VIRGINIA REGISTER OF REGULATIONS

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

Unless exempted by law, an agency wishing to adopt, amend, or repeal regulations must follow the procedures in the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia). Typically, this includes first publishing 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 proposed regulation 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 of Regulations 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 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 the final regulation contains changes made after publication of the proposed regulation that 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*. Pursuant to § 2.2-4007.06 of the Code of Virginia, any person may request that the agency solicit additional public comment on certain changes made after publication of the proposed regulation. The agency shall suspend the regulatory process for 30 days upon such request from 25 or more individuals, 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 alternative to the standard process set forth in the Administrative Process Act for regulations deemed by the Governor to be noncontroversial. To use this process, the Governor's concurrence is required and advance notice must be provided to certain legislative committees. Fast-track regulations become effective on the date noted in the regulatory action if fewer than 10 persons object to using the process in accordance with § 2.2-4012.1.

EMERGENCY REGULATIONS

Pursuant to § 2.2-4011 of the Code of Virginia, an agency may adopt emergency regulations if necessitated by an emergency situation or when Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or fewer from its enactment. In either situation, approval of the Governor is required. The emergency regulation is effective upon its filing with the Registrar of Regulations, unless a later date is specified per § 2.2-4012 of the Code of Virginia. Emergency regulations are limited to no more than 18 months in duration; however, may be extended for six months under the circumstances noted in § 2.2-4011 D. Emergency regulations are published as soon as possible in the *Virginia Register* and are on the Register of Regulations website at register.dls.virgina.gov.

During the time the emergency regulation is in effect, the agency may proceed with the adoption of permanent regulations in accordance with the Administrative Process Act. 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.

PUBLICATION SCHEDULE AND DEADLINES

This schedule is available on the Virginia Register of Regulations website (http://register.dls.virginia.gov).

November 2021 through November 2022

Volume: Issue	Material Submitted By Noon*	Will Be Published On
38:6	October 20, 2021	November 8, 2021
38:7	November 3, 2021	November 22, 2021
38:8	November 15, 2021 **(Monday)**	December 6, 2021
38:9	December 1, 2021	December 20, 2021
38:10	December 15, 2021	January 3, 2022
38:11	December 29, 2021	January 17, 2022
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38:26	July 27, 2022	August 15, 2022
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39:5	October 5, 2022	October 24, 2022
39:6	October 19, 2022	November 7, 2022
39:7	November 2, 2022	November 21, 2022

*Filing deadlines are Wednesdays unless otherwise specified.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF PHARMACY

Agency Decision

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

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

Name of Petitioner: Courtney Fuller.

Nature of Petitioner's Request: To amend 18VAC110-20-460 and 18VAC110-20-490 to allow (i) a pharmacist at a central distribution company to verify Schedule VI drugs to be placed in an automated dispensing device (ADD) prior to delivery to the receiving hospital and (ii) pharmacy technicians at the hospital to load the drugs directly into the ADD without further verification by a pharmacist at the hospital.

Agency Decision: Request granted.

Statement of Reason for Decision: The petition and the comments in support were considered by the board at its meeting on September 24, 2021. The board decided to initiate rulemaking to amend the regulation in accordance with the petitioner's request and with pilot programs that are currently approved.

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

VA.R. Doc. No. PFR21-33; Filed September 24, 2021, 4:11 p.m.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

VIRGINIA SOIL AND WATER CONSERVATION BOARD

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Virginia Soil and Water Conservation Board conducted a periodic review and a small business impact review of **4VAC50-85, Nutrient Management Training and Certification Regulations**, and determined that this regulation should be amended. The board is publishing its report of findings dated September 9, 2021, to support this decision.

The regulation meets the criteria set out in Executive Order 14 (2018) as it is necessary for the protection of public health, safety, and welfare of the citizens and visitors to the Commonwealth.

Recommended amendments would allow individuals who successfully complete a two-year college degree program and one and one-half years of practical experience to meet certain eligibility requirements set out in 4VAC50-85-40.

The regulation does not have an adverse impact on small businesses and does not overlap, duplicate, or conflict with any known federal or state law or regulation.

Contact Information: Lisa McGee, Policy and Planning Director, Department of Conservation and Recreation, 600 East Main Street, 24th Floor, Richmond, VA 23219, telephone (804) 786-4378.

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

STATE BOARD OF LOCAL AND REGIONAL JAILS

Agency Notice

Pursuant to Executive Order 14 (as amended July 16, 2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulation is undergoing a periodic review and a small business impact review: **6VAC15-26, Regulations for Human Subject Research**. The review will be guided by the principles in Executive Order 14 (as amended July 16, 2018). The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public comment period begins October 25, 2021, and ends January 31, 2022.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Virginia Regulatory Town Hall and published in the Virginia Register of Regulations.

Contact Information: Tracey Jenkins, Grant Administrator and Regulatory Coordinator, Department of Corrections, 6900 Atmore Drive, Richmond, VA 23225, telephone (804) 887-7898.

Agency Notice

Pursuant to Executive Order 14 (as amended July 16, 2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulation is undergoing a periodic review and a small business impact review: **6VAC15-28, Regulations for Public/Private Joint Venture Work Programs Operated in a State Correctional Facility**. The review will be guided by the principles in Executive Order 14 (as amended July 16, 2018). The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public comment period begins October 25, 2021, and ends November 15, 2021.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Virginia Regulatory Town Hall and published in the Virginia Register of Regulations.

Contact Information: Ryan McCord, Executive Director, State Board of Local and Regional Jails, 6900 Atmore Drive, Richmond, VA 23225, telephone (804) 887-8340.

Agency Notice

Pursuant to Executive Order 14 (as amended July 16, 2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulation is undergoing a periodic review and a small business impact review: **6VAC15-40, Minimum Standards for Jails and Lockups**. The review will be guided

by the principles in Executive Order 14 (as amended July 16, 2018). The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public comment period begins October 25, 2021, and ends January 3, 2022.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Virginia Regulatory Town Hall and published in the Virginia Register of Regulations.

Contact Information: Ryan McCord, Executive Director, State Board of Local and Regional Jails, 6900 Atmore Drive, Richmond, VA 23225, telephone (804) 887-8340.

Agency Notice

Pursuant to Executive Order 14 (as amended July 16, 2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulation is undergoing a periodic review and a small business impact review: **6VAC15-45, Regulations for Private Management and Operation of Prison Facilities**. The review will be guided by the principles in Executive Order 14 (as amended July 16, 2018). The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public comment period begins October 25, 2021, and ends January 31, 2022.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Virginia Regulatory Town Hall and published in the Virginia Register of Regulations.

Contact Information: Tracey Jenkins, Grant Administrator and Regulatory Coordinator, Department of Corrections, 6900 Atmore Drive, Richmond, VA 23225, telephone (804) 887-7898.

CRIMINAL JUSTICE SERVICES BOARD

Agency Notice

Pursuant to Executive Order 14 (as amended July 16, 2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulation is undergoing a periodic review and a small business impact review: **6VAC20-30, Rules Relating to Compulsory In-Service Training Standards for Law-Enforcement Officers, Jailors or Custodial Officers, Courtroom Security Officers, Process Service Officers and Officers of the Department of Corrections, Division of Operations**.

The Notice of Intended Regulatory Action for 6VAC20-30, which is published in this issue of the Virginia Register, serves as the announcement of the periodic review.

Contact Information: Kristi Shalton, Law Enforcement Program Coordinator, Department of Criminal Justice Services, 1100 Bank Street, Richmond, VA 23219, telephone (804) 786-7801, FAX (804) 786-0410, or email kristi.shalton@dcjs.virginia.gov.

Agency Notice

Pursuant to Executive Order 14 (as amended July 16, 2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulation is undergoing a periodic review and a small business impact review: **6VAC20-50, Rules Relating to Compulsory Minimum Training Standards for Jailors or Custodial Officers, Courthouse and Courtroom Security Officers and Process Service Officers**.

The Notice of Intended Regulatory Action for 6VAC20-50, which is published in this issue of the Virginia Register, serves as the announcement of the periodic review.

Contact Information: Kristi Shalton, Law Enforcement Program Coordinator, Department of Criminal Justice Services, 1100 Bank Street, Richmond, VA 23219, telephone (804) 786-7801, FAX (804) 786-0410, or email kristi.shalton@dcjs.virginia.gov.

TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Report of Findings

Pursuant to §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the State Water Control Board conducted a periodic review and a small business impact review of **9VAC25-890, General VPDES Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems**, and determined that this regulation should be amended. The

department is publishing its report of findings dated September 9, 2021, to support this decision.

This regulation is necessary for the protection of public health, safety, and welfare. The regulation is clearly written and easily understandable. The regulation is effective and continues to be needed; however, this general permit is scheduled to expire on October 31, 2023. This regulation will be amended to reissue the general permit.

The general permit authorizes municipal owners or operators of separate storm sewer systems located within the Census Urbanized Area to discharge stormwater to waters of the state. These discharges are considered to be point sources of pollutants and thus are subject to regulation under the Virginia Pollutant Discharge Elimination System (VPDES) permit program. The permit regulation specifies requirements that protect water quality downstream from the discharge and is essential to protect the health, safety, or welfare of citizens. If this regulation were repealed, individual permits would be required to conduct these activities.

Public comments were received during the periodic review supporting the current general permit and recognizing the need to reissue the general permit in the future. This regulation establishes procedures for obtaining coverage under this general permit, and portions of the regulation may be viewed as complex due to the technical requirements included in the regulation. This regulation is clearly written and easily understandable. The regulation does not overlap, duplicate, or conflict with federal or state law or regulation as the State Water Control Board is the delegated authority to regulate point source discharges to surface water.

The State Water Control Board last reissued this regulation in 2018. This regulation is evaluated and necessary changes are made to the regulation when the permit is reissued. This regulation is related to stormwater discharges from municipal separate storm systems to surface waters, and small businesses do not operate municipal separate storm systems. This regulation is not applicable to small businesses and does not regulate small businesses.

Contact Information: Melissa Porterfield, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4238.

TITLE 12. HEALTH

STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Agency Notice

Pursuant to Executive Order 14 (as amended July 16, 2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulation is undergoing a periodic review and a small business impact review: **12VAC35-105, Rules and Regulations for Licensing Providers by the Department of Behavioral Health and Developmental Services**. The review will be guided by the principles in Executive Order 14 (as amended July 16, 2018). The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public comment period begins October 25, 2021, and ends November 30, 2021.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Virginia Regulatory Town Hall and published in the Virginia Register of Regulations.

Agency Contact: Ruth Anne Walker, Director of Regulatory Affairs, Department of Behavioral Health and Developmental Services, Jefferson Building, 1220 Bank Street, 4th Floor, Richmond, VA 23219, telephone (804) 385-6549.

TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Agency Notice

Pursuant to Executive Order 14 (as amended July 16, 2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the following regulation is undergoing a periodic review and a small business impact review: **22VAC40-141, Licensing Standards for Independent Foster Homes**. The review will be guided by the principles in Executive Order 14 (as amended July 16, 2018). The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the

review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public comment period begins October 25, 2021, and ends November 15, 2021.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Virginia Regulatory Town Hall and published in the Virginia Register of Regulations.

Contact Information: Tammy Trestrail, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7132.

NOTICES OF INTENDED REGULATORY ACTION

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

CRIMINAL JUSTICE SERVICES BOARD

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 intends to consider amending **6VAC20-30, Rules Relating to Compulsory In-Service Training Standards for Law-Enforcement Officers, Jailors or Custodial Officers, Courtroom Security Officers, Process Service Officers and Officers of the Department of Corrections, Division of Operations**. The purpose of the proposed action is to align training standards for current law-enforcement officers with the compulsory minimum training standards for new law-enforcement officer recruits in the Commonwealth. The proposed amendments will revise in-service requirements to create cohesiveness among all criminal justice professions and align regulation with recently passed legislation. The current in-service training standards and requirements were last updated in 2016. An example of the substantive changes that are being considered is raising the in-service firearms qualification score to align with the revised compulsory minimum training standards for new law-enforcement officer recruits at the academy-level.

In addition, pursuant to Executive Order 14 (as amended, July 16, 2018) and § 2.2-4007.1 of the Code of Virginia, the agency is conducting a periodic review and small business impact review of this regulation to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare; (ii) minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

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

Statutory Authority: § 9.1-102 of the Code of Virginia.

Public Comment Deadline: November 24, 2021.

Agency Contact: Kristi Shalton, Law Enforcement Program Coordinator, Department of Criminal Justice Services, 1100 Bank Street, Richmond, VA 23219, telephone (804) 786-7801, FAX (804) 786-0410, or email kristi.shalton@dcjs.virginia.gov.

VA.R. Doc. No. R22-6808; Filed October 4, 2021, 8:27 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Criminal Justice Services Board intends to consider amending **6VAC20-50, Rules Relating to Compulsory Minimum Training Standards for Jailors or Custodial Officers, Courthouse and Courtroom Security Officers and Process Service Officers**. The purpose of the proposed action is to modify and update language to align current training standards with the compulsory minimum training standards for new law-enforcement officer recruits in the Commonwealth. The intention of this regulatory revision is to revise the requirements for the minimum training standards for jailors, court security, and civil process officers and create cohesiveness among all criminal justice professions. This regulatory action will also conform regulation to recently passed legislation.

In addition, pursuant to Executive Order 14 (as amended, July 16, 2018) and § 2.2-4007.1 of the Code of Virginia, the agency is conducting a periodic review and small business impact review of this regulation to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare; (ii) minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

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

Statutory Authority: § 9.1-102 of the Code of Virginia.

Public Comment Deadline: November 24, 2021.

Agency Contact: Kristi Shalton, Law Enforcement Program Coordinator, Department of Criminal Justice Services, 1100 Bank Street, Richmond, VA 23219, telephone (804) 786-7801, FAX (804) 786-0410, or email kristi.shalton@dcjs.virginia.gov.

VA.R. Doc. No. R22-6819; Filed October 4, 2021, 8:25 a.m.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

Final Regulation

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

Title of Regulation: **4VAC20-950. Pertaining to Black Sea Bass (amending 4VAC20-950-20).**

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

Effective Date: January 1, 2022.

Agency Contact: Jennifer Farmer, Marine Resources Commission, 380 Fenwick Road, Fort Monroe, VA 23551, telephone (757) 247-2248, or email jennifer.farmer@mrc.virginia.gov.

Summary:

The amendment changes the Virginia percent allocation of the coastwide commercial black sea bass quota.

4VAC20-950-20. Definitions.

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

"Annual quota" means Virginia's ~~20%~~ 15.88% share of the annual coastwide commercial black sea bass quota managed by the Atlantic States Marine Fisheries Commission.

"Black sea bass" means any fish of the species Centropristis striata.

"Land" or "landing" means to (i) enter port with finfish, shellfish, crustaceans, or other marine seafood on board any boat or vessel; (ii) begin offloading finfish, shellfish, crustaceans, or other marine seafood; or (iii) offload finfish, shellfish, crustaceans, or other marine seafood.

"Recreational vessel" means any vessel, kayak, charter vessel, or headboat fishing recreationally.

"Snout" means the most forward projection from a fish's head that includes the upper and lower jaw.

"Total length" means the length of a fish measured from the most forward projection of the snout, with the mouth closed, to the tip of the longer lobe of the tail (caudal) fin, excluding the caudal fin filament, measured with the tail compressed along the midline, using a straight-line measure, not measured over the curve of the body.

"Virginia Saltwater Fisherman's Journal" means the online web-based resource provided by the Marine Resources Commission to report recreational harvest of seafood at https://www.vasaltwaterjournal.com.

VA.R. Doc. No. R22-6984; Filed September 28, 2021, 12:45 p.m.

TITLE 8. EDUCATION

STATE BOARD OF EDUCATION

Final Regulation

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

Title of Regulation: **8VAC20-81. Regulations Governing Special Education Programs for Children with Disabilities in Virginia (amending 8VAC20-81-10, 8VAC20-81-110, 8VAC20-81-170).**

Statutory Authority: §§ 22.1-16 and 22.1-214 of the Code of Virginia.

Effective Date: November 24, 2021.

Agency Contact: Jim Chapman, Regulatory and Legal Coordinator, Department of Education, James Monroe Building, 101 North 14th Street, 25th Floor, Richmond, VA 23219, telephone (804) 255-2540, or email jim.chapman@doe.virginia.gov.

Summary:

The amendments conform the regulation to legislation adopted during the 2021 Special Session I of the General Assembly. Pursuant to Chapter 109, an amendment removes the word "component" from where it modifies "evaluation" in a requirement regarding parental right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the

local educational agency. Pursuant to Chapter 170, amendments adjust the definition of "traumatic brain injury." Pursuant to Chapters 451 and 452, amendments require that if a school division develops a draft individualized education program (IEP) prior to a scheduled IEP meeting, such draft IEP be provided to the parents at least two business days in advance of such IEP meeting.

8VAC20-81-10. Definitions.

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

"Act" means the Individuals with Disabilities Education Improvement Act, P.L. 108-446, December 3, 2004, § 1400 et seq. (34 CFR 300.4)

"Age of eligibility" means all eligible children with disabilities who have not graduated with a standard or advanced studies high school diploma who, because of such disabilities, are in need of special education and related services, and whose second birthday falls on or before September 30, and who have not reached their 22nd birthday on or before September 30 (two to 21, inclusive) in accordance with the Code of Virginia. A child with a disability whose 22nd birthday is after September 30 remains eligible for the remainder of the school year. (§ 22.1-213 of the Code of Virginia; 34 CFR 300.101(a) and 34 CFR 300.102(a)(3)(ii))

"Age of majority" means the age when the procedural safeguards and other rights afforded to the ~~parent(s)~~ parent of a student with a disability transfer to the student. In Virginia, the age of majority is 18. (§ 1-204 of the Code of Virginia; 34 CFR 300.520)

"Agree or ~~Agreement~~ agreement" – see the definition for "consent."

"Alternate assessment" means the state assessment program, and any school divisionwide assessment to the extent that the school division has one, for measuring student performance against alternate achievement standards for students with significant intellectual disabilities who are unable to participate in statewide Standards of Learning testing, even with accommodations. (34 CFR 300.320(a)(2)(ii) and 34 CFR 300.704(b)(4)(x))

"Alternative assessment" means the state assessment program for measuring student performance on grade level standards for students with disabilities who are unable to participate in statewide Standards of Learning testing, even with accommodations.

"Assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a child with a disability. The term does not include a medical device that is surgically implanted, or the replacement of that device. (34 CFR 300.5)

"Assistive technology service" means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes: (34 CFR 300.6)

1. The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;

2. Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;

3. Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

4. Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

5. Training or technical assistance for a child with a disability or, if appropriate, that child's family; and

6. Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to employ or are otherwise substantially involved in the major life functions of that child.

"At no cost" means that all specially designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to students without disabilities or their ~~parent(s)~~ parent as part of the regular education program. (34 CFR 300.39(b)(1))

"Audiology" means services provided by a qualified audiologist licensed by the Board of Audiology and Speech-Language Pathology and includes: (Regulations Governing the Practice of Audiology and Speech-Language Pathology, 18VAC30-20; 34 CFR 300.34(c)(1))

1. Identification of children with hearing loss;

2. Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;

3. Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation;

4. Creation and administration of programs for prevention of hearing loss;

5. Counseling and guidance of children, parents, and teachers regarding hearing loss; and

6. Determination of children's needs for group and individual amplification, selecting and fitting an appropriate aid, and evaluating the effectiveness of amplification.

"Autism" means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. Autism does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance. A child who manifests the characteristics of autism after age three could be identified as having autism if the criteria in this definition are satisfied. (34 CFR 300.8(c)(1))

"Behavioral intervention plan" means a plan that utilizes positive behavioral interventions and supports to address behaviors that interfere with the learning of students with disabilities or with the learning of others or behaviors that require disciplinary action.

"Business day" means Monday through Friday, 12 months of the year, exclusive of federal and state holidays (unless holidays are specifically included in the designation of business days, as in 8VAC20-81-150 B 4 a (2)). (34 CFR 300.11)

"Calendar days" means consecutive days, inclusive of Saturdays and Sundays. Whenever any period of time fixed by this chapter shall expire on a Saturday, Sunday, or federal or state holiday, the period of time for taking such action under this chapter shall be extended to the next day, not a Saturday, Sunday, or federal or state holiday. (34 CFR 300.11)

"Career and technical education" means organized educational activities that offer a sequence of courses that: (20 USC § 2301 et seq.)

1. Provides individuals with the rigorous and challenging academic and technical knowledge and skills the individuals need to prepare for further education and for careers (other than careers requiring a master's or doctoral degree) in current or emerging employment sectors;

2. May include the provision of skills or courses necessary to enroll in a sequence of courses that meet the requirements of this subdivision; or

3. Provides, at the postsecondary level, for a one-year certificate, an associate degree, or industry-recognized credential and includes competency-based applied learning that contributes to the academic knowledge, higher-order reasoning and problem-solving skills, work attitudes, general employability skills, technical skills, and occupational-specific skills.

"Caseload" means the number of students served by special education personnel.

"Change in identification" means a change in the categorical determination of the child's disability by the group that determines eligibility.

"Change in placement" or "change of placement" means when the local educational agency places the child in a setting that is distinguishable from the educational environment to which the child was previously assigned and includes: (34 CFR 300.102(a)(3)(iii), 34 CFR 300.532(b)(2)(ii) and 34 CFR 300.536)

1. The child's initial placement from general education to special education and related services;

2. The expulsion or long-term removal of a student with a disability;

3. The placement change that results from a change in the identification of a disability;

4. The change from a public school to a private day, residential, or state-operated program; from a private day, residential, or state-operated program to a public school; or to a placement in a separate facility for educational purposes;

5. Termination of all special education and related services; or

6. Graduation with a standard or advanced studies high school diploma.

A "change in placement" also means any change in the educational setting for a child with a disability that does not replicate the elements of the educational program of the child's previous setting.

"Change in placement" or "change of placement," for the purposes of discipline, means: (34 CFR 300.536)

1. A removal of a student from the student's current educational placement is for more than 10 consecutive school days; or

2. The student is subjected to a series of removals that constitute a pattern because they cumulate to more than 10 school days in a school year, and because of factors such as:

a. The length of each removal;

b. The child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals;

c. The total amount of time the student is removed; or

d. The proximity of the removals to one another.

"Chapter" means these regulations.

"Charter schools" means any school meeting the requirements for charter as set forth in the Code of Virginia. (§§ 22.1-212.5 through 22.1-212.16 of the Code of Virginia; 34 CFR 300.7)

"Child" means any person who shall not have reached his 22nd birthday by September 30 of the current year.

"Child with a disability" means a child evaluated in accordance with the provisions of this chapter as having an intellectual disability, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disability (referred to in this part as "emotional disability"), an orthopedic impairment, autism, traumatic brain injury, an other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities who, by reason thereof, needs special education and related services. This also includes developmental delay if the local educational agency recognizes this category as a disability in accordance with 8VAC20-81-80 M 3. If it is determined through an appropriate evaluation that a child has one of the disabilities identified but only needs a related service and not special education, the child is not a child with a disability under this part. If the related service required by the child is considered special education rather than a related service under Virginia standards, the child would be determined to be a child with a disability. (§ 22.1-213 of the Code of Virginia; 34 CFR 300.8(a)(1) and 34 CFR 300.8(a)(2)(i) and (ii))

"Collaboration" means interaction among professionals as they work toward a common goal. Teachers do not necessarily have to engage in co-teaching in order to collaborate.

"Complaint" means a request that the Virginia Department of Education investigate an alleged violation by a local educational agency of a right of a ~~parent(s)~~ parent of a child who is eligible or suspected to be eligible for special education and related services based on federal and state law and regulations governing special education or a right of such child. A complaint is a statement of some disagreement with procedures or process regarding any matter relative to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education. (34 CFR 300.151)

"Comprehensive Services Act" (CSA) means the Comprehensive Services Act for At-Risk Youth and Families that establishes the collaborative administration and funding system for services for certain at-risk youths and their families. (Chapter 52 (§ 2.2-5200 et seq.) of Title 2.2 of the Code of Virginia)

"Consent" means: (34 CFR 300.9)

1. The ~~parent(s)~~ parents or eligible student has been fully informed of all information relevant to the activity for which consent is sought in the ~~parent's(s')~~ parent's or eligible student's native language, or other mode of communication;

2. The ~~parent(s)~~ parent or eligible student understands and agrees, in writing, to the carrying out of the activity for which consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and

3. The ~~parent(s)~~ parent or eligible student understands that the granting of consent is voluntary on the part of the ~~parent(s)~~ parent or eligible student and may be revoked any time.

a. If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked. Revocation ceases to be relevant after the activity for which consent was obtained was completed.)

b. If a parent revokes consent in writing for their child's receipt of special education services after the child is initially provided special education and related services, the local educational agency is not required to amend the child's education records to remove any references to the child's receipt of special education and related services because of the revocation of consent.

The meaning of the term "consent" is not the same as the meaning of the term "agree" or "agreement." "Agree" or "agreement" refers to an understanding between the parent and the local educational agency about a particular matter and as required in this chapter. There is no requirement that an agreement be in writing, unless stated in this chapter. The local educational agency and ~~parent(s)~~ parent should document their agreement.

"Controlled substance" means a drug or other substance identified under ~~schedules~~ Schedule I, II, ~~or~~ III, IV, or V in § 202(c) of the Controlled Substances Act, 21 USC § 812(c). (34 CFR 300.530(i)(1))

"Core academic subjects" means English, reading or language arts, mathematics, science, foreign languages, civics, and government, economics, arts, history, and geography. (34 CFR 300.10)

"Correctional facility" means any state facility of the Virginia Department of Corrections or the Virginia Department of Juvenile Justice, any regional or local detention home, or any regional or local jail. (§§ 16.1-228 and 53.1-1 of the Code of Virginia)

"Coteaching" means a service delivery option with two or more professionals sharing responsibility for a group of students for some or all of the school day in order to combine their expertise to meet student needs.

"Counseling services" means services provided by qualified visiting teachers, social workers, psychologists, guidance counselors, or other qualified personnel. (34 CFR 300.34(c)(2); Licensure Regulations for School Personnel (8VAC20-22))

"Dangerous weapon" means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for or

is readily capable of, causing death or bodily injury, except that such term does not include a pocket knife with a blade of less than three inches in length. (18 USC § 930(g)(2); § 18.2-308.1 of the Code of Virginia)

"Day" means calendar day unless otherwise indicated as business day or school day. (34 CFR 300.11)

"Deaf-blindness" means simultaneous hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness. (34 CFR 300.8(c)(2))

"Deafness" means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects the child's educational performance. (34 CFR 300.8(c)(3))

"Destruction of information" means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable. (34 CFR 300.611(a))

"Developmental delay" means a disability affecting a child ages two by September 30 through six, inclusive: (34 CFR 300.8(b); 34 CFR 300.306(b))

1. (i) Who is experiencing developmental delays, as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development, or (ii) who has an established physical or mental condition that has a high probability of resulting in developmental delay;

2. The ~~delay(s)~~ delay is not primarily a result of cultural factors, environmental or economic disadvantage, or limited English proficiency; and

3. The presence of one or more documented characteristics of the delay has an adverse ~~affect~~ effect on educational performance and makes it necessary for the student to have specially designed instruction to access and make progress in the general educational activities for this age group.

"Direct services" means services provided to a child with a disability directly by the Virginia Department of Education, by contract, or through other arrangements. (34 CFR 300.175)

"Due process hearing" means an administrative procedure conducted by an impartial special education hearing officer to resolve disagreements regarding the identification, evaluation, educational placement and services, and the provision of a free appropriate public education that arise between a ~~parent(s)~~ parent and a local educational agency. A due process hearing involves the appointment of an impartial special education hearing officer who conducts the hearing, reviews evidence, and determines what is educationally appropriate for the child with a disability. (34 CFR 300.507)

"Early identification and assessment of disabilities in children" means the implementation of a formal plan for identifying a disability as early as possible in a child's life. (34 CFR 300.34(c)(3))

"Education record" means those records that are directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution. The term also has the same meaning as "scholastic record." In addition to written records, this also includes electronic exchanges between school personnel and ~~parent(s)~~ parent regarding matters associated with the child's educational program (e.g., scheduling of meetings or notices). This term also includes the type of records covered under the definition of "education record" in the regulations implementing the Family Education Rights and Privacy Act. (20 USC § 1232g(a)(3); § 22.1-289 of the Code of Virginia; 34 CFR 300.611(b))

"Educational placement" means the overall instructional setting in which the student receives his education including the special education and related services provided. Each local educational agency shall ensure that the parents of a child with a disability are members of the group that makes decisions on the educational placement of their child. (34 CFR 300.327)

"Educational service agencies and other public institutions or agencies" include: (34 CFR 300.12)

1. Regional public multiservice agencies authorized by state law to develop, manage, and provide services or programs to local educational agencies;

2. Recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary schools and secondary schools of the state;

3. Any other public institution or agency having administrative control and direction over a public elementary school or secondary school; and

4. Entities that meet the definition of intermediate educational unit in § 1402(23) of the Act as in effect prior to June 4, 1997.

"Eligible student" means a child with a disability who reaches the age of majority and to whom the procedural safeguards and other rights afforded to the ~~parent(s)~~ parent are transferred.

"Emotional disability" means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance: (34 CFR 300.8(c)(4))

1. An inability to learn that cannot be explained by intellectual, sensory, or health factors;

2. An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

3. Inappropriate types of behavior or feelings under normal circumstances;

4. A general pervasive mood of unhappiness or depression; or

5. A tendency to develop physical symptoms or fears associated with personal or school problems.

Emotional disability includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disability as defined in this section.

"Equipment" means machinery, utilities, and built-in equipment, and any necessary enclosures or structures to house machinery, utilities, or equipment and all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture, printed, published and audio-visual instructional materials, telecommunications, sensory, and other technological aids and devices and books, periodicals, documents, and other related materials. (34 CFR 300.14)

"Evaluation" means procedures used in accordance with this chapter to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs. (34 CFR 300.15)

"Excess costs" means those costs that are in excess of the average annual per-student expenditure in a local educational agency during the preceding school year for an elementary school or secondary school student, as may be appropriate, and that shall be computed after deducting: (34 CFR 300.16)

1. Amounts received:

a. Under Part B of the Act;

b. Under Part A of Title I of the ESEA; and

c. Under Parts A and B of Title III of the ESEA; and

2. Any state or local funds expended for programs that would qualify for assistance under any of the parts described in subdivision 1 a of this definition, but excluding any amounts for capital outlay or debt service.

"Extended school year services" for the purposes of this chapter means special education and related services that: (34 CFR 300.106(b))

1. Are provided to a child with a disability:

a. Beyond the normal school year of the local educational agency;

b. In accordance with the child's individualized education program;

c. At no cost to the ~~parent(s)~~ parent of the child; and

2. Meet the standards established by the Virginia Department of Education.

"Federal core academic subjects" means English, reading or language arts, mathematics, science, foreign language (languages other than English), civics and government, economics, arts, history, and geography. (20 USC § 7801(11))

"Federal financial assistance" means any grant, loan, contract or any other arrangement by which the U.S. Department of Education provides or otherwise makes available assistance in the form of funds, services of federal personnel, or real and personal property. (34 CFR 104.3(h))

"Free appropriate public education" or "FAPE" means special education and related services that: (34 CFR 300.17)

1. Are provided at public expense, under public supervision and direction, and without charge;

2. Meet the standards of the Virginia Board of Education;

3. Include an appropriate preschool, elementary school, middle school or secondary school education in Virginia; and

4. Are provided in conformity with an individualized education program that meets the requirements of this chapter.

"Functional behavioral assessment" means a process to determine the underlying cause or functions of a child's behavior that impede the learning of the child with a disability or the learning of the child's peers. A functional behavioral assessment may include a review of existing data or new testing data or evaluation as determined by the IEP team.

"General curriculum" means the same curriculum used with children without disabilities adopted by a local educational agency, schools within the local educational agency or, where applicable, the Virginia Department of Education for all children from preschool through secondary school. The term relates to content of the curriculum and not to the setting in which it is taught.

"Hearing impairment" means an impairment in hearing in one or both ears, with or without amplification, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in this section. (34 CFR 300.8(c)(5))

"Highly qualified special education teacher" means a teacher has met the requirements as specified in 34 CFR 300.18 for special education teachers in general, for special education teachers teaching core academic subjects, for special education teachers teaching to alternate achievement standards, or for special education teachers teaching multiple subjects as it applies to their teaching assignment. (34 CFR 300.18)

"Home-based instruction" means services that are delivered in the home setting (or other agreed upon setting) in accordance with the child's individualized education program.

"Homebound instruction" means academic instruction provided to students who are confined at home or in a health care facility for periods that would prevent normal school attendance based upon certification of need by a licensed physician or licensed clinical psychologist. For a child with a disability, the IEP team shall determine the delivery of services, including the number of hours of services. (Regulations Establishing Standards for Accrediting Public Schools in Virginia, 8VAC20-131-180)

"Home instruction" means instruction of a child or children by a ~~parent(s)~~ parent, guardian or other person having control or charge of such child or children as an alternative to attendance in a public or private school in accordance with the provisions of the Code of Virginia. This instruction may also be termed home schooling. (§ 22.1-254.1 of the Code of Virginia)

"Homeless children" has the meaning given the term "homeless children and youth" in § 725 (42 USC § 11434a) of the McKinney-Vento Homeless Assistance Act, as amended, 42 USC § 11431 et seq. and listed below: (34 CFR 300.19)

The term "homeless children and youth" means individuals who lack a fixed, regular, and adequate nighttime residence within the meaning of § 103(a)(1) of the McKinney-Vento Homeless Assistance Act and includes the following:

1. Children and youth who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to a lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;

2. Children and youth who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings within the meaning of § 103(a)(2)(C);

3. Children and youth who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and

4. Migratory children (as such term is defined in § 1309 of the Elementary and Secondary Education Act of 1965) who qualify as homeless because the children are living in circumstances described in subdivisions 1 through 3 of this definition.

The term "unaccompanied youth" includes a youth not in the physical custody of a parent or guardian.

"Home tutoring" means instruction by a tutor or teacher with qualifications prescribed by the Virginia Board of Education, as an alternative to attendance in a public or private school and approved by the division superintendent in accordance with the provisions of the Code of Virginia. This tutoring is not home instruction as defined in the Code of Virginia. (§ 22.1-254 of the Code of Virginia)

"Illegal drug" means a controlled substance, but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under the Controlled Substances Act, 21 USC § 812(c), or under any other provision of federal law. (34 CFR 300.530(i)(2))

"Impartial special education hearing officer" means a person, selected from a list maintained by the Office of the Executive Secretary of the Supreme Court of Virginia to conduct a due process hearing.

"Implementation plan" means the plan developed by the local educational agency designed to operationalize the decision of the hearing officer in cases that are fully adjudicated.

"Independent educational evaluation" means an evaluation conducted by a qualified examiner or examiners who are not employed by the local educational agency responsible for the education of the child in question. (34 CFR 300.502(a)(3)(i))

"Individualized education program" or "IEP" means a written statement for a child with a disability that is developed, reviewed, and revised in a team meeting in accordance with this chapter. The IEP specifies the individual educational needs of the child and what special education and related services are necessary to meet the child's educational needs. (34 CFR 300.22)

"Individualized education program team" means a group of individuals described in 8VAC20-81-110 that is responsible for developing, reviewing, or revising an IEP for a child with a disability. (34 CFR 300.23)

"Individualized family service plan (IFSP) under Part C of the Act" means a written plan for providing early intervention services to an infant or toddler with a disability eligible under Part C and to the child's family. (34 CFR 303.24; 20 USC § 636)

"Infant and toddler with a disability" means a child, ages birth to two, inclusive, whose birthday falls on or before September 30, or who is eligible to receive services in the Part C early intervention system up to age three, and who: (§ 2.2-5300 of the Code of Virginia; 34 CFR 300.25)

1. Has delayed functioning;

2. Manifests atypical development or behavior;

3. Has behavioral disorders that interfere with acquisition of developmental skills; or

4. Has a diagnosed physical or mental condition that has a high probability of resulting in delay, even though no current delay exists.

"Informed parental consent": see "Consent."

"Initial placement" means the first placement for the child to receive special education and related services in either a local educational agency, other educational service agency, or other public agency or institution for the purpose of providing special education or related services.

"Intellectual disability" means the definition formerly known as "mental retardation" and means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a child's educational performance. (34 CFR 300.8(c)(6))

"Interpreting services" as used with respect to children who are deaf or hard of hearing, means services provided by personnel who meet the qualifications set forth under 8VAC20-81-40 and includes oral transliteration services, cued speech/language transliteration services, sign language transliteration and interpreting services, and transcription services, such as communication access real-time translation (CART), C-Print, and TypeWell and interpreting services for children who are deaf-blind. A child who is not deaf or hard of hearing, but who has language deficits, may receive interpreting services as directed by the child's Individualized Education Program. (Regulations Governing Interpreter Services for the Deaf and Hard of Hearing 22VAC20-30; 34 CFR 300.34(c)(4)(i))

"Least restrictive environment" (LRE) means that to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and that special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (34 CFR 300.114 through 34 CFR 300.120)

"Level I services" means the provision of special education to children with disabilities for less than 50% of their instructional school day (excluding intermission for meals). The time that a child receives special education services is calculated on the basis of special education services described in the individualized education program, rather than the location of services.

"Level II services" means the provision of special education to children with disabilities for 50% or more of the instructional school day (excluding intermission for meals). The time that a child receives special education services is calculated on the basis of special education services described in the individualized education program, rather than the location of services.

"Limited English proficient" when used with respect to an individual means an individual: (20 USC § 7801(25); 34 CFR 300.27)

1. Who is aged ~~2~~ two through 21;

2. Who is enrolled or preparing to enroll in an elementary school or secondary school; or

3. Who:

a. Was not born in the United States or whose native language is a language other than English;

b. Is a Native American or Alaska Native, or a native resident of the outlying areas, and comes from an environment where a language other than English has had a significant impact on the individual's level of English language proficiency; or

c. Is migratory, whose native language is a language other than English, and who comes from an environment where a language other than English is dominant; and

4. Whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual:

a. The ability to meet Virginia's proficient level of achievement on Virginia's assessments;

b. The ability to successfully achieve in classrooms where the language of instruction is English; or

c. The opportunity to participate fully in society.

"Local educational agency" means a local school division governed by a local school board, a state-operated program that is funded and administered by the Commonwealth of Virginia or the Virginia School for the Deaf and the Blind at Staunton. Neither state-operated programs nor the Virginia School for the Deaf and the Blind at Staunton are considered a school division as that term is used in these regulations. (§ 22.1-346 C of the Code of Virginia; 34 CFR 300.28)

"Long-term placement" if used in reference to state-operated programs as outlined in 8VAC20-81-30 H means those hospital placements that are not expected to change in status or condition because of the child's medical needs.

"Manifestation determination review" means a process to review all relevant information and the relationship between the child's disability and the behavior subject to the disciplinary action.

"Medical services" means services provided by a licensed physician or nurse practitioner to determine a child's medically related disability that results in the child's need for special education and related services. (§ 22.1-270 of the Code of Virginia; 34 CFR 300.34(c)(5))

"Mental retardation" - see "Intellectual disability."

"Multiple disabilities" means simultaneous impairments (such as intellectual disability with blindness, intellectual disability with orthopedic impairment), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include deaf-blindness. (34 CFR 300.8(c)(7))

"National Instructional Materials Access Center" or "NIMAC" means the national center established to do the following: (34 CFR 300.172)

1. Receive and maintain a catalog of print instructional materials prepared in the NIMAS, as established by the U.S. Secretary of Education, made available to such center by the textbook publishing industry, state educational agencies, and local educational agencies;

2. Provide access to print instructional materials, including textbooks, in accessible media, free of charge, to blind or other persons with print disabilities in elementary schools and secondary schools, in accordance with such terms and procedures as the NIMAC may prescribe; and

3. Develop, adopt and publish procedures to protect against copyright infringement, with respect to print instructional materials provided in accordance with the Act.

"National Instructional Materials Accessibility Standard" or "NIMAS" means the standard established by the United States Secretary of Education to be used in the preparation of electronic files suitable and used solely for efficient conversion of print instructional materials into specialized formats. (34 CFR 300.172)

"Native language" if used with reference to an individual of limited English proficiency, means the language normally used by that individual, or, in the case of a child, the language normally used by the ~~parent(s)~~ parent of the child, except in all direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment. For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, Braille, or oral communication). (34 CFR 300.29)

"Nonacademic services and extracurricular services" may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the local educational agency, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the local educational agency and assistance in making outside employment available. (34 CFR 300.107(b))

"Notice" means written statements in English or in the primary language of the home of the ~~parent(s)~~ parent, or, if the language or other mode of communication of the ~~parent(s)~~ parent is not a written language, oral communication in the primary language of the home of the ~~parent(s)~~ parent. If an individual is deaf or blind, or has no written language, the mode of communication would be that normally used by the individual (such as sign language, Braille, or oral communication). (34 CFR 300.503(c))

"Occupational therapy" means services provided by a qualified occupational therapist or services provided under the direction or supervision of a qualified occupational therapist and includes: (Regulations Governing the Licensure of Occupational Therapists (18VAC85-80-10 et seq.); 34 CFR 300.34(c)(6))

1. Improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation;

2. Improving ability to perform tasks for independent functioning if functions are impaired or lost; and

3. Preventing, through early intervention, initial or further impairment or loss of function.

"Orientation and mobility services" means services provided to blind or visually impaired children by qualified personnel to enable those children to attain systematic orientation to and safe movement within their environments in school, home, and community; and includes travel training instruction, and teaching children the following, as appropriate: (34 CFR 300.34(c)(7))

1. Spatial and environmental concepts and use of information received by the senses (e.g., sound, temperature, and vibrations) to establish, maintain, or regain orientation and line of travel (e.g., using sound at a traffic light to cross the street);

2. To use the long cane or service animal to supplement visual travel skills or as a tool for safely negotiating the environment for students with no available travel vision;

3. To understand and use remaining vision and distance low vision aids; and

4. Other concepts, techniques, and tools.

"Orthopedic impairment" means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by congenital anomaly, impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures). (34 CFR 300.8(c)(8))

"Other health impairment" means having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning,

leukemia, nephritis, rheumatic fever, and sickle cell anemia and Tourette syndrome that adversely affects a child's educational performance. (34 CFR 300.8(c)(9))

"Paraprofessional," also known as paraeducator, means an appropriately trained employee who assists and is supervised by qualified professional staff in meeting the requirements of this chapter. (34 CFR 300.156(b)(2)(iii))

"Parent" means: (§ 20-124.6 and § 22.1-213.1 of the Code of Virginia; 34 CFR 99.4 and 34 CFR 300.30)

1. Persons who meet the definition of "parent":

a. A biological or adoptive parent of a child;

b. A foster parent, even if the biological or adoptive parent's rights have not been terminated, but subject to subdivision 8 of this definition;

c. A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not a guardian ad litem, or the state if the child is a ward of the state);

d. An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare;

e. If no party qualified under subdivisions 1 a through 1 d of this definition can be identified, or those parties are unwilling to act as parent, a surrogate parent who has been appointed in accordance with requirements detailed under 8VAC20-81-220; or

f. A minor who is emancipated under § 16.1-333 of the Code of Virginia.

2. If a judicial decree or order identifies a specific ~~person(s)~~ person under subdivisions 1 a through 1 e of this subsection to act as the "parent" of a child or to make educational decisions on behalf of a child, then such ~~person(s)~~ person shall be determined to be the "parent" for purposes of this definition.

3. "Parent" does not include local or state agencies or their agents, including local departments of social services, even if the child is in the custody of such an agency.

4. The biological or adoptive parent, when attempting to act as the parent under this chapter and when more than one party is qualified under this section to act as a parent, shall be presumed to be the parent for purposes of this section unless the biological or adoptive parent's or parents' authority to make educational decisions on the child's behalf has been extinguished pursuant to §§ 16.1-277.01, 16.1-277.02, or 16.1-283 of the Code of Virginia or a comparable law in another state.

5. Noncustodial parents whose parental rights have not been terminated are entitled to all parent rights and responsibilities available under this chapter, including access to their child's records.

6. Custodial stepparents have the right to access the child's record. Noncustodial stepparents do not have the right to access the child's record.

7. A validly married minor who has not pursued emancipation under § 16.1-333 of the Code of Virginia may assert implied emancipation based on the minor's marriage record and, thus, assumes responsibilities of "parent" under this chapter.

8. The local educational agency shall provide written notice to the biological or adoptive parents at their last known address that a foster parent is acting as the parent under this section, and the local educational agency is entitled to rely upon the actions of the foster parent under this section until such time that the biological or adoptive parent attempts to act as the parent.

"Parent counseling and training" means assisting parents in understanding the special needs of their child, providing parents with information about child development, and helping parents to acquire the necessary skills that will allow them to support the implementation of their child's IEP or IFSP. (34 CFR 300.34(c)(8))

"Participating agency" means a state or local agency (including a Comprehensive Services Act team), other than the local educational agency responsible for a student's education, that is financially and legally responsible for providing transition services to the student. The term also means any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained under Part B of the Act. (34 CFR 300.611(c), 34 CFR 300.324(c) and 34 CFR 300.321(b)(3))

"Personally identifiable" means information that contains the following: (34 CFR 300.32)

1. The name of the child, the child's parent, or other family member;

2. The address of the child;

3. A personal identifier, such as the child's social security number or student number; or

4. A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

"Physical education" means the development of: (34 CFR 300.39(b)(2))

1. Physical and motor fitness;

2. Fundamental motor skills and patterns; and

3. Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports). The

term includes special physical education, adapted physical education, movement education, and motor development.

"Physical therapy" means services provided by a qualified physical therapist or under the direction or supervision of a qualified physical therapist upon medical referral and direction. (Regulations Governing the Practice of Physical Therapy, 18VAC112-20; 34 CFR 300.34(c)(9))

"Private school children with disabilities" means children with disabilities enrolled by their ~~parent(s)~~ parent in private, including religious, schools or facilities that meet the definition of elementary school or secondary school as defined in this section other than children with disabilities who are placed in a private school by a local school division or a Comprehensive Services Act team in accordance with 8VAC20-81-150. (34 CFR 300.130)

"Program" means the special education and related services, including accommodations, modifications, supplementary aids and services, as determined by a child's individualized education program.

"Psychological services" means those services provided by a qualified psychologist or under the direction or supervision of a qualified psychologist, including: (34 CFR 300.34(c)(10))

1. Administering psychological and educational tests, and other assessment procedures;

2. Interpreting assessment results;

3. Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;

4. Consulting with other staff members in planning school programs to meet the special needs of children as indicated by psychological tests, interviews, direct observation, and behavioral evaluations;

5. Planning and managing a program of psychological services, including psychological counseling for children and parents; and

6. Assisting in developing positive behavioral intervention strategies.

"Public expense" means that the local educational agency either pays for the full cost of the service or evaluation or ensures that the service or evaluation is otherwise provided at no cost to the ~~parent(s)~~ parent. (34 CFR 300.502(a)(3)(ii))

"Public notice" means the process by which certain information is made available to the general public. Public notice procedures may include~~, but not be limited to,~~ newspaper advertisements, radio announcements, television features and announcements, handbills, brochures, electronic means, and other methods that are likely to succeed in providing information to the public.

"Qualified person who has a disability" means a "qualified handicapped person" as defined in the federal regulations implementing the Rehabilitation Act of 1973, as amended. (29 USC § 701 et seq.)

"Recreation" includes: (34 CFR 30.34(c)(11))

1. Assessment of leisure function;

2. Therapeutic recreation services;

3. Recreation program in schools and community agencies; and

4. Leisure education.

"Reevaluation" means completion of a new evaluation in accordance with this chapter. (34 CFR 300.303)

"Rehabilitation counseling services" means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to students with disabilities by vocational rehabilitation programs funded under the Rehabilitation Act of 1973 (29 USC § 701 et seq.), as amended. (34 CFR 300.34(c)(12))

"Related services" means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education and includes speech-language pathology and audiology services; interpreting services; psychological services; physical and occupational therapy; recreation, including therapeutic recreation; early identification and assessment of disabilities in children; counseling services, including rehabilitation counseling; orientation and mobility services; and medical services for diagnostic or evaluation purposes. Related services also includes school health services and school nurse services; social work services in schools; and parent counseling and training. Related services do not include a medical device that is surgically implanted including cochlear implants, the optimization of device functioning (e.g., mapping), maintenance of the device, or the replacement of that device. The list of related services is not exhaustive and may include other developmental, corrective, or supportive services (such as artistic and cultural programs, and art, music and dance therapy), if they are required to assist a child with a disability to benefit from special education. (§ 22.1-213 of the Code of Virginia; 34 CFR 300.34(a) and (b))

Nothing in this section:

1. Limits the right of a child with a surgically implanted device (e.g., cochlear implant) to receive related services that are determined by the IEP team to be necessary for the child to receive FAPE;

2. Limits the responsibility of a public agency to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the child, including breathing, nutrition, or operation of other bodily

functions, while the child is transported to and from school or is at school; or

3. Prevents the routine checking of an external component of a surgically implanted device to make sure it is functioning properly.

"School day" means any day, including a partial day, that children are in attendance at school for instructional purposes. The term has the same meaning for all children in school, including children with and without disabilities. (34 CFR 300.11)

"School health services and school nurse services" means health services that are designed to enable a child with a disability to receive FAPE as described in the child's IEP. School nurse services are services provided by a qualified school nurse. School health services are services that may be provided by either a qualified school nurse or other qualified person. (Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 of the Code of Virginia; 34 CFR 300.34(c)(13))

"Scientifically based research" means research that involves the application of rigorous, systematic, and objective procedures to obtain reliable and valid knowledge relevant to education activities and programs and includes research that: (20 USC § 9501(18); 34 CFR 300.35)

1. Employs systematic, empirical methods that draw on observation or experiment;

2. Involves rigorous data analyses that are adequate to test the stated hypotheses and justify the general conclusions drawn;

3. Relies on measurements or observational methods that provide reliable and valid data across evaluators and observers, across multiple measurements and observations, and across studies by the same or different investigators;

4. Is evaluated using experimental or quasi-experimental designs in which individuals, entities, programs, or activities are assigned to different conditions and with appropriate controls to evaluate the effects of the condition of interest, with a preference for random-assignment experiments, or other designs to the extent that those designs contain within-condition or across-condition controls;

5. Ensures that experimental studies are presented in sufficient detail and clarity to allow for replication or, at a minimum, offer the opportunity to build systematically on their findings; and

6. Has been accepted by a peer-reviewed journal or approved by a panel of independent experts through a comparably rigorous, objective, and scientific review.

"Screening" means those processes that are used routinely with all children to identify previously unrecognized needs and that may result in a referral for special education and related services or other referral or intervention.

"Section 504" means that section of the Rehabilitation Act of 1973, as amended, which is designed to eliminate discrimination on the basis of disability in any program or activity receiving federal financial assistance. (29 USC § 701 et seq.)

"Serious bodily injury" means bodily injury that involves substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ or mental faculty. (18 USC § 1365(h)(3); 34 CFR 300.530(i)(3))

"Services plan" means a written statement that describes the special education and related services the local educational agency will provide to a parentally placed child with a disability enrolled in a private school who has been designated to receive services, including the location of the services and any transportation necessary, and is developed and implemented in accordance with 8VAC20-81-150. (34 CFR 300.37)

"Social work services in schools" means those services provided by a school social worker or qualified visiting teacher, including: (Licensure Regulations for School Personnel, 8VAC20-22-660); 34 CFR 300.34(c)(14))

1. Preparing a social or developmental history on a child with a disability;

2. Group and individual counseling with the child and family;

3. Working in partnership with parents and others on those problems in a child's living situation (home, school, and community) that affect the child's adjustment in school;

4. Mobilizing school and community resources to enable the child to learn as effectively as possible in the child's educational program; and

5. Assisting in developing positive behavioral intervention strategies for the child.

A local educational agency, in its discretion, may expand the role of a school social worker or visiting teacher beyond those services identified in this definition, as long as the expansion is consistent with other state laws and regulations, including licensure.

"Special education" means specially designed instruction, at no cost to the ~~parent(s)~~ parent, to meet the unique needs of a child with a disability, including instruction conducted in a classroom, in the home, in hospitals, in institutions, and in other settings and instruction in physical education. The term includes each of the following if it meets the requirements of the definition of special education: (§ 22.1-213 of the Code of Virginia; 34 CFR 300.39)

1. Speech-language pathology services or any other related service, if the service is considered special education rather than a related service under state standards;

2. Vocational education; and

3. Travel training.

"Special education hearing officer" has the same meaning as the term "impartial hearing officer" as that term is used in the Act and its federal implementing regulations.

"Specially designed instruction" means adapting, as appropriate to the needs of an eligible child under this chapter, the content, methodology, or delivery of instruction: (34 CFR 300.39(b)(3))

1. To address the unique needs of the child that result from the child's disability; and

2. To ensure access of the child to the general curriculum, so that the child can meet the educational standards that apply to all children within the jurisdiction of the local educational agency.

"Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities; of intellectual disabilities; of emotional disabilities; of environmental, cultural, or economic disadvantage. (§ 22.1-213 of the Code of Virginia; 34 CFR 300.8(c)(10))

Dyslexia is distinguished from other learning disabilities due to its weakness occurring at the phonological level. Dyslexia is a specific learning disability that is neurobiological in origin. It is characterized by difficulties with accurate and/or fluent word recognition and by poor spelling and decoding abilities. These difficulties typically result from a deficit in the phonological component of language that is often unexpected in relation to other cognitive abilities and the provision of effective classroom instruction. Secondary consequences may include problems in reading comprehension and reduced reading experience that can impede growth of vocabulary and background knowledge.

"Speech or language impairment" means a communication disorder, such as stuttering, impaired articulation, expressive or receptive language impairment, or voice impairment that adversely affects a child's educational performance. (34 CFR 300.8(c)(11))

"Speech-language pathology services" means the following: (34 CFR 300.34(c)(15))

1. Identification of children with speech or language impairments;

2. Diagnosis and appraisal of specific speech or language impairments;

3. Referral for medical or other professional attention necessary for the habilitation of speech or language impairments;

4. Provision of speech and language services for the habilitation or prevention of communicative impairments; and

5. Counseling and guidance of parents, children, and teachers regarding speech and language impairments.

"State assessment program" means the state assessment program in Virginia under the Act that is the component of the state assessment system used for accountability.

"State educational agency" means the Virginia Department of Education. (34 CFR 300.41)

"State-operated programs" means programs that provide educational services to children and youth who reside in facilities according to the admissions policies and procedures of those facilities that are the responsibility of state boards, agencies, or institutions. (§§ 22.1-7, 22.1-340 and 22.1-345 of the Code of Virginia)

"Supplementary aids and services" means aids, services, and other supports that are provided in general education classes or other education-related settings to enable children with disabilities to be educated with children without disabilities to the maximum extent appropriate in accordance with this chapter. (34 CFR 300.42)

"Surrogate parent" means a person appointed in accordance with procedures set forth in this chapter to ensure that children are afforded the protection of procedural safeguards and the provision of a free appropriate public education. (34 CFR 300.519)

"Timely manner" if used with reference to the requirement for National Instructional Materials Accessibility Standard means that the local educational agency shall take all reasonable steps to provide instructional materials in accessible formats to children with disabilities who need those instructional materials at the same time as other children receive instructional materials. (34 CFR 300.172(b)(4))

"Transition from Part C (Early Intervention Program for Infants and Toddlers with Disabilities) services" means the steps identified in the Individualized Family Services Plan (IFSP) to be taken to support the transition of the child to: (34 CFR 300.124)

1. Early childhood special education to the extent that those services are appropriate; or

2. Other services that may be available, if appropriate.

"Transition services" if used with reference to secondary transition means a coordinated set of activities for a student

with a disability that is designed within a results-oriented process that: (34 CFR 300.43)

1. Is focused on improving the academic and functional achievement of the child with a disability to facilitate the child's movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation.

2. Is based on the individual child's needs, taking into account the child's strengths, preferences, and interests and includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives and, if appropriate, acquisition of daily living skills and functional vocational evaluation.

Transition services for students with disabilities may be special education, if provided as specially designed instruction, or related services, if they are required to assist a student with a disability to benefit from special education.

"Transportation" includes: (34 CFR 300.34(c)(16))

1. Travel to and from school and between schools;

2. Travel in and around school buildings; and

3. Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.

"Traumatic brain injury" means an acquired injury to the brain caused by an external physical force or by other medical conditions, including stroke, anoxia, infectious disease, aneurysm, brain tumors, and neurological insults resulting from medical or surgical treatments, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. Traumatic brain injury applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma. (34 CFR 300.8(c)(12))

"Travel training" means providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to: (34 CFR 300.39(b)(4))

1. Develop an awareness of the environment in which they live; and

2. Learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community).

"Universal design" has the meaning given the term in § 3 of the Assistive Technology Act of 1998, as amended, 29 USC § 3002. The term "universal design" means a concept or philosophy for designing and delivering products and services that are usable by people with the widest possible range of functional capabilities, which include products and services that are directly usable (without requiring assistive technologies) and products and services that are made usable with assistive technologies. (34 CFR 300.44)

"Virginia School for the Deaf and the Blind at Staunton" means the Virginia school under the operational control of the Virginia Board of Education. The Superintendent of Public Instruction shall approve the education programs of this school. (§ 22.1-346 of the Code of Virginia)

"Visual impairment including blindness" means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness. (34 CFR 300.8(c)(13))

"Vocational education," for the purposes of special education, means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment or for additional preparation for a career not requiring a baccalaureate or advanced degree, and includes career and technical education. (34 CFR 300.39(b)(5))

"Ward of the state" means a child who, as determined by the state where the child resides is: (34 CFR 300.45)

1. A foster child;

2. A ward of the state; or

3. In the custody of a public child welfare agency.

"Ward of the state" does not include a foster child who has a foster parent who meets the definition of a "parent."

"Weapon" means dangerous weapon under 18 USC § 930(g)(2). (34 CFR 530(i)(4))

8VAC20-81-110. Individualized education program.

A. Responsibility. The local educational agency shall ensure that an IEP is developed and implemented for each child with a disability served by that local educational agency, including a child placed in a private special education school by: (34 CFR 300.112)

1. A local school division; or

2. A noneducational placement by a Comprehensive Services Act team that includes the school division. The local school division's responsibility is limited to special education and related services.

B. Accountability.

1. At the beginning of each school year, each local educational agency shall have an IEP in effect for each child with a disability within its jurisdiction, with the exception of

children placed in a private school by parents when a free appropriate public education is not at issue. (34 CFR 300.323(a))

2. Each local educational agency shall ensure that an IEP: (34 CFR 300.323(c))

a. Is in effect before special education and related services are provided to an eligible child;

b. Is developed within 30 calendar days of the date of the initial determination that the child needs special education and related services;

c. Is developed within 30 calendar days of the date the eligibility group determines that the child remains eligible for special education and related services following reevaluation, if the IEP team determines that changes are needed to the child's IEP, or if the parent requests it; and

d. Is implemented as soon as possible following parental consent to the IEP.

3. Each local educational agency shall ensure that: (34 CFR 300.323(d))

a. The child's IEP is accessible to each regular education teacher, special education teacher, related service provider, and other service provider who is responsible for its implementation; and

b. Teachers and providers are informed of:

(1) Their specific responsibilities related to implementing the child's IEP; and

(2) The specific accommodations, modifications, and supports that shall be provided for the child in accordance with the IEP.

4. Each local educational agency is responsible for initiating and conducting meetings to develop, review, and revise the IEP of a child with a disability.

5. Each local educational agency shall ensure that the IEP team reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals are being achieved and to revise its provisions, as appropriate, to address: (34 CFR 300.324(b))

a. Any lack of expected progress toward the annual goals and in the general curriculum, if appropriate;

b. The results of any reevaluation conducted under this chapter;

c. Information about the child provided to or by the ~~parent(s)~~ parent;

d. The child's anticipated needs; or

e. Other matters.

6. Each local educational agency shall provide special education and related services to a child with a disability in accordance with the child's IEP. (34 CFR 300.323(c)(2))

7. Nothing in this section limits a parent's right to ask for revisions of the child's IEP if the parent feels that the efforts required by this chapter are not being met.

8. To the extent possible, the local educational agency shall encourage the consolidation of reevaluation and IEP team meetings for the child. (34 CFR 300.324(a)(5))

9. In making changes to a child's IEP after the annual IEP team meeting for the school year, the ~~parent(s)~~ parent and the local educational agency may agree not to convene an IEP team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child's current IEP. (34 CFR 300.324(a)(4) and (6))

a. If changes are made to the child's IEP, the local educational agency shall ensure that the child's IEP team is informed of those changes.

b. Upon request, a parent shall be provided with a revised copy of the IEP with the amendments incorporated.

c. This meeting is not a substitute for the required annual IEP meeting.

C. IEP team.

1. General. The local educational agency shall ensure that the IEP team for each child with a disability includes: (34 CFR 300.321(a), (c) and (d))

a. The ~~parent(s)~~ parent of the child;

b. Not less than one regular education teacher of the child (if the child is or may be participating in the regular educational environment);

c. Not less than one special education teacher of the child or, if appropriate, not less than one special education provider of the child. For a child whose only disability is speech-language impairment, the special education provider shall be the speech-language pathologist;

d. A representative of the local educational agency who is:

(1) Qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of children with disabilities;

(2) Knowledgeable about the general education curriculum; and

(3) Knowledgeable about the availability of resources of the local education agency. A local educational agency may designate another member of the IEP team to serve simultaneously as the agency representative if the individual meets the above criteria;

e. An individual who can interpret the instructional implications of evaluation results. This individual may be a member of the team serving in another capacity, other than the parent of the child;

f. At the discretion of the ~~parent(s)~~ parent or local educational agency, other individuals who have

knowledge or special expertise regarding the child, including related services personnel, as appropriate. The determination of knowledge or special expertise of any individual shall be made by the party (~~parent(s)~~ parent or local educational agency) who invited the individual to be a member of the team; and

g. Whenever appropriate, the child.

2. The local educational agency determines the school personnel to fill the roles of the required IEP team members in subdivisions 1 b through 1 e of this subsection.

3. Secondary transition service participants. (34 CFR 300.321(b))

a. The local educational agency shall invite a student with a disability of any age to attend the student's IEP meeting if a purpose of the meeting will be the consideration of:

(1) The student's postsecondary goals;

(2) The needed transition services for the student; or

(3) Both.

b. If the student does not attend the IEP meeting, the local educational agency shall take other steps to ensure that the student's preferences and interests are considered.

c. To the extent appropriate and with the consent of the ~~parent(s)~~ parent or a child who has reached the age of majority, the local educational agency shall invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services. If an agency invited to send a representative to a meeting does not do so, the local educational agency shall take other steps to obtain the participation of the other agency in the planning of any transition services.

4. Part C transition participants. In the case of a child who was previously served under Part C of the Act, the local educational agency shall, at the parent's(s') request, invite the Part C service coordinator or other representatives of the Part C system to the initial IEP meeting to assist with the smooth transition of services. (34 CFR 300.321(f))

D. IEP team attendance. (34 CFR 300.321(e))

1. A required member of the IEP team described in subdivisions C 1 b through C 1 e of this section is not required to attend an IEP team meeting, in whole or in part, if the parent and the local educational agency agree, in writing, that the attendance of this member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.

2. A required member of the IEP team may be excused from attending the IEP team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of curriculum or related services, if:

a. The parent and the local educational agency consent in writing to the excusal; and

b. The member submits, in writing, to the parent and the IEP team input into the development of the IEP prior to the meeting.

E. Parent participation.

1. Each local educational agency shall take steps to ensure that one or both of the parents of the child with a disability are present at each IEP meeting or are afforded the opportunity to participate including: (34 CFR 300.322(a))

a. Notifying the ~~parent(s)~~ parent of the meeting early enough to ensure that they will have an opportunity to attend; and

b. Scheduling the meeting at a mutually agreed on time and place.

2. Notice. (34 CFR 300.322(b))

a. General notice. The notice given to the ~~parent(s)~~ parent:

(1) May be in writing, or given by telephone or in person with proper documentation;

(2) Shall indicate the purpose, date, time, and location of the meeting, and who will be in attendance; and

(3) Shall inform the ~~parent(s)~~ parent of the provisions relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the child under subdivision C 1 f of this section.

b. Additional notice requirements are provided if transition services are under consideration.

(1) For Part C transition, the notice shall inform the parents of the provisions relating to the participation of the Part C service coordinator or other ~~representative(s)~~ representative of the Part C system under subdivision C 4 of this section.

(2) For secondary transition, the notice shall also:

(a) Indicate that a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the child;

(b) Indicate that the local educational agency will invite the student; and

(c) Identify any other agency that will be invited to send a representative.

3. If neither parent can attend, the local educational agency shall use other methods to ensure parent participation, including individual or conference telephone calls and audio conferences. If the local educational agency uses an alternative means of meeting participation that results in additional costs, the local educational agency is responsible for those costs. (34 CFR 300.322(c))

4. A meeting may be conducted without a ~~parent(s)~~ parent in attendance if the local educational agency is unable to convince the ~~parent(s)~~ parent that they should attend. In this case, the local educational agency shall have a record of the

attempts to arrange a mutually agreed on time and place, such as: (34 CFR 300.322(d))

a. Detailed records of telephone calls made or attempted and the results of those calls;

b. Copies of correspondence (written, electronic, or facsimile) sent to the ~~parent(s)~~ parent and any responses received; or

c. Detailed records of visits made to the ~~parent's(s')~~ parent's home or place of employment and the results of those visits.

5. The local educational agency shall take whatever action is necessary to ensure that the ~~parent(s) understand~~ parent understands the proceedings at the IEP meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English. (34 CFR 300.322(e))

6. At the IEP meeting, the IEP team shall provide the ~~parent(s)~~ parent of a child with a disability with a written description of the factors in subdivisions F 1 and F 2 of this section that will be considered during the IEP meeting. The description shall be written in language understandable by the general public and provided in the native language of the ~~parent(s)~~ parent or other mode of communication used by the ~~parent(s)~~ parent, unless it is clearly not feasible to do so.

7. The local educational agency shall give the ~~parent(s)~~ parent a copy of the child's IEP at no cost to the ~~parent(s)~~ parent at the IEP meeting, or within a reasonable period of time after the IEP meeting, not to exceed 10 calendar days. (34 CFR 300.322(f))

8. If the local educational agency elects to use a draft version of an IEP in any IEP team meeting, such draft shall be developed and a copy shall be provided to the parent at least two business days in advance of the IEP meeting.

F. Development, review, and revision of the IEP. (34 CFR 300.324(a))

1. In developing each child's IEP, the IEP team shall consider:

a. The strengths of the child;

b. The concerns of the ~~parent(s)~~ parent for enhancing the education of their child;

c. The results of the initial or most recent evaluation of the child; and

d. The academic, developmental, and functional needs of the child.

2. The IEP team also shall: (34 CFR 300.324(a))

a. In the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions, strategies, and supports to address the behavior;

b. In the case of a child with limited English proficiency, consider the language needs of the child as those needs relate to the child's IEP;

c. In the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP team determines after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media, including an evaluation of the child's future needs for instruction in Braille or the use of Braille, that instruction in Braille or the use of Braille is not appropriate for the child;

d. Consider the communication needs of the child;

e. Consider the child's needs for benchmarks or short-term objectives;

f. In the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and

g. Consider whether the child requires assistive technology devices and services.

3. If, in considering the special factors, the IEP team determines that a child needs a particular device or service, including an intervention, accommodation, or other program modification in order for the child to receive a free appropriate public education, the IEP team shall include a statement to that effect in the child's IEP. (34 CFR 300.324(b)(2))

4. The regular education teacher of a child with a disability, as a member of the IEP team, shall participate, to the extent appropriate, in the development, review, and revision of the child's IEP, including assisting in the determination of: (34 CFR 300.324(a)(3))

a. Appropriate positive behavioral interventions and supports and other strategies for the child; and

b. Supplementary aids and services, accommodations, program modifications or supports for school personnel that will be provided for the child.

5. Nothing in this section shall be construed to require: (34 CFR 300.320(d))

a. The IEP team to include information under one component of a child's IEP that is already contained under another component of the child's IEP; or

b. That additional information be included in the child's IEP beyond what is explicitly required in this chapter.

6. The IEP team shall consider all factors identified under a free appropriate public education in 8VAC20-81-100, as appropriate, and work toward consensus. If the IEP team cannot reach consensus, the local educational agency shall

provide the ~~parent(s)~~ parent with prior written notice of the local educational agency's proposals or refusals, or both, regarding the child's educational placement or provision of a free appropriate public education in accordance with 8VAC20-81-170 C.

G. Content of the individualized education program. The IEP for each child with a disability shall include:

1. A statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general curriculum or, for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities. (34 CFR 300.320(a)(1))

a. The statement shall be written in objective measurable terms, to the extent possible. Test scores, if appropriate, shall be self-explanatory or an explanation shall be included.

b. The present level of performance shall directly relate to the other components of the IEP.

2. A statement of measurable annual goals, including academic and functional goals designed to: (34 CFR 300.320(a)(2))

a. Meet the child's needs that result from the child's disability to enable the child to be involved in and progress in the general curriculum, or for preschool children, as appropriate, to participate in appropriate activities; and

b. Meet each of the child's other educational needs that result from the child's disability.

3. If determined appropriate by the IEP team, as outlined in subdivision F 2 of this section, a description of benchmarks or short-term objectives. For children with disabilities who take alternate assessments aligned to alternate achievement standards, the IEP shall include a description of benchmarks or short-term objectives. (34 CFR 300.320(a)(2))

The IEP team shall document its consideration of the inclusion in the child's IEP of benchmarks or short-term objectives.

4. A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided for the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child: (34 CFR 300.320(a)(4))

a. To advance appropriately toward attaining the annual goals;

b. To be involved and progress in the general curriculum and to participate in extracurricular and other nonacademic activities; and

c. To be educated and participate with other children with disabilities and children without disabilities in the activities described in this section.

5. An explanation of the extent, if any, to which the child will not participate with children without disabilities in the regular class and in the activities described in this section. (34 CFR 300.320(a)(5))

6. The following information concerning state and divisionwide assessments shall be included: (34 CFR 300.320(a)(6))

a. A statement of any individual appropriate accommodations or modifications that are necessary to measure the child's academic achievement and functional performance, in accordance with the guidelines approved by the Board of Education, in the administration of state assessments of student achievement that are needed in order for the child to participate in the assessment;

b. If the IEP team determines that the child must take an alternate assessment instead of a particular state assessment of student achievement (or part of an assessment), a statement of:

(1) Why the child cannot participate in the regular assessment;

(2) Why the particular assessment selected is appropriate for the child, including that the child meets the criteria for the alternate assessment; and

(3) How the child's nonparticipation in the assessment will impact the child's promotion; graduation with a modified standard, standard, or advanced studies diploma; or other matters.

c. A statement that the child shall participate in either a state assessment for all children that is part of the state assessment program or the state's alternate assessment;

d. A statement of any individual appropriate accommodations or modifications approved for use in the administration of divisionwide assessments of student achievement that are needed in order for the child to participate in the assessment;

e. If the IEP team determines that the child must take an alternate assessment instead of a particular divisionwide assessment of student achievement (or part of an assessment), a statement of:

(1) Why the child cannot participate in the regular assessment;

(2) Why the particular alternate assessment selected is appropriate for the child; and

(3) How the child's nonparticipation in the assessment will impact the child's courses; promotion; graduation with a modified standard, standard, or advanced studies diploma; or other matters.

7. The projected dates (month, day, and year) for the beginning of the services and modifications and the anticipated frequency, location, and duration of those services and modifications. (34 CFR 300.320(a)(7))

8. A statement of: (34 CFR 300.320(a)(3))

a. How the child's progress toward the annual goals will be measured; and

b. When periodic reports on the progress the child is making toward meeting the annual goals will be provided; for example, through the use of quarterly or other periodic reports, concurrent with the issuance of report cards, and at least as often as parents are informed of the progress of their children without disabilities.

9. Initial transition services (34 CFR 300.101(b) and 34 CFR 300.323(b))

a. In the case of a preschool-aged child with a disability, age two (on or before September 30) through age five (on or before September 30), whose ~~parent(s)~~ parent elect to receive services under Part B of the Act, the local educational agency shall develop an IEP.

b. The IEP team shall consider an IFSP that contains the IFSP content described under Part C of the Act (§ 1431 et seq.) including:

(1) A statement regarding natural environments; and

(2) A component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills.

c. These components of the child's IFSP may be incorporated into the child's IEP.

10. Secondary transition services. (34 CFR 300.43 and 34 CFR 300.320(b))

a. Prior to the child entering secondary school but not later than the first IEP to be in effect when the child turns 14, or younger if determined appropriate by the IEP team, and updated annually thereafter, the IEP shall include age-appropriate:

(1) Measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills; and

(2) Transition services, including courses of study, needed to assist the child in reaching those goals. Transition services shall be based on the individual child's needs, taking into account the child's strengths, preferences, and interests.

b. Beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP team, and updated annually, in addition to the requirements of subdivision 10 a of this subsection, the IEP shall also include a statement, if appropriate, of interagency responsibilities or any linkages.

c. For a child pursuing a modified standard diploma, the IEP team shall consider the child's need for occupational readiness upon school completion, including consideration of courses to prepare the child as a career and technical education program completer.

11. Beginning at least one year before a student reaches the age of majority, the student's IEP shall include a statement that the student and ~~parent(s)~~ parent have been informed of the rights under this chapter, if any, that will transfer to the student on reaching the age of majority. (34 CFR 300.320(c))

H. Agency responsibilities for secondary transition services. (34 CFR 300.324(c))

1. If a participating agency, other than the local educational agency, fails to provide the transition services described in the IEP of a student with a disability, the local educational agency shall reconvene the IEP team to identify alternative strategies to meet the transition objectives for the student set out in the IEP.

2. Nothing in this part relieves any participating agency, including a state vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to students with disabilities who meet the eligibility criteria of that agency.

I. Additional requirements for eligible students with disabilities in state, regional, or local adult or juvenile correctional facilities. (34 CFR 300.324(d) and 34 CFR 300.102(a)(2); Regulations Establishing Standards for Accrediting Public Schools in Virginia (8VAC20-131))

1. A representative of the state from a state, regional, or local adult or juvenile correctional facility may participate as a member of the IEP team.

2. All requirements regarding IEP development, review, and revision in this section apply to students with disabilities in state, regional, or local adult or juvenile correctional facilities, including assessment requirements to graduate with a modified standard, standard, or advanced studies diploma. The requirements related to least restrictive environment in 8VAC20-81-130 do not apply.

3. The following additional exceptions to subdivision 2 of this subsection apply only to students with disabilities who are convicted as an adult under state law and incarcerated in adult prisons:

a. The IEP team may modify the student's IEP or placement if the state has demonstrated to the IEP team a bona fide security or compelling penological interest that cannot be otherwise accommodated.

b. IEP requirements regarding participation in state assessments, including alternate assessments, do not apply.

c. IEP requirements regarding transition planning and transition services do not apply to students whose eligibility for special education and related services will end because of their age before they will be eligible for release from the correctional facility based on consideration of their sentence and their eligibility for early release.

8VAC20-81-170. Procedural safeguards.

A. Opportunity to examine records; parent participation. (34 CFR 300.322(e), 34 CFR 300.500 and 34 CFR 300.501; 8VAC20-150)

1. Procedural safeguards. Each local educational agency shall establish, maintain, and implement procedural safeguards as follows:

a. The ~~parent(s)~~ parent of a child with a disability shall be afforded an opportunity to:

(1) Inspect and review all education records with respect to (i) the identification, evaluation, and educational placement of the child; and (ii) the provision of a free appropriate public education to the child.

(2) Participate in meetings with respect to the identification, evaluation, and educational placement of the child and the provision of a free appropriate public education to the child.

b. Parent participation in meetings.

(1) Each local educational agency shall provide notice to ensure that the ~~parent(s)~~ parent of a child with a disability has the opportunity to participate in meetings described in subdivision 1 a (2) of this subsection, including notifying the ~~parent(s)~~ parent of the meeting early enough to ensure that the parent has an opportunity to participate. The notice shall:

(a) Indicate the purpose, date, time, and location of the meeting and who will be in attendance;

(b) Inform the ~~parent(s)~~ parent that at ~~their~~ the parent's discretion or at the discretion of the local educational agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel, as appropriate, may participate in meetings with respect to the identification, evaluation, and educational placement of the child and the provision of a free appropriate public education to the child;

(c) Inform the parent that the determination of the knowledge or special expertise shall be made by the party who invited the individual; and

(d) Inform the ~~parent(s)~~ parent, in the case of a child who was previously served under Part C that an invitation to the initial IEP team meeting shall, at the request of the parent, be sent to the Part C service coordinator or other representatives of Part C to assist with the smooth transition of services.

(2) A meeting does not include informal or unscheduled conversations involving local educational agency personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision if those issues are not addressed in the child's IEP. A meeting also does not include preparatory activities that local educational agency personnel engage in to develop a proposal or a response to a parent proposal that will be discussed at a later meeting.

c. Parent involvement in placement decisions.

(1) Each local educational agency shall ensure that a ~~parent(s)~~ parent of each child with a disability is a member of the IEP team that makes decisions on the educational placement of their child or any Comprehensive Services Act team that makes decisions on the educational placement of their child.

(2) In implementing the requirements of subdivision 1 c (1) of this subsection, the local educational agency shall provide notice in accordance with the requirements of 8VAC20-81-110 E.

(3) If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the local educational agency shall use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.

(4) A placement decision may be made by the IEP or Comprehensive Services Act team without the involvement of the ~~parent(s)~~ parent if the local educational agency is unable to obtain the parents' participation in the decision. In this case, the local educational agency shall have a record of its attempt to ensure the parents' involvement.

(5) The local educational agency shall take whatever action is necessary to ensure that the ~~parent(s) understand~~ parent understands and ~~are~~ is able to participate in, any group discussions relating to the educational placement of ~~their~~ the parent's child, including arranging for an interpreter for a ~~parent(s)~~ parent with deafness, or whose native language is other than English.

(6) The exception to the IEP team determination regarding placement is with disciplinary actions involving interim alternative education settings for 45-day removals under 8VAC20-81-160 D 6 a. (34 CFR 300.530(f)(2) and (g))

B. Independent educational evaluation.

1. General. (34 CFR 300.502(a))

a. The ~~parent(s)~~ parent of a child with a disability shall have the right to obtain an independent educational evaluation of the child.

b. The local educational agency shall provide to the ~~parent(s)~~ parent of a child with a disability, upon request for an independent educational evaluation, information

about where an independent educational evaluation may be obtained and the applicable criteria for independent educational evaluations.

2. Parental right to evaluation at public expense. (34 CFR 300.502(b) and (e))

a. The ~~parent(s)~~ parent has the right to an independent educational evaluation at public expense if the ~~parent(s)~~ parent disagrees with an evaluation ~~component~~ obtained by the local educational agency.

b. If the ~~parent(s)~~ parent requests an independent educational evaluation at public expense, the local educational agency shall, without unnecessary delay, either:

(1) Initiate a due process hearing to show that its evaluation is appropriate; or

(2) Ensure that an independent educational evaluation is provided at public expense, unless the local educational agency demonstrates in a due process hearing that the evaluation obtained by the ~~parent(s)~~ parent does not meet the local educational agency's criteria.

c. If the local educational agency initiates a due process hearing and the final decision is that the local educational agency's evaluation is appropriate, the ~~parent(s)~~ parent still has the right to an independent educational evaluation, but not at public expense.

d. If the ~~parent(s)~~ parent requests an independent educational evaluation, the local educational agency may ask the reasons for the parent's objection to the public evaluation. However, the explanation by the ~~parent(s)~~ parent may not be required and the local educational agency may not unreasonably delay either providing the independent educational evaluation at public expense or initiating a due process hearing to defend the public evaluation.

e. A parent is entitled to only one independent educational evaluation at public expense each time the public educational agency conducts an evaluation ~~component~~ with which the parent disagrees.

f. If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, shall be the same as the criteria that the local educational agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation. Except for the criteria, a local educational agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

3. Parent-initiated evaluations. If the parent obtains an independent educational evaluation at public expense or shares with the local educational agency an evaluation obtained at private expense, the results of the evaluation: (34 CFR 300.502(c))

a. Shall be considered by the local educational agency, if it meets local educational agency criteria, in any decision regarding the provision of a free appropriate public education to the child; and

b. May be presented by any party as evidence at a hearing under 8VAC20-81-210.

4. Requests for evaluations by special education hearing officers. If a special education hearing officer requests an independent educational evaluation for an evaluation component, as part of a hearing on a due process complaint, the cost of the evaluation shall be at public expense. (34 CFR 300.502(d))

C. Prior written notice by the local educational agency; content of notice.

1. Prior written notice shall be given to the ~~parent(s)~~ parent of a child with a disability within a reasonable time before the local educational agency: (34 CFR 300.503(a))

a. Proposes to initiate or change the identification, evaluation, or educational placement (including graduation with a standard or advanced studies diploma) of the child, or the provision of a free appropriate public education for the child; or

b. Refuses to initiate or change the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education for the child.

2. The notice shall include: (34 CFR 300.503(b))

a. A description of the action proposed or refused by the local educational agency;

b. An explanation of why the local educational agency proposes or refuses to take the action;

c. A description of any other options the IEP team considered and the reasons for the rejection of those options;

d. A description of each evaluation procedure, assessment, record, or report the local educational agency used as a basis for the proposed or refused action;

e. A description of any other factors that are relevant to the local educational agency's proposal or refusal;

f. A statement that the ~~parent(s)~~ parent of a child with a disability have protection under the procedural safeguards of this chapter and, if the notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; and

g. Sources for the ~~parent(s)~~ parent to contact in order to obtain assistance in understanding the provisions of this section.

3. a. The notice shall be: (i) written in language understandable to the general public; and (ii) provided in the native language of the ~~parent(s)~~ parent or other mode of communication used by the ~~parent(s)~~ parent, unless it is clearly not feasible to do so. (34 CFR 300.503(c))

b. If the native language or other mode of communication of the ~~parent(s)~~ parent is not a written language, the local educational agency shall take steps to ensure that:

(1) The notice is translated orally or by other means to the ~~parent(s)~~ parent in ~~their~~ the parent's native language or other mode of communication;

(2) The ~~parent(s) understand~~ parent understands the content of the notice; and

(3) There is written evidence that the requirements of subdivisions (1) and (2) of this subdivision have been met.

D. Procedural safeguards notice. (34 CFR 300.504)

1. A copy of the procedural safeguards available to the ~~parent(s)~~ parent of a child with a disability shall be given to the ~~parent(s)~~ parent by the local educational agency only one time a school year, except that a copy shall be given to the ~~parent(s)~~ parent upon:

a. Initial referral for or parent request for evaluation;

b. If the parent requests an additional copy;

c. Receipt of the first state complaint during a school year;

d. Receipt of the first request for a due process hearing during a school year; and

e. On the date on which the decision is made to make a disciplinary removal that constitutes a change in placement because of a violation of a code of student conduct.

2. The local educational agency may place a current copy of the procedural safeguards notice on its Internet website if a website exists, but the local educational agency does not meet its obligation under subdivision 1 of this subsection by directing the parent to the website. The local educational agency shall offer the ~~parent(s)~~ parent a printed copy of the procedural safeguards notice in accordance with subdivision 1 of this subsection.

3. The procedural safeguards notice shall include a full explanation of all of the procedural safeguards available relating to:

a. Independent educational evaluation;

b. Prior written notice;

c. Parental consent;

d. Access to educational records;

e. Opportunity to present and resolve complaints through the due process procedures;

f. The availability of mediation;

g. The child's placement during pendency of due process proceedings;

h. Procedures for students who are subject to placement in an interim alternative educational setting;

i. Requirements for unilateral placement by parents of children in private schools at public expense;

j. Due process hearings, including requirements for disclosure of evaluation results and recommendations;

k. Civil actions, including the time period in which to file those actions;

l. Attorneys' fees; and

m. The opportunity to present and resolve complaints through the state complaint procedures, including:

(1) The time period in which to file a complaint;

(2) The opportunity for the local educational agency to resolve the complaint; and

(3) The difference between the due process and the state complaint procedures, including the applicable jurisdiction, potential issues, and timelines for each process.

4. The notice required under this subsection shall meet the prior notice requirements regarding understandable language in subdivision C 3 of this section.

E. Parental consent.

1. Required parental consent. Informed parental consent is required before:

a. Conducting an initial evaluation or reevaluation, including a functional behavioral assessment if such assessment is not a review of existing data conducted at an IEP meeting; (34 CFR 300.300(a)(1)(i))

b. An initial eligibility determination or any change in categorical identification;

c. Initial provision of special education and related services to a child with a disability; (34 CFR 300.300(b)(1))

d. Any revision to the child's IEP services;

e. Any partial or complete termination of special education and related services, except for graduation with a standard or advance studies diploma;

f. The provision of a free appropriate public education to children with disabilities who transfer between public agencies in Virginia or transfer to Virginia from another state in accordance with 8VAC20-81-120;

g. Accessing a child's public benefits or insurance or private insurance proceeds in accordance with subsection F of this section; and (34 CFR 300.154)

h. Inviting to an IEP meeting a representative of any participating agency that is likely to be responsible for providing or paying for secondary transition services. (34 CFR 300.321(b)(3))

2. Parental consent not required. Parental consent is not required before:

a. Review of existing data as part of an evaluation or a reevaluation, including a functional behavioral assessment; (34 CFR 300.300(d)(1))

b. Administration of a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of the ~~parent(s)~~ parents of all children; (34 CFR 300.300(d)(1))

c. The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation; (34 CFR 300.302)

d. Administration of a test or other evaluation that is used to measure progress on the child's IEP goals and is included in the child's IEP;

e. A teacher's or related service provider's observations or ongoing classroom evaluations;

f. Conducting an initial evaluation of a child who is a ward of the state and who is not residing with his ~~parent(s)~~ parent if: (34 CFR 300.300(a)(2))

(1) Despite reasonable efforts, the local educational agency cannot discover the whereabouts of the ~~parent(s)~~ parent;

(2) The parent's rights have been terminated; or

(3) The rights of the ~~parent(s)~~ parent to make educational decisions have been subrogated by a judge and an individual appointed by the judge to represent the child has consented to the initial evaluation.

3. Revoking consent.

a. If at any time subsequent to the initial provision of special education and related services the parent revokes consent in writing for the continued provision of special education and related services: (34 CFR 300.300(b)(4))

(1) The local educational agency may not continue to provide special education and related services to the child, but must provide prior written notice in accordance with 8VAC20-81-170 C before ceasing the provision of special education and related services;

(2) The local educational agency may not use mediation or due process hearing procedures to obtain parental consent, or a ruling that the services may be provided to the child;

(3) The local educational agency's failure to provide the special education and related services to the child will not be considered a violation of the requirement to provide FAPE; and

(4) The local educational agency is not required to convene an IEP meeting or to develop an IEP for the child for the further provision of special education and related services.

b. If a parent revokes consent, that revocation is not retroactive in accordance with the definition of "consent" at 8VAC20-81-10.

4. Refusing consent.

a. If the ~~parent(s)~~ parent refuses consent for initial evaluation or a reevaluation, the local educational agency may, but is not required to, use mediation or due process hearing procedures to pursue the evaluation. The local educational agency does not violate its obligations under this chapter if it declines to pursue the evaluation. (34 CFR 300.300(a)(3) and (c)(1))

b. If the ~~parent(s)~~ parent refuses to consent to the initial provision of special education and related services: (34 CFR 300.300(b)(3))

(1) The local educational agency may not use mediation or due process hearing procedures to obtain parental consent, or a ruling that the services may be provided to the child;

(2) The local educational agency's failure to provide the special education and related services to the child for which consent is requested is not considered a violation of the requirement to provide FAPE; and

(3) The local educational agency is not required to convene an IEP meeting or to develop an IEP for the child for the special education and related services for which the local educational agency requests consent. However, the local educational agency may convene an IEP meeting and develop an IEP to inform the parent about the services that may be provided with parental consent.

c. If the ~~parent(s)~~ parent of a parentally placed private school child refuses consent for an initial evaluation or a reevaluation, the local educational agency: (34 CFR 300.300(d)(4))

(1) May not use mediation or due process hearing procedures to obtain parental consent, or a ruling that the evaluation of the child may be completed; and

(2) Is not required to consider the child as eligible for equitable provision of services in accordance with 8VAC20-81-150.

d. A local educational agency may not use a parent's refusal to consent to one service or activity to deny the ~~parent(s)~~ parent or child any other service, benefit, or activity of the local educational agency, except as provided by this chapter. (34 CFR 300.300(d)(3))

5. Withholding consent.

a. If the ~~parent(s)~~ parent fails to respond to a request to consent for an initial evaluation, the local educational agency may, but is not required to, use mediation or due process hearing procedures to pursue the evaluation. The local educational agency does not violate its obligations under this chapter if it declines to pursue the evaluation. (34 CFR 300.300(a)(3) and (c)(1))

b. Informed parental consent need not be obtained for reevaluation if the local educational agency can demonstrate that it has taken reasonable measures to obtain that consent, and the child's ~~parent(s)~~ parent has failed to respond. (34 CFR 300.300(c)(2))

c. If the ~~parent(s)~~ parent fails to respond to a request to provide consent for the initial provision of special education and related services, the local educational agency follows the provisions of subdivision 4 b of this subsection. (34 CFR 300.300(b)(3) and (4))

6. Consent for initial evaluation may not be construed as consent for initial provision of special education and related services. (34 CFR 300.300(a)(1)(ii))

7. The local educational agency shall make reasonable efforts to obtain informed parental consent for an initial evaluation and the initial provision of special education and related services. (34 CFR 300.300(a)(1)(iii) and (b)(2))

8. To meet the reasonable measures requirement of this section, the local educational agency shall have a record of its attempts to secure the consent, such as: (34 CFR 300.322(d) and 34 CFR 300.300(a), (b), (c) and (d)(5))

a. Detailed records of telephone calls made or attempted and the results of those calls;

b. Copies of correspondence (written, electronic, or facsimile) sent to the ~~parent(s)~~ parent and any responses received; and

c. Detailed records of visits made to the parent's home or place of employment and the results of those visits.

F. Parental rights regarding use of public or private insurance. Each local educational agency using Medicaid or other public benefits or insurance programs to pay for services required under this chapter, as permitted under the public insurance program, and each local educational agency using private insurance to pay for services required under this chapter, shall provide notice to the ~~parent(s)~~ parent and obtain informed parental consent in accordance with 8VAC20-81-300. (34 CFR 300.154)

G. Confidentiality of information.

1. Access rights. (34 CFR 300.613)

a. The local educational agency shall permit the ~~parent(s)~~ parent to inspect and review any education records relating to ~~their~~ the parent's children that are collected, maintained, or used by the local educational agency under this chapter. The local educational agency shall comply with a request without unnecessary delay and before any meeting regarding an IEP or any hearing in accordance with 8VAC20-81-160 and 8VAC20-81-210, or resolution session in accordance with 8VAC20-81-210, and in no case more than 45 calendar days after the request has been made.

b. The right to inspect and review education records under this section includes:

(1) The right to a response from the local educational agency to reasonable requests for explanations and interpretations of the records;

(2) The right to request that the local educational agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and

(3) The right to have a representative of the parent inspect and review the records.

c. A local educational agency may presume that a parent has authority to inspect and review records relating to the parent's children unless the local educational agency has been provided a copy of a judicial order or decree, or other legally binding documentation, that the parent does not have the authority under applicable Virginia law governing such matters as guardianship, separation, and divorce.

2. Record of access. Each local educational agency shall keep a record of parties, except parents and authorized employees of the local educational agency, obtaining access to education records collected, maintained, or used under Part B of the Act, including the name of the party, the date of access, and the purpose for which the party is authorized to use the records. (34 CFR 300.614)

3. Record on more than one child. If any education record includes information on more than one child, the ~~parent(s)~~ parents of those children have the right to inspect and review only the information relating to their child or to be informed of the specific information requested. (34 CFR 300.615)

4. List of types and locations of information. Each local educational agency shall provide a ~~parent(s)~~ parent on request a list of the types and locations of education records collected, maintained, or used by the local educational agency. (34 CFR 300.616)

5. Fees. (34 CFR 300.617)

a. Each local educational agency may charge a fee for copies of records that are made for a ~~parent(s)~~ parent under this chapter if the fee does not effectively prevent the ~~parent(s)~~ parent from exercising their right to inspect and review those records.

b. A local educational agency may not charge a fee to search for or to retrieve information under this section.

c. A local educational agency may not charge a fee for copying a child's IEP that is required to be provided to the ~~parent(s)~~ parent in accordance with 8VAC20-81-110 E 7.

6. Amendment of records at parent's request. (34 CFR 300.618)

a. A ~~parent(s)~~ parent who believes that information in the education records collected, maintained, or used under this chapter is inaccurate or misleading or violates the privacy or other rights of the child may request the local educational agency that maintains the information to amend the information.

b. The local educational agency shall decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.

c. If the local educational agency decides to refuse to amend the information in accordance with the request, it shall inform the ~~parent(s)~~ parent of the refusal and advise the ~~parent(s)~~ parent of the right to a hearing under subdivision 7 of this subsection.

7. Opportunity for a hearing. The local educational agency shall provide on request an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child. (34 CFR 300.619)

8. Results of hearing. (34 CFR 300.620)

a. If, as a result of the hearing, the local educational agency decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it shall amend the information accordingly and so inform the parent in writing.

b. If, as a result of the hearing, the local educational agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it shall inform the parent of the right to place in the child's education records a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.

c. Any explanation placed in the records of the child under this section shall:

(1) Be maintained by the local educational agency as part of the records of the child as long as the record or contested portion is maintained by the local educational agency; and

(2) If the records of the child or the contested portion is disclosed by the local educational agency to any party, the explanation shall also be disclosed to the party.

9. Hearing procedures. A hearing held under subdivision 7 of this subsection shall be conducted in accordance with the procedures under 34 CFR 99.22 of the Family Educational Rights and Privacy Act. (20 USC § 1232g; 34 CFR 300.621)

a. The local educational agency may:

(1) Develop local procedures for such a hearing process; or

(2) Obtain a hearing officer from the Supreme Court of Virginia's special education hearing officer list in accordance with the provisions of 8VAC20-81-210 H.

10. Consent. (34 CFR 300.32; 34 CFR 300.622)

a. Parental consent shall be obtained before personally identifiable information is disclosed to anyone other than officials of the local educational agency unless the information is contained in the education records, and the disclosure is authorized under the Family Education Rights and Privacy Act. (20 USC § 1232g).

b. Parental consent is not required before personally identifiable information is disclosed to officials of the local educational agencies collecting, maintaining, or using personally identifiable information under this chapter, except:

(1) Parental consent, or the consent of a child who has reached the age of majority, shall be obtained before personally identifiable information is released to officials of any agency or institution providing or paying for transition services.

(2) If a child is enrolled, or is going to enroll in a private school that is not located in the local educational agency where the ~~parent(s)~~ parent resides, parental consent shall be obtained before any personally identifiable information about the child is released between officials in the local educational agency where the private school is located, and officials in the local educational agency where the ~~parent(s)~~ parent resides.

11. Safeguards. (34 CFR 300.623)

a. Each local educational agency shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

b. Each local educational agency shall ensure that electronic communications via emails or facsimiles regarding any matter associated with the child, including matters related to IEP meetings, disciplinary actions, or service delivery, be part of the child's educational record.

c. One official at each local educational agency shall assume responsibility for ensuring the confidentiality of any personally identifiable information.

d. All persons collecting, maintaining, or using personally identifiable information shall receive training or instruction on Virginia's policies and procedures for ensuring confidentiality of the information.

e. Each local educational agency shall maintain for public inspection a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

12. Destruction of information. (34 CFR 300.624)

a. The local educational agency shall inform parents when personally identifiable information collected, maintained, or used under this chapter is no longer needed to provide educational services to the child.

b. This information shall be destroyed at the request of the parents. However, a permanent record of a student's name,

address, phone number, grades, attendance record, classes attended, grade level completed, and year completed shall be maintained without time limitation.

c. The local educational agency shall comply with the Records Retention and Disposition Schedule of the Library of Virginia.

H. Electronic mail. If the local educational agency makes the option available, ~~parent(s)~~ the parent of a child with a disability may elect to receive prior written notice, the procedural safeguards notice, and the notice of a request for due process, by electronic mail. (34 CFR 300.505)

I. Electronic signature. If an electronically filed document contains an electronic signature, the electronic signature has the legal effect and enforceability of an original signature. An electronic signature is an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record. (Chapter 42.1 (§ 59.1-479 et seq.) of Title 59.1 of the Code of Virginia)

J. Audio and video recording.

1. The local educational agency shall permit the use of audio recording devices at meetings convened to determine a child's eligibility under 8VAC20-81-80; to develop, review, or revise the child's IEP under 8VAC20-81-110 F; and to review discipline matters under 8VAC20-81-160 D. The ~~parent(s)~~ parent shall inform the local educational agency before the meeting in writing, unless the parents cannot write in English, that they will be audio recording the meeting. If the ~~parent(s)~~ parent does not inform the local educational agency, the ~~parent(s)~~ parent shall provide the local educational agency with a copy of the audio recording. The ~~parent(s)~~ parent shall provide their own audio equipment and materials for audio recording. If the local educational agency audio records meetings or receives a copy of an audio recording from the ~~parent(s)~~ parent, the audio recording becomes a part of the child's educational record.

2. The local educational agency may have policies that prohibit, limit, or otherwise regulate the use of:

a. Video recording devices at meetings convened pursuant to this chapter; or

b. Audio or video recording devices at meetings other than those meetings identified in subdivision 1 of this subsection.

3. These policies shall:

a. Stipulate that the recordings become part of the child's educational record;

b. Ensure that the policy is uniformly applied; and

c. If the policy prohibits the use of the devices, the policy shall provide for exceptions if they are necessary to ensure that the ~~parent(s)~~ parent understands the IEP, the special education process, or to implement other parental rights guaranteed under this chapter.

VA.R. Doc. No. R22-6981; Filed September 27, 2021, 4:11 p.m.

TITLE 9. ENVIRONMENT

VIRGINIA WASTE MANAGEMENT BOARD

Forms

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

Title of Regulation: **9VAC20-90. Solid Waste Management Permit Action Fees and Annual Fees.**

Agency Contact: Gary E. Graham, Department of Environmental Quality, 1111 East Main Street, Suite 1400 P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4103, FAX (804) 698-4178, TDD, or email gary.graham@deq.virginia.gov.

FORMS (9VAC20-90)

Solid Waste Information and Assessment Program Reporting Table, Form DEQ 50-25 with Statement of Economic Benefits Form and Instructions (rev. 12/2018)

~~Solid Waste Annual Permit Fee Quarter Payment, Form PF001 (rev. 6/2020)~~

Solid Waste Annual Permit Fee Quarter Payment, Form PF001 (rev. 6/2021)

VA.R. Doc. No. R22-6963; Filed September 24, 2021, 1:57 p.m.

STATE WATER CONTROL BOARD

Forms

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

Title of Regulation: **9VAC25-820. General Virginia Pollutant Discharge Elimination System (VPDES) Watershed Permit Regulation for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay Watershed in Virginia.**

Effective Date: October 25, 2021.

Agency Contact: Joseph Bryan, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4211, FAX (804) 698-4178, or email joseph.bryan@deq.virginia.gov.

FORMS (9VAC25-820)

~~Virginia Pollutant Discharge Elimination System General Permit Registration Statement for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay Watershed in Virginia (rev. 10/11).~~

General Virginia Pollutant Discharge Elimination System (VPDES) Permit Registration Statement for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay Watershed in Virginia (rev. 9/2021).

VA.R. Doc. No. R22-6990; Filed October 6, 2021, 8:30 a.m.

TITLE 11. GAMING

VIRGINIA LOTTERY BOARD

Proposed Regulation

Title of Regulation: **11VAC5-90. Casino Gaming (adding 11VAC5-90-10 through 11VAC5-90-210).**

Statutory Authority: §§ 58.1-4101 and 58.1-4102 of the Code of Virginia.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: December 24, 2021.

Agency Contact: Amy Roper, Regulatory Coordinator, Virginia Lottery, 600 East Main Street, First Floor, Richmond, VA 23219, telephone (804) 692-7133, FAX (804) 692-7325, or email aroper@valottery.com.

Basis: The Virginia Lottery Board is promulgating these regulations pursuant to Chapters 1197 and 1248 of the 2020 Virginia Acts of Assembly. The board derives its authority to regulate casino gaming from §§ 58.1- 4101 and 54.1-4102 of the Code of Virginia.

Purpose: The regulation ensures that casino gaming operations in the Commonwealth are conducted with order and the highest degree of integrity, protecting the public's safety and welfare by addressing requirements for the rules of casino games and the programming of slot machines to ensure fair play and the prevention of cheating and fraudulent practices, providing sufficient on-premises security where extremely large amounts of money are present, and overseeing and auditing casino operators' internal financial controls to guard against risks such as organized crime and money laundering. The regulation also protects the public's safety and welfare by setting the requirements for licensing the principals and certain employees of casino operators, suppliers and vendors, including investigations of previous business relationships, employment history, criminal records, and financial stability, in order to ensure that casino games offered to the public are managed by individuals who demonstrate good character, honesty and integrity. The regulation also protects problem gamblers by providing them with the option to be placed on a voluntary self-exclusion list. Casino operators are required to enforce measures to prohibit individuals on the list from entering a casino or playing casino games.

Substance: This regulation establishes how the Virginia Lottery will issue casino licenses and permits; casino facility and gaming security and control standards; rules and guidelines for slot machine, mechanical casino games, and table games and on-premises mobile casino gaming; reporting requirements; facility, employee and equipment investigation procedures, and nonmonetary sanctions and penalties for violations; and procedures for payment of taxes, fees, and penalties.

Based on input from Lottery staff and in response to comments received during the public comment period, the proposed regulation lowers the minimum theoretical percentage payout to 84% and raises the maximum payout to 100%; clarifies technical concerns about slot machine functions and reports; and incorporates legislative changes from the 2021 Session of the General Assembly.

Issues: The proposed regulatory action for casino gaming is primarily advantageous to the public in that it promotes public confidence and trust, provides a safer market for gamblers (including protections for individuals contending with gambling addiction), and generates job opportunities in the Commonwealth. There are no known disadvantages to the public that would be created by these regulations.

The primary advantage for the Commonwealth of the proposed regulatory action is that casino gaming is operated in an orderly manner with the highest degree of integrity, which creates an environment conducive to increased tax revenues, economic development and tourism. There are no known disadvantages to the Commonwealth that would be created by these regulations.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Chapters 1197 and 1248 of the 2020 Acts of Assembly[1] authorized casino gaming in the Commonwealth, to be regulated by the Virginia Lottery Board (Board). Pursuant to the third enactment clause, an emergency regulation became effective on March 11, 2021. The emergency regulation will expire on September 10, 2022.

Chapter 7 of the 2021 Special Session 1 Acts of Assembly amended the statutes related to casino gaming to state that: 1) the casino may have sports betting, and 2) an applicant for a casino facility operator license shall include in the application a minority investment plan, a plan for the participation of minority individuals or minority-owned businesses in the applicant's purchase of goods and services related to the casino gaming establishment, and the applicant's financing plan for the casino gaming establishment.

Chapter 15 of the 2021 Special Session 1 Acts of Assembly amended the statutory requirements for the casino facility operator license to include that the applicant has established a policy requiring all license and permit holders who interact directly with the public in the casino gaming establishment to complete a training course acceptable to the Virginia Lottery Department (Lottery or Department) in how to recognize and report suspected human trafficking.

The Board now proposes to replace the emergency regulation with a permanent regulation. The proposed permanent regulation differs from the emergency regulation in that it takes into account the requirements of Chapters 7 and 15, and subsequent public comment.

Background.

The requirements and other elements of the legislation[2] include the following 67 specific items:

Regulatory Activity Required by the Legislation

- Requiring the Director of the Lottery to supervise and administer the regulation of casino gaming.
- Requiring the Board to adopt regulations regarding the conditions under which casino gaming shall be conducted in the Commonwealth.
- Requiring the Board to adopt regulations to establish and implement a voluntary exclusion program.[3] The name of a person participating in the program shall be included on a list of excluded persons. The list of persons entering the voluntary exclusion program and the personal information of the participants shall be confidential, with dissemination limited to lottery sales agents, owners and operators of casino gaming establishments, and any other parties the Lottery deems necessary for purposes of enforcement. Lottery sales agents and owners and operators of casino gaming establishments shall make all reasonable attempts as determined by the Board to cease all direct marketing efforts to a person participating in the program.

Host Cities

- Limiting the conduct of casino gaming to the Cities of Bristol, Danville, Norfolk, Portsmouth, and Richmond.
- The legislation required that each eligible host city hold a referendum on the question of whether casino gaming shall be permitted in such city if approved by the voters of such city. The voters of Bristol, Danville, Norfolk, and Portsmouth have all already approved casino gaming via referendum. Richmond will hold their referendum on November 2, 2021.
- Requiring that the host cities submit their preferred casino gaming operator to the Lottery for review.

Operator's License

- Establishing that no person shall operate a casino gaming establishment unless he has obtained an operator's license issued by the Lottery.
- Establishing that if a preferred casino gaming operator, as certified by the applicable eligible host city, submits an application that meets the standards for licensure, the Board shall issue an operator's license to such preferred casino gaming operator. The Board shall not consider an application from any applicant that has not been certified as a preferred casino gaming operator by an eligible host city.
- Establishing that in order to obtain an operator's license, the applicant shall (i) make a capital investment of at least $300 million in a casino gaming establishment, including the value of the real property upon which such establishment is located and all furnishings, fixtures, and other improvements, and (ii) possess an equity interest equal to at least 20 percent of the casino gaming establishment.
- Establishing that any required local infrastructure or site improvements, including necessary sewerage, water, drainage facilities, or traffic flow, be paid exclusively by the operator license applicant without state or local financial assistance.
- Requiring that a nonrefundable fee of $15 million be paid by the applicant upon the issuance of a license and upon any subsequent transfer of a license to operate a casino gaming establishment.
- Requiring that a nonrefundable application fee of $50,000 be paid for each principal at the time of filing to defray the costs associated with the background investigation conducted for the Lottery. If the reasonable costs of the investigation exceed the application fee, the applicant shall pay the additional amount. The Board may establish regulations calculating the reasonable costs to the Lottery in performing its functions under this chapter and allocating such costs to the applicants for licensure at the time of filing.
- Establishing that the Lottery shall require a bond with surety acceptable to it, and in an amount determined by it, to be sufficient to cover any indebtedness incurred by the licensee to the Commonwealth.
- Requiring that the license application include: (a) the applicant's financing plan for the casino gaming establishment; and (b) evidence of compliance by the applicant with the economic development and land use plans and design review criteria of the local governing body of the city in which the casino gaming establishment is proposed to be located, including certification that the project complies with all applicable land use ordinances.

- Requiring, in addition to the license application, that the applicant submit: (i) a minority investment plan disclosing any equity interest owned by a minority individual or minority-owned business or the applicant's efforts to seek equity investment from minority individuals or minority-owned businesses and (ii) a plan for the participation of minority individuals or minority-owned businesses in the applicant's purchase of goods and services related to the casino gaming establishment.
- Requiring that the operator license applicant establish a policy requiring all license and permit holders who interact directly with the public in the casino gaming establishment to complete a training course acceptable to the Lottery in how to recognize and report suspected human trafficking.
- Requiring that the Board make a determination regarding whether to issue the operator's license within 12 months of the receipt of a completed application.
- Establishing that the Lottery may authorize casino gaming to occur on a temporary basis for a period of one year under specified conditions.
- Establishing that the casino gaming operator license shall be valid for a period of 10 years from its date of issuance, but shall be reviewed no less frequently than annually to determine compliance with statutes and regulations.
- Requiring that every five years the licensed operator submit for review and approval a reinvestment projection related to the casino gaming establishment to cover the succeeding five-year period of operations.
- Requiring that the Board establish by regulation the criteria and procedures for license renewal and for amending licenses to conform to changes in a licensee's gaming operations. Such regulations shall require the operator to submit to the Board any updates or revisions to the capital investment plan provided with the initial license application.
- Requiring that a licensed operator keep his books and records so as to clearly indicate the total amount of gross receipts and adjusted gross receipts.
- Requiring that the licensed operator furnish to the Lottery reports and information as the Department may require with respect to its activities.
- Requiring that each casino game that operates electronically be connected to a central monitoring and audit system established and operated by the Lottery. Such system shall provide the ability to audit and account for terminal revenues and distributions in real time.
- Requiring that within 90 days after the end of each fiscal year, the licensed operator transmit to the Lottery a third-party, independent audit of the financial transactions and condition of the licensee's total operations.
- Establishing that an operator issued a license shall not be precluded from operating a sports betting facility for individuals to participate in sports betting activities in a casino gaming establishment, which may include in-person sports betting where the bettor places a bet directly with an employee of the casino or the sports betting permit holder, or through a kiosk or device.

Supplier's Permit

- Establishing that any person that supplies any casino gaming equipment, devices, or supplies to a licensed gaming operation or manages any operation, including a computerized network, of a casino gaming establishment must first obtain a supplier's permit.
- Establishing that the Board may issue a supplier's permit upon application and payment of a nonrefundable application fee set by the Board, a determination by the Board that the applicant is eligible for a supplier's permit, and payment of a $5,000 initial permit fee. A supplier's permit shall be renewed annually at a fee to be determined by the Lottery, not to exceed $5,000 per year of licensure. The Board shall prescribe by regulation the criteria for the issuance, duration, and renewal of supplier's permits.
- Requiring that a supplier keep books and records for the furnishing of casino gaming equipment, devices, and supplies to gaming operations separate and distinct from any other business that the supplier might operate. A supplier shall file a quarterly return with the Lottery listing all sales and leases for which a permit is required.
- Establishing that the Lottery Director may suspend, revoke, and refuse to renew, or assess a civil penalty against the holder of a license or permit in a sum not to exceed $100,000, after notice and a hearing.
- The Lottery believes that the legislative requirement that a nonrefundable application fee of $50,000 be paid for each principal, to defray the costs associated with the background investigation, also applies to supplier permittees. This is based upon the Lottery's interpretation of § 58.1-4109, which they state applies to all principals as that term is defined in § 58.1-4100, and thus also includes "a person who manages a gaming operation on behalf of a licensee."

Service Permits

- Establishing that no person shall participate in (i) any gaming operation as a casino gaming employee or concessionaire or employee of either or in (ii) any

other occupation that the Board has determined necessary to regulate in order to ensure the integrity of casino gaming in the Commonwealth, unless such person possesses a service permit to perform such occupation issued by the Board. The Board shall prescribe by regulation the criteria for the issuance, duration, and renewal of service permits.

- Requiring that the service permit application be accompanied by a fee prescribed by the Lottery; in the proposed regulation, the Lottery has set this fee at $500.

- The Lottery believes that the legislative requirement that a nonrefundable application fee of $50,000 be paid for each principal, to defray the costs associated with the background investigation, also applies to service permittees. This is based upon the Lottery's interpretation of § 58.1-4109, which they state applies to all principals as that term is defined in § 58.1-4100, and thus also includes "a person who manages a gaming operation on behalf of a licensee."

Background Checks

- Requiring the Board, in conjunction with an accredited law-enforcement agency, to conduct a background investigation, including a criminal history records check and fingerprinting, of the following individuals: (i) every individual applying for a license or permit pursuant to this chapter; (ii) every individual who is an officer, director, or principal of a licensee or applicant for a license and every employee of the licensee who conducts gaming operations; (iii) all security personnel of any licensee; and (iv) all permit holders and officers, directors, principals, and employees of permit holders whose duties relate to gaming operations in Virginia. Each such individual shall submit his fingerprints and personal descriptive information to the Central Criminal Records Exchange to be forwarded to the Federal Bureau of Investigation for a national criminal records search and to the Department of State Police for a Virginia criminal history records check.

- The fee for the Virginia criminal history information and the FBI national search is $35.72.[4]

Conduct of Casino Gaming

- Establishing that agents of the Lottery, the Department of State Police, and the local law-enforcement and fire departments may enter any casino gaming establishment and inspect such facility at any time for the purpose of determining compliance with this chapter and other applicable fire prevention and safety laws.

- Establishing that no person under age 21 shall be permitted to make a wager under this chapter or be present where casino gaming is being conducted.

- Requiring that casino gaming wagers shall be conducted only with tokens, chips, or electronic cards purchased from a licensed casino gaming operator. This does not apply to sports betting, which may be conducted using cash.

New Funds

- Creating in the state treasury a special non-reverting fund to be known as the Gaming Proceeds Fund.

- Creating in the state treasury a special non-reverting fund to be known as the Virginia Indigenous People's Trust Fund. After payment of the costs of administration, moneys in the Virginia Indigenous People's Trust Fund shall be used to make disbursements on a quarterly basis in equal amounts to each of the six federally recognized Virginia Indian tribes.

- Creating in the state treasury a special non-reverting fund to be known as the Problem Gambling Treatment and Support Fund. Moneys in the Fund shall be used solely for the purposes of (i) providing counseling and other support services for compulsive and problem gamblers, (ii) developing and implementing compulsive and problem gambling treatment and prevention programs, and (iii) providing grants to support organizations that provide assistance to compulsive and problem gamblers.

- Requiring the Commissioner of the Department of Behavioral Health and Developmental Services to establish a comprehensive program for the prevention and treatment of problem gambling in the Commonwealth and administer the Problem Gambling Treatment and Support Fund.

Taxation

- Establishing that a tax on the adjusted gross receipts[5] of each licensed operator received from games shall be imposed as follows:[6] (a) On the first $200 million of adjusted gross receipts of an operator each calendar year, a rate of 18 percent. (b) On the adjusted gross receipts of an operator that exceed $200 million but do not exceed $400 million each calendar year, a rate of 23 percent. (c) On the adjusted gross receipts of an operator that exceed $400 million each calendar year, a rate of 30 percent.

- Establishing that all such tax revenues shall accrue to the Gaming Proceeds Fund.

- Establishing that revenues from the Gaming Proceeds Fund shall be appropriated by the General Assembly as follows:
- The following amounts shall be appropriated to the city in which they were collected:[7] a. An amount equal to a six percent tax on the first $200 million of adjusted gross receipts; b. An amount equal to a seven percent tax on the adjusted gross receipts that exceed $200 million but do not exceed $400 million; and c. An amount equal to an eight percent tax on the adjusted gross receipts that exceed $400 million.
- For any casino gaming establishment operated by a Virginia Indian tribe recognized in House Joint Resolution No. 54 (1983) and acknowledged by the Assistant Secretary-Indian Affairs of the U.S. Department of the Interior as an Indian tribe within the meaning of federal law that has the authority to conduct gaming activities as a matter of claimed inherent authority or under the authority of the Indian Gaming Regulatory Act (25 U.S.C. Đ· 2701 et seq.), an amount equal to a tax of one percent on the adjusted gross receipts of such establishment shall be deposited in the Virginia Indigenous People's Trust Fund.
- Eight-tenths of one percent of the Fund shall be appropriated to the Problem Gambling Treatment and Support Fund.
- Two-tenths of one percent of the Fund shall be appropriated to the Family and Children's Trust Fund.[8]
- Any remaining revenues shall remain in the Gaming Proceeds Fund until appropriated by the General Assembly for programs established to address public school construction, renovations, or upgrades.

On-premises Mobile Casino Gaming

- Requiring that a casino gaming operator's primary on-premises mobile casino gaming[9] operation, including facilities, equipment, and personnel who are directly engaged in the conduct of on-premises mobile casino gaming, be located within a restricted area on the premises of the casino gaming establishment.
- Requiring that all amounts remaining in on-premises mobile casino gaming accounts inactive or dormant for such period and under such conditions as established by regulation by the Board shall be closed. Any funds remaining in the account at such time shall be paid 50 percent to the casino gaming operator and 50 percent to the general fund. Before closing an account pursuant to this section, the casino gaming operator shall attempt to contact the account holder by mail, phone, and electronic mail.
- Establishing that any gross receipts from on-premises mobile casino gaming shall be included in a casino gaming operator's adjusted gross receipts and subject to taxation.

Assistance to people with gambling problem

- In order to assist those persons who may have a gambling problem, requiring that a casino gaming operator:
- Cause the words "If you or someone you know has a gambling problem and wants help, call 1-800-GAMBLER," or some comparable language approved by the Lottery, which language shall include the words "gambling problem" and "call 1-800 GAMBLER," to be displayed prominently at log-on and log-off times to any person visiting or logged onto on-premises mobile casino gaming; and
- Provide a mechanism by which an account holder may establish the following controls on wagering activity through the wagering account: a. A limit on the amount of money deposited within a specified period of time and the length of time the account holder will be unable to participate in gaming if the holder reaches the established deposit limit; and b. A temporary suspension of gaming through the account for any number of hours or days.

Requirements for Contracts

- Establishing that a contract between an eligible host city and its preferred casino gaming operator shall require the operator to agree that any contractor hired for construction on the site of the casino gaming establishment be required to: (i) pay the local prevailing wage rate as determined by the U.S. Secretary of Labor under the provisions of the Davis-Bacon Act, 40 USC § 276 et seq., as amended, to each laborer, workman, and mechanic the contractor employs on the site; (ii) participate in apprenticeship programs that have been certified by the Department of Labor and Industry or the U.S. Department of Labor; (iii) establish preferences for hiring residents of the eligible host city and adjacent localities, veterans, women, and minorities for work performed on the site; (iv) provide health insurance and retirement benefits for all full-time employees performing work on the site; and (v) require that the provisions of clauses (i) through (iv) be included in every subcontract so that the provisions will be binding upon each subcontractor.
- Establishing that the contract between an eligible host city and its preferred casino gaming operator shall also require that the operator agree to: (a) pay any of its full-time employees performing work on the site an hourly wage or a salary, including tips, that equates to an hourly rate no less than 125 percent of the federal minimum wage; (b) establish preferences for

hiring residents of the eligible host city and adjacent localities, veterans, women, and minorities for work performed on the site in compliance with any applicable federal law; (c) provide access to health insurance and retirement savings benefit opportunities for all full-time employees of the operator performing work on the site; and (d) require that any contract for services performed on the site, other than construction, with projected annual services fees exceeding $500,000, meet the requirements of clauses (a), (b), and (c) with regard to full-time personnel of the subcontractor who will be performing services under the contract between the operator and the subcontractor.

Estimated Benefits and Costs. The legislation sets specific tax rates, which combined with general economic conditions and decisions of the owners and operators of the casinos will largely determine the revenues generated for state and local governments and other entities. Most benefits resulting from job creation, and any cost impacts resulting from an increase in crime or bankruptcies, would again largely be due to the legislation. Specific aspects of the proposed regulation would also have some impact, largely in the way of: 1) ensuring fairness and protection for casino patrons, taxpayers, and casino employees, 2) ensuring the accurate accounting of casino revenues, and 3) additional costs imposed for operators and suppliers.

Some of the requirements for regulated entities are directly delineated in the legislation. For many of the requirements, greater detail is specified in the proposed regulation. The following are various proposed fees and charges in the regulation where either the amounts or other details are not specified in the legislation:

- Section 40 I.8.a: $40 for the cost of a replacement identification card.
- Section 40 I.8.b: $20 for the cost of a temporary identification card.
- Section 50 F.3: Lottery will charge to be reimbursed for the administrative costs of background investigations beyond the set fees.
- Section 60 I.5: Facility operator license renewal fee of $15 million (every ten years).
- Section 70 J: Every five years, suppliers are to pay any fees associated with the supplier permit renewal application and background investigation as directed by the Lottery.
- Section 80 E.1: $500 application fee for the service permit applicant, plus any applicable fingerprinting fees.
- Section 80 J: Every five years, service permittees are to pay any fees associated with the service permit renewal application and background investigation as required by the director of the Lottery.

Below are other requirements that involve costs, but are not detailed in the legislation.[10] The primary benefits of these requirements include ensuring fairness and protection for patrons, taxpayers, and employees, and ensuring the accurate accounting of casino revenues. Some may also include job creation. The latter will be discussed later in the Projected Impact on Employment section of this report.

The Department of Planning and Budget contacted regulators for casino gaming from Connecticut, Maryland, Massachusetts, Michigan, Nevada, New Jersey, and Pennsylvania, as well as the Virginia Lottery and a consultant used by the Joint Legislative Audit and Review Commission, to help estimate the costs for bonds; audits, reports and opinion letters by independent certified public accountants; testing and certification of slot machines, mechanical casino games, electronic table game systems, and software by independent certified testing laboratories; and system integrity and security assessments of casino gaming operations by independent certified testing laboratories. The following estimates reflect the information that could be obtained within the statutory timeframes provided for this analysis.

- Section 40 E: The legislation establishes that for the operator's license the Lottery shall require a bond with surety acceptable to it, and in an amount determined by it, to be sufficient to cover any indebtedness incurred by the licensee to the Commonwealth. The proposed regulation further specifies that: 1) the bond shall be issued only by a company that is financially rated "A" or better by a nationally recognized rating agency and that is permitted to transact business in the Commonwealth of Virginia, and 2) the amount of the bond may not exceed $50 million.
- Surety bonds can help protect Virginia taxpayers. The larger the amount of the surety bond, the greater the cost to the operator. Depending on the perceived credit worthiness of the entity acquiring the surety bond, the annual cost can range from one percent to fifteen percent of the amount of the bond.[11] Thus, the annual cost for a $50 million bond could range from $500,000 to $7.5 million.
- Section 40 E: The legislation does not directly address bonds for permit holders. The proposed regulation specifies that: 1) the Lottery may require an applicant for or holder of a permit to obtain a bond, 2) the bond shall be issued only by a company that is financially rated "A" or better by a nationally recognized rating agency and that is permitted to transact business in the Commonwealth of Virginia, 3) the amount of the bond shall be in an amount determined by the director to be sufficient to cover any loss or indebtedness to the Commonwealth incurred by the permit holder, and 4) for a supplier permit holder the amount of the bond may not exceed $50 million, while for a service

permit holder the amount of the bond may not exceed $100,000.

- Surety bonds can help protect Virginia taxpayers. The larger the amount of the surety bond, the greater the cost to the operator. Depending on the perceived credit worthiness of the entity acquiring the surety bond, the annual cost can range from one percent to fifteen percent of the amount of the bond.[12] Thus, the annual cost for a $50 million bond could range from $500,000 to $7.5 million, while the annual cost for a $100,000 bond could range from $1,000 to $15,000.
- According to the Lottery, whether or not a bond would be required for a permit holder would depend on the level of risk to the Commonwealth, based on the type of product or service provision.
- Section 60 I.2: The criteria and procedures for license renewal shall be the same for successive renewal terms as for the initial term of licensure, including the application fees for background and other investigations, unless the facility operator's operational and capital investment plans have been approved for amendment by the Lottery.
- It is beneficial to have this information specified in the regulation.
- Section 100 J.5.a: A facility shall establish a responsible gaming plan that sets forth the facility's plan for addressing problem gambling at the facility.
- The requirement may help individuals with potential gambling problems. There would be operator staff time costs in developing and implementing the plan.
- Section 110 D.2.c: An opinion letter by an independent certified public accountant expressing an opinion as to: (1) The effectiveness of the design of the submitted system of internal controls over financial reporting; (2) Whether the submitted system of internal controls conforms to the requirements of the casino gaming law, this chapter, and any Department policy or directives; and (3) If applicable, whether a deviation from the requirements of the casino gaming law, this chapter, or any Department policy or directive identified by the independent certified public accountant in the course of its review of the submitted system of internal controls is material.
- This helps ensure the accuracy of the reporting of revenue and other information. There would be cost in hiring the independent certified public accountant.
- Combined, the proposed requirements for certified public accountant services are expected to cost between $50,000 and $200,000 annually.[13]
- Section 110 E.1: The Lottery may require a facility operator to submit daily, weekly, monthly, quarterly, and annual reports of financial and statistical data.
- This could be beneficial in helping monitor the financial condition of the operator, which may help ensure protection for taxpayers. This may require substantial staff time for operators.
- Section 110 F.1: A facility operator shall cause its annual financial statements to be audited in accordance with generally accepted auditing standards by an independent certified public accountant.
- This helps ensure the accuracy of the reporting of revenue and other information. There would be cost in hiring the independent certified public accountant.
- Combined, the proposed requirements for certified public accountant services are expected to cost between $50,000 and $200,000 annually.[14]
- Section 110 F.6: A facility operator shall require the independent certified public accountant auditing its financial statements or other qualified entity approved by the Department to render the following additional reports: a. A report identifying: (1) Material weaknesses or significant deficiencies in the facility operator's Department-approved internal controls noted in the course of the examination of the financial statements; and (2) Recommendations as to how to eliminate each material weakness or significant deficiency identified; and b. A report assessing the adequacy and effectiveness of the facility operator's information technology security controls and system configurations with recommendations as to how to eliminate each material weakness or significant deficiency identified.
- This helps ensure the accuracy of the reporting of revenue and other information. There would be cost in hiring the independent certified public accountant.
- Combined, the proposed requirements for certified public accountant services are expected to cost between $50,000 and $200,000 annually.[15]
- Section 110 I: A facility operator shall install in its facility a surveillance system that complies with the requirements of this subsection and is reviewed and approved by the Lottery.
- Operators would likely install a surveillance system whether or not it is required, but specific required design features may add to cost. The design specifications are intended to help ensure fairness and safety for patrons.

- Section 110 K: Surveillance department minimum staffing. 1. At least 60 days before casino gaming operations are to commence, a facility operator shall submit its surveillance department minimum staffing plan to the Lottery for review and written approval. 2. A facility operator may not commence operations until its surveillance department minimum staffing plan is approved in writing by the Lottery. 3. A surveillance department minimum staffing plan shall assess, on a per-shift basis, the minimum number of on duty surveillance department employees necessary to: a. Provide adequate and effective surveillance of all activities in and outside the facility; b. Ensure the physical safety of employees of invitees to the facility; c. Comply with all applicable laws, regulations, and directives of the Lottery and director, including Department-approved internal controls and operating procedures.

- According to the Department, ensuring sufficient staffing levels for surveillance is for the safety and security of players and non-playing guests and to maintain the integrity of a multi-billion dollar gaming program by limiting potential staff misbehavior or player misconduct such as "cupping" chips and other types of cheating. If the minimum staffing level is set higher than the number of employees the operator would have otherwise chosen, this requirement would add cost.

- Section 110 L: Security department operating procedures. 1. At least 60 days before casino gaming operations are to commence, a facility operator shall submit to the Lottery for review and written approval its security department operating procedures.

- This may help ensure the safety of casino patrons and employees. It would require operator staff time.

- Section 110 M: Security department minimum staffing. 1. At least 60 days before casino gaming operations are to commence, a facility operator shall submit its security department minimum staffing plan to the Lottery for review and written approval. 2. A facility operator may not commence operations until its security department minimum staffing plan is approved in writing by the Lottery. 3. A security department minimum staffing plan shall assess, on a per-shift basis, the minimum number of necessary on-duty security department employees.

- According to the Department, ensuring sufficient staffing levels for security is for the safety and security of players and non-playing guests and to maintain the integrity of a multi-billion dollar gaming program by limiting potential staff misbehavior or player misconduct such as "cupping" chips and other types of cheating. If the minimum staffing level is set higher than the number of employees the operator would have otherwise chosen, this requirement would add cost.

- Section 110 N: Internal audit department standards. 1. At least 60 days before casino gaming operations are set to commence, a facility operator shall submit to the Lottery for review and approval internal audit department operating standards and procedures that: a. Meet the requirements of the casino gaming law, this chapter, and any Department policies or directives; b. Conform to this section; and c. Direct that an internal audit be conducted in accordance with generally accepted auditing standards in the United States. 2. A facility operator's internal audit department operating procedures and standards shall, at a minimum, require the internal audit department to: "h. Prepare an audit report for each audit conducted;" 3. The audit department shall audit at least semiannually the functions and operations of the facility's: a. Cashiers' cage; b. Main bank; c. Collection of cash storage boxes; d. Cash count; e. Revenue audit; f. Operations department; g. Key control; and h. Table game operations. 4. The audit department shall audit at least annually: a. Responsible gaming program; b. Security department; c. Currency transaction reporting; d. Suspicious activity reporting; e. Information technology controls; f. Accounts payable; g. Purchasing; h. Player tracking system; and i. Surveillance department.

- These requirements may help ensure the accuracy of revenue reporting and the overall integrity of the gaming programs. The requirements would require substantial staff time.

- Section 110 P: Specifications on cashiers' cage.

- Operators would likely have cashiers' cages whether or not it is required, but specific required design features may add to cost. The design specifications are intended to help ensure safety.

- Section 110 Q: Accounting controls for a cashiers' cage. 4. A facility operator shall develop and include in the internal controls submitted to and approved by the Lottery procedures that address the segregation of the cashiers' cage and the general conduct of cashiers' cage transactions.

- This requirement may help ensure the accuracy of revenue reporting. It would require staff time.

- Section 110 U: Player Accounts. 5. A facility operator shall develop and include in the internal controls submitted to and approved by the Lottery procedures

addressing the acceptance of player account transactions.

- This may help ensure fairness and accurate revenue reporting. It would involve operator staff time.
- Section 110 Z: Gaming ticket. 1. A facility operator shall develop and include in the internal controls submitted to and approved by the Lottery procedures addressing the issuance and redemption of a gaming ticket.
- This may help ensure fairness and accurate revenue reporting. It would involve operator staff time.
- Section 110 AA: Promotional play. 6. A facility operator shall develop and include in the internal controls submitted to and approved by the Lottery procedures addressing the requirements of this subsection and: "8. A facility operator shall submit to the Lottery in a form and in accordance with a timeframe specified by the Department a quarterly report summarizing: a. Promotional play awarded for the period, including: (1) Total amount in promotional play awarded in non-cashable credits; and (2) Other forms of promotional play; and b. Promotional play redeemed by players for the period, including: (1) Total amount in promotional play redeemed in non-cashable credits; and (2) Other forms of promotional play redeemed.
- This may help ensure fairness and accurate revenue reporting. It would involve operator staff time.
- Section 110 BB: Ticket redemption unit. 3. A facility operator shall develop and include in the internal controls submitted and approved by the Lottery procedures addressing a ticket redemption unit.
- This may help ensure fairness and accurate revenue reporting. It would involve operator staff time.
- Section 110 CC: Jackpot payout. 4. A facility operator shall develop and include in the internal controls submitted to and approved by the Lottery procedures addressing the payment of a jackpot or credit meter payout not totally and automatically paid by a casino gaming machine.
- This may help ensure fairness and accurate revenue reporting. It would involve operator staff time.
- Section 110 DD: Annuity jackpot. 3. A facility operator submitting a request for approval of an annuity jackpot to the Lottery shall submit details pertaining to the annuity jackpot.
- This may help ensure fairness and accurate revenue reporting. It would involve operator staff time.
- Section 110 EE: Merchandise jackpot. 1. A facility operator may not offer a merchandise jackpot without the prior written approval of the Lottery. 2. A facility operator submitting a request for approval of a merchandise jackpot to the Department shall submit details pertaining to the merchandise jackpot.
- This may help ensure fairness and accurate revenue reporting. It would involve operator staff time.
- Section 110 FF: Automated jackpot payout machine. 4. A facility operator shall develop and include in the internal controls submitted to and approved by the Lottery procedures addressing the payment of a jackpot or credit meter payout utilizing an automated jackpot payout machine.
- This may help ensure fairness and accurate revenue reporting. It would involve operator staff time.
- Section 110 II: Count room design standards.
- Operators would likely have a count room whether or not it is required, but specific required design features may add to cost. The design specifications are intended to help ensure safety.
- Section 120 B.1: A facility operator shall, at its own expense, construct its facility in accordance with specifications established by the director, including: "f. At least 1,000 square feet of office space for use by Lottery staff that is located immediately adjacent to the gaming floor and is equipped with: "i. An area for the detention of individuals taken into custody by any law-enforcement agency that has jurisdiction over the facility;" j. Adequate space for use by the Department in connection with conducting background investigations of applicants or licensees;
- Having space onsite for Lottery staff is beneficial in that it would greatly ease the Department's monitoring of operations, which helps ensure fairness and accurate revenue reporting. Having an area for the detention of individuals taken into custody by any law-enforcement agency that has jurisdiction over the facility would be beneficial in that it would aid law enforcement, may help ensure security, and may help reduce disruption within the casino. The requirements would substantially add to the cost of constructing the casinos.
- Section 120 B.2: a. A facility operator shall provide at least two locations in the facility for the sale of Virginia Lottery games that are offered by or through the Department. b. Virginia Lottery game sales locations shall be situated as near as practicable to a cashiers' cage.

- This would aid in the sale of Virginia Lottery games. It would produce a small cost for operators in that the space dedicated for the sale of Virginia Lottery games may have been used in a different manner that would have been more useful for the operator.

- Section 120 D: Gaming floor plan. 1. At least 60 days before gaming operations are to commence, a facility operator shall submit a floor plan depicting its gaming floor and all restricted areas to the Lottery for review and written approval.

- This may aid the Department in helping ensure fairness and safety. It would require some operator staff time.

- Section 130 F: Before a facility operator begins its mobile gaming operations, all equipment and software used in conjunction with its operation shall be submitted to an independent testing laboratory approved by the director; "A mobile casino gaming platform submitted to an approved independent testing laboratory shall contain: a. A complete, comprehensive, technically accurate description and explanation of the mobile casino gaming platform; b. Detailed operating procedures of the mobile casino gaming platform; c. A description of the risk management framework, including: (1) User access controls for all facility operator personnel; (2) Information regarding segregation of duties; (3) Information regarding automated risk-management procedures; (4) Information regarding identifying and reporting fraud and suspicious activity; (5) Controls for ensuring regulatory compliance; (6) A description of anti-money laundering (AML) compliance standards; (7) A description of all software applications that comprise the system; (8) A description of all types of wagers available to be offered by the system; and (9) A description of all types of third-party systems proposed for utilization;

- This helps ensure the fairness of the mobile gaming. Hiring the independent certified testing laboratory would produce cost for the operator.[16]

- Section 130 K: At least 60 days before on-premises mobile casino gaming operations are to commence, a facility operator shall submit its internal controls for those operations to the Lottery for review and written approval. The internal controls shall be integrated into the internal controls required by 11VAC5-90-110.

- This helps ensure fairness and accurate revenue reporting. It would require staff time.

- Section 140 G: Request for authorization. 1. A facility operator shall obtain prior written authorization from the Lottery before taking any of the following actions with respect to a slot machine, mechanical casino gaming machine, or table game equipment in its facility: a. Placing the slot machine, mechanical casino gaming machine, or table game into operation; b. Relocating the slot machine, mechanical casino gaming machine, or table game within the facility; c. Converting a game theme or table layout; d. Converting a play denomination on a slot machine or mechanical casino gaming device; e. Changing percentage payout; f. Changing an erasable programmable read only memory chip; g. Changing a jackpot lockup amount; h. Changing a configuration; i. Performing a substantial replacement of parts; j. Implementing any variation, composite, or new feature of a table game; or k. Performing any other action that materially alters or interrupts the operation of a slot machine, mechanical casino gaming machine, or table game.

- This helps ensure fairness and accurate revenue reporting. This may be costly to operators in that it would slow down the implementation of desired actions or changes.

- Section 150 (Slot Machines) B: 1. A manufacturer may not offer the equipment, systems, or software enumerated in subdivision 5 of this subsection, or a modification to a Department-approved version of that equipment, system or software, for sale, lease, distribution, or use in a facility without it having been: a. Tested and certified by an independent certified testing laboratory; and b. Approved in writing by the Lottery. 2. A facility operator may not purchase, lease, or otherwise acquire the right to install, utilize, or make available for use the equipment, systems, or software enumerated in subdivision 5 c of this subsection, or a modification to a Department-approved version of that equipment, system, or software, without it having been: a. Tested and certified by an independent certified testing laboratory; and b. Approved in writing by the Lottery.

- This helps ensure the fairness of the slot machines. The manufacturer probably would have already done this for standard machines, but would likely have to do it again for modifications. Hiring the independent certified testing laboratory would produce cost for the manufacturer.[17]

- Section 150 (Slot Machines) K.2: A slot machine shall have a theoretical payout percentage that is between 84% and 100%.

- Having a minimum payout helps in fairness to patrons. This requirement is arguably costly for an operator who would prefer a lower theoretical payout percentage. For operators who would have had payouts at least as high as the minimum, this

requirement would have no impact. Since tax rates are based on adjusted gross revenue, and adjusted gross revenue is gross receipts less winnings paid to wagerers, setting what the payout to wagerers can be can affect tax revenues.

- Section 150 (Slot Machines) FF.1: A manufacturer may not utilize a location outside of a facility to store or repair equipment, systems, software, or related parts and inventory for use in a facility without the storage facility being: a. Inspected by the Lottery; and b. Approved in writing by the Department.

- This helps ensure fairness of slot machines. Assuming the inspector is prompt and reasonable, this should not be particularly costly for the manufacturer.

- Section 160 (Mechanical casino games) B: 1. A manufacturer may not offer a mechanical casino game for sale, lease, distribution, or use in a facility, or a modification to a Department-approved version of such a game, without it having been: a. Tested and certified by an independent certified testing laboratory; and b. Approved in writing by the Lottery. 2. A facility operator may not purchase, lease, develop, or otherwise acquire the right to install, utilize, or make available for use a mechanical casino game, or a modification to a Department-approved version of such a game or equipment, without it having been: a. Tested and certified by an independent certified testing laboratory; and b. Approved in writing by the Lottery.

- This helps ensure the fairness of mechanical casino games. The manufacturer probably would have already done this for standard games, but would likely have to do it again for modifications. Hiring the independent certified testing laboratory would produce cost for the manufacturer.[18]

- Section 160 (Mechanical casino games) J.1: A manufacturer may not utilize a location outside of a facility to store or repair a mechanical casino game or equipment, or related parts and inventory for use in a facility without the storage facility being: a. Inspected by the Lottery; and b. Approved in writing by the Department.

- This helps ensure fairness of mechanical casino games. Assuming the inspector is prompt and reasonable, this should not be particularly costly for the manufacturer.

- Section 170 (Table games definitions and equipment) T.3: All aspects of an electronic table game system, including the computer and any related hardware, software, or related devices, shall be tested by an independent certified testing laboratory and approved by the Lottery prior to use by a facility operator.

- This helps ensure fairness of electronic table game systems. For those game systems that had not already been tested by an independent certified testing laboratory, hiring the laboratory would produce cost.

- Section 180 (Table games procedures) B.2: A facility operator shall maintain the following minimum levels of staffing when table games are being operated: a. Excluding craps or baccarat, one dealer for a table game; b. Two dealers for a big baccarat table; c. Two dealers for a craps table, one of whom shall act as the stickperson; and d. One box person or floor person for a craps table.

- According to the Department, ensuring sufficient staffing levels for on-floor gaming is for the safety and security of players and non-playing guests and to maintain the integrity of a multi-billion dollar gaming program by limiting potential staff misbehavior or player misconduct such as "cupping" chips and other types of cheating. If the minimum staffing level is set higher than the number of employees the operator would have otherwise chosen, this requirement would add cost.

- Section 180 (Table games procedures) J: Table inventory counts. 1. In addition to other requirements in this section for opening a table game, conducting a drop during an open game, and closing a table game, a facility operator may establish procedures for the use of a three-compartment drop box. 2. The use of a three-compartment drop box requires the preparation of a Table Inventory Slip for each shift that the table was open at least once each gaming day. 3. A facility operator shall submit to the Lottery for approval the procedures developed under subdivision 1 of this subsection as part of the facility operator's internal controls.

- This requirement may help ensure security. It would require some staff time.

- Section 180 (Table games procedures) K: Match play coupons and direct bet coupons. 1. A facility operator may use match play coupons and direct bet coupons. 2. A coupon may not be issued by a facility operator or used in a facility until: a. The design specifications of the proposed coupon are submitted to and approved by the Lottery; and b. A system of internal procedures and administrative and accounting controls governing the inventory, distribution, and redemption of the coupon is submitted to and approved by the Department as part of the facility operator's internal controls.

- This may be beneficial in helping to accurately determine adjusted gross revenue. It would require some staff time.
- Section 180 (Table games procedures) P: Employee training by facility operators. A facility operator shall develop a training program for its dealers that, at a minimum, includes training in: "7. Recognizing problem and compulsive gamblers at table games and procedures for informing supervisory personnel.
- This may be beneficial for patrons who may have problems with compulsive gambling. It would require staff time.
- Section 180 (Table games procedures) R: 1. Before offering a table game authorized under the standard rules, a facility operator shall submit to the Lottery a rules submission that specifies which options the facility operator will use in the conduct of the table game. 2. A facility operator may implement the provisions in a rules submission only after receipt of written notice of approval from the Department.
- This may help ensure fairness for patrons. It would require some staff time.
- Section 180 (Table games procedures) S.1: A facility operator that desires to offer a table game or feature that is not already in the standard rules, or to offer a new wager, pay table, or other feature as part of table game that has been approved by the Lottery, shall submit a written request to the Department.
- This may help ensure fairness for patrons. It would require some staff time.
- Section 180 (Table games procedures) U: 1. A facility operator shall maintain, at its security podium or other location approved in advance by the Lottery, a printed copy of the complete text of the standard rules of all authorized games that shall be available to the public for inspection upon request. 2. A facility operator shall make available to players upon request a gaming guide that contains, in a printed format, an abridged edition of the complete text of the standard rules of all authorized games. 3. The gaming guide required may not be issued, displayed, or distributed by a facility operator until a sample of the gaming guide has been submitted to and approved by the Department. 4. A facility operator may display an approved gaming guide at any location in its licensed facility. 5. Each facility operator shall make the approved gaming guide available on its website.
- This may help ensure fairness for patrons. The operator may have chosen to provide such written rules without the requirement. If not, there would be some printing costs.
- Section 200 (Information security system): A facility operator shall implement, maintain, regularly review and revise, and comply with a comprehensive information security system, the purpose of which shall be to take reasonable steps to protect the confidentiality, integrity, and availability of personal information of individuals who place a wager with the facility operator, and shall contain administrative, technical, and physical safeguards appropriate to the size, complexity, nature, and scope of the operations and the sensitivity of the personal information owned, licensed, maintained, handled, or otherwise in the possession of the facility operator.
- This helps ensure security. It would require staff time.
- This helps ensure the fairness of the casino gaming. Engaging an independent certified testing laboratory to perform a system integrity and security assessment would produce cost for the operator. Depending on the complexity of the systems and operations, this could cost from $30,000 to hundreds of thousands of dollars.[19]

Businesses and Other Entities Affected. The proposed regulation affects the four firms and one Indian tribe that would be operating casinos, the firms that would be providing casino equipment supplies, the companies and individuals who would be providing services for the casinos, construction firms who would be building the casinos, sellers of surety bonds, certified public accountants, independent certified testing laboratories, the Virginia Lottery, employees of the casinos, patrons and taxpayers. The receivers of the tax revenue from the adjusted gross receipts of the casino operators are likely indirectly affected, particularly in regard to requirements that help ensure the accuracy of revenue reporting. The receivers of this tax revenue include the localities described, the Virginia Department of Behavioral Health through oversight of the Problem Gambling Treatment Fund, the Virginia Department of Social Services through guiding the board of trustees administering the Family and Children's Trust Fund, and the six federally recognized Virginia Indian tribes.

For purposes described, many of the proposed requirements produce costs for casino facility operators. The Code of Virginia requires the Department of Planning and Budget to assess whether an adverse impact may result from the proposed regulation.[20] An adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. Thus, an adverse impact is indicated for operators.

Small Businesses[21] Affected:

Types and Estimated Number of Small Businesses Affected. The four firms that would be operating the casinos do not likely qualify as small businesses, as that term is defined in § 2.2-4007.04, because the firms operate in several states and have more than 1,000 employees. However, no data are available to

indicate the current or potential employment associated with the Indian tribe. In addition, some of the firms that would be providing supplies or services may qualify as small businesses, but no data are available on how many small businesses would be providing supplies or services to the casinos.

Costs and Other Effects. Proposed fees, bonds requirements, and other requirements for manufacturers may produce costs for some small providers of supplies or services.

Alternative Method that Minimizes Adverse Impact. There are no clear alternative methods that both reduce adverse impact and meet the intended policy goals.

Localities[22] Affected.[23] The cities of Bristol, Danville, Norfolk, Portsmouth, and Richmond are particularly affected in that they are permitted to establish casinos. Since the fifth enactment clause of the 2020 legislation specifies that revenues garnered from the casino located in Bristol go to the Regional Improvement Commission on behalf of its constituent localities, those localities are also particularly affected. The localities within the Regional Improvement Commission are the Counties of Bland, Buchanan, Dickenson, Grayson, Lee, Russell, Scott, Smyth, Tazewell, Washington, Wise, and Wythe and the Cities of Bristol and Norton.

The proposed requirements in the regulation do not appear to directly introduce costs for local governments.

Projected Impact on Employment. As mentioned, most of the likely impact on employment is due to the legislation. In addition, proposed requirements in the regulation that may also affect employment include bonds for permit holders; design specifications for the construction of casinos; audits, reports and opinion letters by independent certified public accountants; testing and certification of slot machines, mechanical casino games, electronic table game systems, and other equipment and software by independent certified testing laboratories; and system integrity and security assessments of casino gaming operations, including any sports betting operations, by independent certified testing laboratories. These proposed requirements may result in some increase in employment for sellers of surety bonds, building contractors, certified public accountants, and independent certified testing laboratories. Also, the numerous proposed reporting requirements from operators to the Lottery and the proposed required staffing minimums may result in the casino operators themselves hiring more employees than they otherwise would.

To date, the Lottery has hired 37 employees to support its gaming regulatory activities. The Lottery continues to assess its needs as the program grows and anticipates hiring at least 100 staff in total.[24] Most of the Lottery's hiring is due to the legislation. The proposed regulation may have some impact in that if there was less proposed oversight in the regulation, there might not be a need for some of the staff.

Effects on the Use and Value of Private Property. Proposed requirements would likely increase demand for the products or services of sellers of surety bonds, building contractors, certified public accounting firms, and independent certified testing laboratories. This may increase the value of some of these firms.

The proposed regulation includes design specifications for the construction of the casino facilities that would not likely otherwise been included if not required, including at least 1,000 square feet of office space for use by Lottery staff. This adds to real estate development costs.

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[1]Chapters 1197 and 1248 of the 2020 Acts of Assembly are identical.

[2]This includes Chapters 1197 and 1248 of the 2020 Acts of Assembly, and Chapters 7 and 15 of the 2021 Special Session 1 Acts of Assembly.

[3]"Voluntary exclusion program" is defined as a program established by the Board that allows individuals to place their names on a voluntary exclusion list and voluntarily exclude themselves from: (i) playing any account-based lottery game, (ii) participating in sports betting, (iii) engaging in any form of casino gaming, (iv) participating in charitable gaming, (v) participating in fantasy contests, or (vi) wagering on horse racing.

[4]Source: Virginia Lottery

[5]Adjusted gross receipts are gross receipts less winnings paid to wagerers. See https://www.lawinsider.com/dictionary/adjusted-gross-receipts

[6]Sports betting receipts are not included. Instead, such receipts shall be taxable under § 58.1-4037.

[7]Pursuant to enactment clause 5 of the legislation, for Bristol revenue goes to the Regional Improvement Commission on behalf of its constituent localities. The localities within the Regional Improvement Commission are the counties of Bland, Buchanan, Dickenson, Grayson, Lee, Russell, Scott, Smyth, Tazewell, Washington, Wise and Wythe, and the cities of Bristol and Norton.

[8]The Family and Children's Trust Fund existed prior to the legislation, and is used for the support and development of services for the prevention and treatment of child abuse and neglect and violence within families (see https://law.lis.virginia.gov/vacode/title63.2/chapter21/section63.2-2100/).

[9]"On-premises mobile casino gaming" is defined as casino gaming offered by a casino gaming operator at a casino gaming establishment using a computer network of both federal and nonfederal interoperable packet-switched data networks through which the casino gaming operator may offer casino gaming to individuals who have established an on-premises mobile casino gaming account with the casino gaming operator and who are physically present on the premises of the casino gaming establishment, as authorized by regulations promulgated by the Board.

[10]Some items that would likely have been done without being specifically required are not included. In addition, some items that would likely have been done without being specifically required, but that may not necessarily meet specified design requirements, are mentioned.

[11]Source: staff from a state currently regulating active casinos

[12]Ibid

[13]Ibid

[14]Ibid

[15]Ibid

[16]None of the regulators from the eight states contacted, nor the consultant, had an estimate for this cost.

[17]Ibid

[18]Ibid

[19]Source: staff from a state currently regulating active casino.

[20]Pursuant to Code § 2.2-4007.04(D): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define "adverse impact" nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

[21]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."

[22]"Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

[23]§ 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

[24]Source: Virginia Lottery

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

Summary:

Pursuant to Chapters 1197 and 1248 of the 2020 Acts of Assembly, the proposed regulation establishes requirements for licensure of casino gaming operators and the conduct of casino gaming. The regulation establishes (i) how the Virginia Lottery will issue casino licenses and permits; (ii) casino facility and gaming security and control standards; (iii) rules for slot machine, mechanical casino games, and table games and on-premises mobile casino gaming; (iv) reporting requirements; (v) facility, employee, and equipment investigation procedures and nonmonetary sanctions and penalties for violations; (vi) procedures for payment of taxes, fees, and penalties; and (vii) information system as well as other system integrity requirements. Pursuant to Chapter 7 of the 2021 Acts of Assembly, Special Session I, the proposed regulation includes requirements and controls for sports betting when it occurs in a casino, and pursuant to Chapter 15 of the 2021 Acts of Assembly, Special Session I, the provisions include a training course be provided on how to recognize and report suspected human trafficking.

Chapter 90
Casino Gaming

11VAC5-90-10. Definitions.

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

"Adjusted gross receipts" means the gross receipts from casino gaming less winnings paid to winners.

"Annuity jackpot" means a casino game jackpot in which a player wins the right to receive fixed cash payments at specified intervals.

"Applicant" means a person who has submitted an application to the board.

"Application" means a written request for a license or permit that has been submitted to the board.

"Associated equipment" means hardware located on a facility operator's premises that is connected to the slot machine system for the purpose of performing communication, validation, or other functions, but not including the communication facilities of a regulated utility or the slot machines.

"Automated jackpot payout machine" means the collective hardware, software, communications technology, and other ancillary equipment used to facilitate the payment of a jackpot that is not totally and automatically paid directly from a casino gaming machine.

"Average payout percentage" means the average percentage of money used by players to play a slot machine or mechanical casino game that is returned to players of that game.

"Background investigation" means a security, criminal, and credit investigation of a person who applies for or who is granted a license or permit under this chapter.

"Board" means the Virginia Lottery Board established in the Virginia Lottery Law (§ 58.1-4100 et seq.) of Title 58.1 of the Code of Virginia.

"Books and records" means any document pertaining to, prepared in, or generated by a facility operator without regard to the medium through which the record is generated or maintained, including all general ledger records, subsidiary records and ledgers, computer-generated data, forms, documents, internal audit reports and work papers, correspondence, and personnel records.

"Cash" means currency and coin.

"Cashable credit" means a credit on a casino game that activates play and is convertible to cash at the conclusion of play.

"Cash equivalent" means a:

1. Certified check, cashier's check, treasurer's check, travelers check, or money order that is:

a. Payable to the facility operator, "bearer," or "cash,"

b. Drawn for a specific amount;

c. Currently dated not postdated;

d. Payable on demand; and

e. Without an endorsement; or

2. Certified check, cashier's check, treasurer's check, or money order that is:

a. Made payable to the presenting player;

b. Drawn for a specific amount;

c. Currently dated not postdated;

d. Payable on demand;

e. Endorsed by the presenting player; and

f. Without an endorsement other than that of the presenting player.

"Cashless funds transfer system" means the collective hardware, software, communications technology, and other ancillary equipment used to facilitate the electronic transfer of cashable or noncashable credits to a patron at a casino game.

"Cash storage box" means a secure tamper resistant container in a bill validator into which currency, gaming tickets, promotional play instruments, or other instruments authorized by the department are placed.

"Casino gaming" or "casino game" or "game" means baccarat, blackjack, twenty-one, poker, craps, dice, slot machines, roulette wheels, Klondike tables, punchboards, faro layouts, numbers tickets, push cards, jar tickets, or pull tabs and any other activity that is authorized by the board as a wagering game or device under this chapter. "Casino gaming" or "casino game" or "game" includes on-premises mobile casino gaming.

"Casino gaming law" or "gaming law" means Chapter 41 (§ 58.1-4100 et seq.) of Title 58.1 of the Code of Virginia.

"Casino gaming machine" means an electronic or mechanical device approved by the department that a player may use to gamble without the assistance of a dealer or other casino employee.

"Casino management system" means the collective hardware, software, communications technology, and other ancillary equipment used to collect, monitor, interpret, analyze, report, and audit data with regard to consumer gaming activity, inclusive of slot machine level accounting transactions, player tracking, and productivity analysis.

"Central monitor and control system" means a centralized computer system maintained or operated by or on behalf of the department that allows the department to monitor electronic gameplay and measure its share of gross revenue with respect to those games.

"Cheat" or "cheating" means to alter the selection criteria that determine the result of a game or the amount or frequency of payment in a game for the purpose of obtaining an advantage for one or more participants in a game over other participants in a game.

"Civil penalty" or "penalty" means a monetary enforcement action that the director or the board may impose on a licensee or permit holder under the casino gaming law and this chapter.

"Concessionaire" means a person who provides to a facility operator those services that do not require a supplier permit.

"Contractor" means a person or individual, other than an employee of a facility operator, who contracts with a facility operator or other person to:

1. Manage or operate a facility;

2. Provide security for a facility;

3. Perform service, maintenance, or repairs of a slot machine, mechanical casino game, table game device, central operating system, associated equipment, or software;

4. Own or control a person that performs or provides services as described in subdivisions 1, 2, and 3 of this definition;

5. Provide junket enterprise services; or

6. Provide any other service that is essential to operation of a casino gaming facility.

"Control" means the authority to direct the management and policies of an applicant, licensee, or permit holder.

"Controlling entity" means an entity that possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of a person, whether through ownership of voting securities, by contract, by beneficial ownership, or otherwise.

"Date of final action on a civil penalty or sanction" means:

1. If, after the director sends a deficiency notice under the department's regulations, a licensee or permit holder fails to submit a timely, acceptable corrective action plan, the date the board adopts as final the director's deficiency notice; or

2. If the board holds a hearing on the director's recommendation to impose a civil penalty or sanction, the date of the board's written decision.

"Date of final action on a denial" means:

1. If, after the director sends written notice of license or permit denial or recommendation of denial, an applicant fails to timely request a reconsideration meeting, the date of the director's written notice;

2. If, after a reconsideration meeting, an applicant fails to timely request a board hearing, the date of the director's written notice after the reconsideration meeting; or

3. If the board holds a hearing on an appeal of the director's license, or permit denial or reconsideration of such a denial, the date of the board's written decision.

"Dealer" means an employee of a facility operator whose primary function is to directly operate and conduct table games.

"Department" or "lottery" means the Virginia Lottery Department, the independent department responsible under the casino gaming law for the administration of the casino gaming program in the Commonwealth of Virginia.

"Director" means the Executive Director of the Virginia Lottery or the director's designees.

"Electronic table game system" means the collective hardware, software, communications technology, and other ancillary equipment used to permit wagering to be conducted on an electronic table game.

"Eligible host city" or "host city" means a city described in § 58.1-4107 of the Code of Virginia in which a casino gaming establishment is authorized to be located.

"Entity" means a person that is not a natural person.

"External bonusing system" means the collective hardware, software, communications technology, and other ancillary equipment used in conjunction with casino games to deliver randomly selected player incentives (bonus awards) to active players and to effect the accurate metering of the bonus award event on the casino game.

"Facility" or "casino gaming facility" or "casino gaming establishment" means the premises upon which lawful casino gaming is authorized and licensed under the casino gaming law and this chapter and does not include a riverboat or similar vessel.

"Facility operator" or "casino gaming operator" means a person who operates or manages the operation of a casino gaming establishment.

"Facility operator's license" means the authority given by the board to a facility operator for the legal operation of casino gaming.

"Fill" means the distribution of gaming chips, coins, and plaques to a gaming table to replenish the table inventory.

"Floorperson" means an employee of a facility operator whose primary function is to supervise the conduct of table games at multiple tables on the gaming floor.

"Gaming chip" means a roulette chip, poker rake chip, tournament chip, or value chip.

"Gaming day" means a period of time determined by the department not to exceed 24 hours marking the beginning and ending times of gaming activities for the purposes of accounting reports and determination by the central monitor and control system of daily proceeds.

"Gaming employee" means an individual who:

1. Is employed by or is seeking to be employed by an applicant for or holder of an operation license, whose duties relate or will relate to the operation of a facility, and who performs or supervises or will perform or supervise the performance of:

a. Operating, servicing, or maintaining a casino gaming machine, table game, or associated equipment;

b. Accounting, maintaining, or auditing a facility's financial records;

c. Counting or processing casino gaming machine or table game revenue;

d. Conducting security or surveillance in or around a facility; or

e. Operating or maintaining a facility's information systems;

2. Is employed by a permit holder and whose duties directly relate to the repair, service, or distribution of a casino gaming machine, table game, or associated equipment or is otherwise required to be present on the gaming floor or in a restricted area of the facility;

3. Is employed by a permit holder as a junket representative; and

4. Is otherwise required by the department to hold a service permit as a gaming employee.

"Gaming floor" means that part of a facility where casino gaming machines or table games have been installed for use or play.

"Gaming operation" means the conduct of authorized casino gaming within a casino gaming establishment.

"Gaming ticket" means an instrument that upon insertion into a bill validator entitles the player inserting the gaming ticket to credits on a casino gaming machine corresponding to the amount printed on the gaming ticket. A gaming ticket may be an electronic ticket or card.

"Gaming ticket system" means the collective hardware, software, communications technology, and other ancillary equipment owned or leased by a facility operator to facilitate the issuance or redemption of a gaming ticket.

"Gross receipts" means the total amount of money exchanged for the purchase of chips, tokens, or electronic tickets or cards by casino gaming players.

"Immediate family" means

1. A spouse; and

2. Any other person residing in the same household as an officer or employee and who is a dependent of the officer or employee or of whom the officer or employee is a dependent.

"Independent certified testing laboratory" means a person engaged in the testing and verification of casino gaming machines and the equipment, systems, and software utilized to collect, monitor, interpret, analyze, authorize, issue, redeem, report, and audit data with regard to activity at casino gaming machines that:

1. Holds a certificate in good standing for compliance with:

a. International Organization for Standardization # 17025 -- General Requirements for the Competence of Testing and Calibration Laboratories; and

b. International Organization for Standardization # 17020 -- General Criteria for the Operation of Various Types of Bodies Performing Inspections;

2. Has performed testing and certification of gaming equipment, systems, and software on behalf of a state within the United States for a period of five or more years; and

3. Has been approved by the department to test and certify equipment, systems, and software used in the Commonwealth of Virginia.

"Individual" means a human being and not a corporation, partnership, association, trust, or other entity.

"Institutional investor" means:

1. A retirement fund administered by a public agency for the exclusive benefit of federal, state, or local public employees;

2. An investment company registered under the Investment Company Act of 1940 (15 USC § 80a et seq.);

3. A collective investment trust organized by banks under Part 9 of the rules of the Comptroller of the Currency;

4. A closed end investment trust;

5. A chartered or licensed life insurance company;

6. A property and casualty insurance company;

7. A banking or other chartered or licensed lending institution;

8. An investment advisor registered under the Investment Advisers Act of 1940 (15 USC § 80b et seq.); or

9. Any other person registered in any foreign jurisdiction and regulated in accordance with a statute of any foreign jurisdiction that the board determines to be substantially similar to that regulated by the Investment Company Act of 1940 or the Investment Advisors Act of 1940.

"Jackpot" means any cash, annuity, or merchandise to be paid to a player as a result of a specific combination of characters on a casino gaming machine.

"Junket" means an arrangement:

1. That is intended to induce an individual who is selected or approved for participation based on the individual's ability to satisfy financial qualification obligations, willingness to gamble, or any other basis related to propensity to gamble; and

2. Under which, or as consideration for which, any or all of the cost of transportation, food, lodging, and entertainment for an individual is directly or indirectly paid by a facility operator or an employee or agent of a facility operator.

"Junket enterprise" means a person, other than a facility operator, that employs or otherwise engages the services of a junket representative in connection with a junket to a facility, regardless of whether the activity occurs in the Commonwealth of Virginia.

"Junket representative" means an individual who negotiates the terms of, or engages in the referral or selection of an individual who may participate in, a junket to a facility, regardless of whether the activity occurs in the Commonwealth of Virginia.

"Key manager" means:

1. An individual who owns, controls, or manages a licensee or otherwise exercises control over the gaming functions of a licensee;

2. An employee of a permit holder who manages or operates the facility, supervises the security of the facility, or is otherwise considered by the department to be a key manager; and

3. Is not a gaming employee.

"Licensee" or "license holder" means a person holding an operator's license under § 58.1-4111 of the Code of Virginia.

"Linked" means to be connected with.

"Manufacturer" means

1. A person:

a. That is engaged in the business of designing, building, constructing, assembling, manufacturing, or distributing a central monitor and control system, slot machines, associated equipment or software, mechanical casino games, or the cabinet in which a slot machine or mechanical casino game is housed;

b. That produces a product that is intended for sale, lease, or other assignment to the Commission or a licensee; and

c. That contracts with the board, a licensee, or permit holder for the sale, lease, or other assignment of a product described in subdivision 1 a of this definition.

2. A person:

a. That is engaged in the business of designing, building, constructing, assembling, manufacturing, or distributing table games or table game equipment;

b. That produces a product related to table games that is intended for sale, lease, or other assignment to a licensee or permit holder; and

c. That contracts with a licensee or permit holder for the sale, lease, or other assignment of a product described in subdivision 2 a of this definition.

"Mechanical casino gaming machine" or "mechanical casino game" means a device approved by the department for play on the gaming floor of a casino gaming facility that relies

primarily on a non-electronic form of interaction with the player, and includes such devices as jar tickets and pull tabs. "Mechanical casino gaming machine" or "mechanical casino game" does not mean table game equipment.

"Merchandise" means goods, commodities, or other things of value.

"Merchandise jackpot" means a casino game jackpot in which a player wins:

1. Merchandise;

2. A combination of a cash payout and merchandise; or

3. An option to choose between a cash payout and merchandise.

"Minor" means an individual who is younger than 21 years of age.

"Mobile casino gaming" means any interactive platform for use through the Internet, mobile device, or computer, which has been approved by the Virginia Lottery Board for operation of gaming by a facility operator.

"Mobile casino gaming platform" means a website, mobile application, or other platform accessible via the Internet or mobile, wireless, or similar communications technology that players may use to participate in on-premises mobile casino gaming.

"Multi-factor authentication" means a strong procedure that requires more than one method to verify a player's identity through a combination of two or more independent credentials such as information known only to the player, such as a password, pattern or answers to challenge questions and a player's personal biometric data, such as fingerprints, facial, or voice recognition, to the extent it does not violate any privacy laws.

"Noncashable credit" means a credit on a casino game that activates play but is not convertible to cash at the conclusion of play.

"Nongaming employee" means an individual who is:

1. Employed or is seeking to be employed by an applicant for or holder of an operation license and whose duties are or will be other than the duties of a gaming employee; or

2. Otherwise required by the department to hold a service permit as a gaming employee.

"On-premises mobile casino gaming" means casino gaming offered by a casino gaming operator at a casino gaming establishment using a computer network of both federal and nonfederal interoperable packet-switched data networks through which the casino gaming operator may offer casino gaming to individuals who have established an on-premises mobile casino gaming account with the casino gaming operator and who are physically present on the premises of the casino gaming establishment, as authorized by the casino gaming law, this chapter, and department policy or directive.

"Operator's license," "facility operator's license," or "casino gaming facility license" means the formal permission granted by the board to legally operate a casino gaming establishment or facility in the Commonwealth of Virginia.

"Notice" or "written notice" means notice provided in paper or electronic form, including electronic mail.

"Permit" means the authority given by the department to a supplier or a service permit holder that authorizes that person or individual to perform the functions permitted by the department.

"Permit holder" means a person holding a supplier or service permit pursuant to this chapter.

"Person" means any individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or any other legal or commercial entity and any successor, representative, agent, agency or instrumentality thereof.

"Plaque" means a rectangular, square, or oval marker that can be used instead of value chips.

"Player" means an individual who participates in casino gaming.

"Player account" means a specific account that (i) is managed by the facility operator, (ii) has a specific identifiable record of deposits, wagers, and withdrawals, and (iii) is established by a facility operator on behalf of an individual for the individual to use for casino gaming.

"Player tracking system" means the collective hardware, software, communications technology, and other ancillary equipment owned or leased by a facility operator to collect, monitor, interpret, analyze, authorize, report, and audit data pertaining to:

1. Player activity generally at casino games, onsite mobile casino games, or sports betting; and

2. Individual player activity at casino games where the player has registered with the facility operator for inclusion in the player tracking system.

"Preferred casino gaming operator" means the proposed casino gaming establishment and operator thereof submitted by an eligible host city to the board for licensure.

"Principal" means an individual who, solely or together with the individual's immediate family members, (i) owns or controls, directly or indirectly, 5.0% or more of the pecuniary interest in any entity that is a licensee or (ii) has the power to vote or cause the vote of 5.0% or more of the voting securities or other ownership interests of such entity, and any person that manages a gaming operation on behalf of a licensee.

"Prize" means:

1. A monetary award;

2. Merchandise; or

3. An experiential award, such as:

a. A trip;

b. An outing; or

c. A designated activity involving personal participation.

"Progressive controller" means a device independent of the operating system of a slot machine that calculates and transmits to a slot machine the amount of an available progressive jackpot based on:

1. A preestablished rate of progression; and

2. Denomination of the slot machine.

"Progressive jackpot" means a jackpot offered by a casino game that may increase uniformly in value based on wagers as the casino game is played.

"Progressive jackpot system" means a system capable of linking one or more casino games in one or more licensed facilities and offering one or more common progressive jackpots.

"Promotional play" means an award by a facility operator of noncashable credits on a casino game:

1. Directly or indirectly to a player; and

2. With or without regard to the:

a. Identity of the player; or

b. Player's level of gaming activity.

"Promotional play system" means the collective hardware, software, communications technology, and other ancillary equipment owned or leased by a facility operator to facilitate the award of promotional play by means of a:

1. Promotional play instrument; or

2. Download from the system to the casino game.

"Restricted area" means that part of a facility directly related to the operation of the gaming floor where access is specifically designated by the department as restricted, including:

1. Cashier's cage, including a satellite cashiers' cage and ancillary offices;

2. Computer space allocated to the central monitor and control system;

3. Count room and trolley storage areas;

4. Areas designated for the storage or repair of equipment of casino gaming machines or table game devices;

5. Information technology department operations centers;

6. Progressive controller locations;

7. Surveillance monitoring rooms;

8. Vault and armored car bay locations; and

9. Any area that the facility operator has designated as restricted in its department-approved accounting and internal control systems.

"Retailer" or "lottery retailer" means a business or person that has been licensed by the department to sell lottery tickets.

"Sanction" means a nonmonetary enforcement action that the director or the board may take against a licensee or permit holder for a violation of the casino gaming law, this chapter, and any other law, regulation, or condition of the department related to casino gaming and includes suspension, revocation, or nonrenewal of a license or permit, reprimand, or imposition of a condition on a licensee or permit holder.

"Security" has the same meaning as provided in § 13.1-501 of the Code of Virginia and, if the department finds that any obligation, stock, or other equity interest creates control of or voice in the management operations of an entity in the manner of a security, then such interest shall be considered a security.

"Service permit" means the authority given by the department to a casino employee or a concessionaire or concessionaire employee that authorizes that person or individual to perform the functions permitted by the department.

"Signature" for a facility employee or contractor, means:

1. At a minimum, the first initial, last name, and department license or permit identification number, written by the facility employee or contractor; or

2. The unique identification code issued to the facility employee or contractor by the facility operator if the document to be signed is authorized by the department to be generated by a system and the method of signature is approved or required by the department.

"Slot machine" means a machine or other device that:

1. On insertion of a token, voucher, gaming ticket, coupon, or similar item, or on payment of any consideration is available to play or simulate the play of any game of chance in which the results, including the options available to the player, are randomly determined by the machine or other device; and

2. By the element of chance, may deliver or entitle the player who operates the machine or device to receive cash, premiums, merchandise, tokens, or anything of value, whether the payout is made automatically from the device or in any other manner.

"Slot machine" includes a machine or device that (i) does not directly dispense money, tokens, or anything of value to winning players; and (ii) uses a cashless funds transfer system making the deposit of bills, coins, or tokens unnecessary.

"Slot machine management system provider" means an entity that operates or manages the department's central monitor and control system or a casino management system.

"Sports betting" means the same as such term is defined in § 58.1-4030 of the Code of Virginia and is regulated under 11VAC5-70 and this chapter.

"Sports betting facility" means an area, kiosk, or device located inside a casino gaming establishment that is designated for sports betting.

"State" means any state in the United States of America and includes any United States territories and the District of Columbia.

"Submit" means to deliver a document:

1. In a manner that ensures its receipt by the party to whom it is addressed; and

2. That is considered complete only upon actual receipt by that party.

"Supplier" means any person that sells or leases, or contracts to sell or lease, any casino gaming equipment, devices, or supplies, or provides any management services, to a licensee.

"Table games" means:

1. Roulette, baccarat, blackjack, craps, big six wheel, poker, pai gow, and sic bo shakers, pai gow tiles, any variation and composites of such games, and other games that the department has approved for play in a casino; and

2. Gaming tournaments in which players compete against one another in one or more of the games authorized under this chapter.

"Table game equipment" means equipment that is related to the operation of table games and that is owned or leased by a facility operator and located on the casino's premises and includes table layouts, cards, dice, chips, shufflers, tiles, wheels, or any mechanical, electrical, or computerized device, apparatus, or supplies used to conduct a table game or designated by the department as table game equipment.

"Table game equipment" does not mean (i) a table or base that does not have a device that is attributable to a specific table game or is not identified with the facility operator's logo on the layout; or (ii) an item described in clause (i) of this definition that is unfinished or inoperable.

"Terminal" means a computerized unit specifically designed for issuing and processing tickets and for printing of special reports.

"Ticket redemption unit" means the collective hardware, software, communications technology, and other ancillary equipment used to facilitate the payment of gaming tickets and that may be configured to function as a bill breaker changing bills of one denomination into bills of a smaller denomination.

"Transport" or "transportation" means any shipping, transfer, delivery, or other movement of a slot machine, mechanical casino gaming machine, or table game equipment into or out of the state, or between facilities within the state. "Transport" or "transportation" does not include the movement of a slot machine, mechanical gaming device, or table game equipment within a casino gaming facility.

"Unclaimed jackpot" means any cash, annuity, merchandise, cashable credit, table game payout, or gaming ticket to be paid or dispensed to a player.

"Value chip" means a chip that contains a denomination on each face.

"Vendor" means a person that provides goods or services to a casino gaming facility applicant or licensee and that is not required to be licensed as a manufacturer or contractor under the gaming law, this chapter, or department policy and directive, and includes:

1. Except for Virginia Alcoholic Beverage Control, providers of alcoholic beverages;

2. Providers of food and nonalcoholic beverages;

3. Refuse handlers;

4. Vending machine providers and service personnel;

5. Janitorial and maintenance companies;

6. Tenant businesses or franchises located within facilities if such goods and services are not gaming related;

7. Providers of transportation services if such services are not gaming related;

8. Persons involved in the construction of a facility;

9. Lessors of real property or goods;

10. Payroll services and other employer related services;

11. Employee recruiting services; and

12. Persons whose services the board reviews and determines must be registered or certified under this regulation.

"Virginia Indian tribe" means an Indian tribe recognized in House Joint Resolution No. 54 (1983) and acknowledged by the Assistant Secretary-Indian Affairs for the U.S. Department of the Interior as an Indian tribe within the meaning of federal law that has the authority to conduct gaming activities as a matter of claimed inherent authority or under the authority of the federal Indian gaming law.

"Voluntary exclusion program" means the self-exclusion program maintained by the department under 11VAC5-60.

"Wide area progressive system" means a system independent of the operating system of a casino game that calculates and transmits to casino games linked in two or more facilities in or

outside the Commonwealth of Virginia the amount of an available progressive jackpot based on:

1. A preestablished rate of progression; and

2. Denomination of the casino game.

"Wire transfer" means a transfer of funds by means of the Federal Reserve Bank wire system in accordance with the requirements of 12 CFR 210.25 et seq.

11VAC5-90-20. Unclaimed jackpots.

A. A player shall have a maximum of 180 days from the date an unclaimed jackpot is won to claim it.

B. After 180 days, an unclaimed jackpot shall be distributed to the Lottery for deposit in the Problem Gambling Treatment and Support Fund established by § 37.2-314.1 of the Code of Virginia.

11VAC5-90-30. Waiver request.

A. A person seeking an exemption from this chapter shall submit a written waiver request in a format specified by the department.

B. A written waiver request shall contain at least the following:

1. The regulation for which the waiver is sought;

2. Detailed facts in support of the waiver request;

3. An explanation of the unique circumstances justifying the request; and

4. Any other information requested by the department.

C. Upon receipt of a waiver request that fails to comply with this section, department staff shall notify the requestor:

1. Of any deficiency in the waiver request; and

2. That the waiver request will not be presented to the board unless the identified deficiency is corrected.

D. Upon receipt of a waiver request that complies with this section, department staff shall present the waiver request to the board as soon as practicable.

E. In evaluating whether to grant a waiver request, the board may consider:

1. The particular facts supporting the waiver request;

2. Whether enforcement of the regulation as to the subject of the waiver request is necessary to protect the public interest or accomplish the policies established by the casino gaming law;

3. Limiting or restricting the relief sought as the board considers necessary in the public interest;

4. Granting the waiver request subject to a condition;

5. Requiring the requestor to submit any additional information; and

6. Any other relevant information.

F. The board shall provide the requestor with written notification of its decision.

G. A decision of the board on a waiver request is not appealable.

11VAC5-90-40. Licenses and permits generally.

A. Applications.

1. An applicant for a license or permit shall submit an electronic application in the form and format established by the department and, as required by the director, may include an original and copies.

2. Upon filing of an application for a license or permit under this chapter, the applicant shall pay by wire transfer the applicable investigation and nonrefundable application fees established by the director.

3. If a license or permit application or related documentation must be submitted to the director by a particular date, the application documents shall be delivered to the director not later than 11:59:59 p.m. local time at the headquarters of the department on the last day of the specified period, and an application or documents submitted after the deadline may not be accepted or considered.

4. A person may not submit an application earlier than one year after the board has:

a. Taken final action on a license or permit denial of a previous application involving the applicant;

b. Taken final action on a sanction resulting in revocation of a previous application involving the applicant; or

c. Provided a person with written notice of termination of a temporary permit.

5. Documents and information submitted to the director in a license or permit application shall be verified under oath or affirmation and sworn under the penalties of perjury as to their truth and validity by the applicant or, if the applicant is not an individual, by an officer or director of the applicant.

6. Upon receipt of an application by the department, department staff shall review the application to determine whether it contains all the information required under this chapter.

7. If the director determines that the required information has not been submitted, department staff shall notify the applicant in writing and state the nature of the deficiency.

8. An applicant notified in accordance with subdivision 7 of this subsection shall submit the information necessary to complete the application not later than 15 days after issuance of the notification.

9. Neither the director nor the board will consider the application of an applicant that is notified in accordance with subdivision 7 of this subsection but fails to submit the requested information in a timely manner.

10. The director and the board will consider only a timely, complete application.

B. Changes in application.

1. If information submitted by an applicant as part of a license or permit application changes or becomes inaccurate before the board acts on the application, the applicant shall immediately notify the department staff in writing of the change or inaccuracy.

2. After an application has been filed by an applicant, the applicant may not amend the application except:

a. To address a deficiency in accordance with a notice sent under subdivision A 7 of this section;

b. As required by the board or department staff for clarification of information contained in the application; or

c. To address a change in the circumstances surrounding the application that was outside the control of the applicant and that affects the ability of the applicant to comply with the law or the regulations of the board.

3. To amend an application under this subsection, an applicant shall submit to the department a written request to amend the application, stating:

a. The change in the circumstances surrounding the application that necessitates the amendment;

b. The nature of the amendment; and

c. The reason why the amendment is necessary to bring the application into compliance with the law or the regulations of the board.

4. The director or department staff shall grant or deny each request submitted under subdivision 2 c of this subsection.

5. A request shall be granted if the applicant demonstrates to the satisfaction of the director that:

a. Before the change in the circumstances surrounding the application, the application complied with the pertinent provisions of the law or the regulations of the board; and

b. The amendment is necessary to bring the application into compliance with the pertinent provisions of the law or the regulations of the board.

6. An application for a license or permit may be withdrawn if the:

a. Applicant submits a written request to the director to withdraw the application; and

b. Written request is submitted before the board has:

(1) Denied the application; or

(2) Terminated a temporary permit.

C. Burden of proof.

1. The burden of proof shall be on an applicant to show by clear and convincing evidence that:

a. The applicant complies with the laws of the Commonwealth of Virginia and the regulations of the board regarding eligibility and qualifications for the license or permit;

b. The applicant is not otherwise disqualified from holding a license or permit; and

c. Award of the license or permit will provide benefit to the people of the Commonwealth of Virginia and assist economic development, promote tourism, and provide for the implementation of casino gaming operations of the highest quality, honesty, integrity; free of any corrupt, incompetent, dishonest, or unprincipled practices.

2. The board may deny a license or permit to an applicant whose gaming license has been suspended or revoked in another jurisdiction.

3. The board may deny a license or permit to an applicant whose past or present conduct would bring the Commonwealth into disrepute.

D. Impact of sports betting permit or license.

1. The department may use or rely on any application, supporting documentation, or information submitted pursuant to § 58.1-4032 of the Code of Virginia and 11VAC5-70 in reviewing and verifying an application and to qualify and issue a license or permit under this chapter.

2. Subdivision 1 of this subsection does not prohibit the department from requiring additional information from an applicant or requiring the applicant to pay additional background investigation or other fees.

E. Bonds.

1. The department shall require an applicant for or holder of a facility operator's license to obtain a bond and submit the original to the director before the board issues or reissues the operator's license.

2. The department may require an applicant for or holder of a permit to obtain a bond and submit the original to the director before the license or permit is issued.

3. A bond shall be for the benefit of the Commonwealth for the faithful performance of the requirements imposed by the laws of the Commonwealth and this chapter, shall be renewable annually, and may not be canceled without at least a 30-day written notice submitted to the director.

4. A bond shall be issued only by a company that is financially rated A or better by a nationally recognized rating

agency and that is permitted to transact business in the Commonwealth of Virginia.

5. The amount of the bond shall be in an amount determined by the director to be sufficient to cover any loss or indebtedness to the Commonwealth incurred by the licensee or permit holder.

6. For a facility operator or supplier, the amount of the bond may not exceed $50 million.

7. For a service permit holder, the amount of the bond may not exceed $100,000.

8. The bond for a facility operator or supplier shall include coverage for all its officers, principals, managers, directors, and employees.

9. The director may apply a bond to the payment of an unpaid liability of the facility operator or permit holder associated with the casino gaming law or this chapter.

10. On an annual basis, the director shall review the amount of bonds required of a facility operator.

F. Denial of license or permit.

1. In addition to the hearing requirements in subdivision 3 of this subsection, the process set out in subdivision 2 of this subsection shall precede a hearing by the board on the denial or nonrenewal of a license or permit.

2. After reviewing an application submitted for a license or permit, department staff may recommend that the director or board deny the application or renewal of an applicant that:

a. Has not established by clear and convincing evidence that the applicant meets applicable qualifications set out in the casino gaming law and this chapter, including demonstration of the good character, honesty, and integrity of the applicant and its officers, principals, managers and directors.

b. Is prohibited from holding a license or permit by the casino gaming law or this chapter.

c. Has violated:

(1) A provision of the casino gaming law of this or any other jurisdiction; or

(2) A provision of this chapter or any other law, regulation, or condition of the department related to casino gaming.

d. If department staff recommends that the director or board deny or refuse to renew a license or permit, the director or the director's designee shall promptly provide the applicant with written notice of:

(1) The recommendation and the basis therefor; and

(2) The applicant's right to request an informal fact-finding conference with the director or the director's designee as provided by § 58.1-4007 of the Code of Virginia.

e. An applicant may submit to the director a written request for an informal fact-finding conference within 15 days of the date of the notice described in subdivision d of this subsection.

f. If an applicant fails to timely submit a request, the director:

(1) May adopt as final the recommendation of department staff;

(2) Shall refuse to renew a license or permit;

(3) Shall forward a denial recommendation to the board for final action; and

(4) Notify the applicant of the director's actions and the applicant's appeal rights.

g. During an informal fact-finding conference, an applicant may:

(1) Be represented by counsel; and

(2) Present evidence as to why the license or permit should be granted or renewed.

h. If after the informal fact-finding conference, the applicant is dissatisfied with the decision of the director, the applicant may submit to the board, in writing:

(1) A request for hearing before the board on the decision; and

(2) The applicant's legal and factual bases for disagreeing with the recommendation of the director.

i. An applicant may submit a hearing request to the board within 15 days of the date of notice of the recommendation of the director after an informal fact-finding conference.

j. If an applicant fails to timely submit a request for an informal fact-finding conference or a written hearing request, the director's recommendation for denial shall be adopted by the board as final.

3. Board process.

a. Upon receipt of a timely written hearing request, the board shall provide the applicant a hearing notice for a hearing before the board.

b. The board's hearing notice, and the board's hearing at which the director's denial will be considered, shall comply with the requirements of the Virginia Administrative Process Act, Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

c. Following a hearing, the board shall:

(1) Grant the license or permit after determining that the applicant is qualified for and not prohibited from holding a license or permit; or

(2) Deny the license or permit after determining that the applicant:

(a) Is not qualified for a license or permit or is disqualified from holding a permit or license;

(b) Has violated a provision described in subdivision F 2 of this section; or

(c) Has failed to demonstrate by clear and convincing evidence that its application or renewal request should be granted.

d. Following a hearing, if the board decides to uphold the decision of the director on a renewal or on a recommendation to deny a license or permit, the board shall:

(1) Prepare an order denying the license or permit with a statement of the reasons and specific findings of fact; and

(2) Provide the applicant with written notice of its final action.

e. The board's final action on a license or permit denial is subject to judicial review as provided in § 58.1-4105 of the Code of Virginia.

f. Unless a waiver under 11VAC5-90-30 has been granted, a person may not reapply for a permit that has been denied any sooner than five years after the date of final action on the denial or nonrenewal.

G. Effect of license or permit.

1. Participation in casino gaming operations by a licensee or permit holder shall be deemed a revocable privilege and shall be conditioned on the proper and continued qualification of the licensee or permit holder and on the discharge of the affirmative responsibility of each licensee and permit holder to provide to the regulatory and investigatory authorities under this chapter or any other provision of law, any assistance and information necessary to assure that the policies underlying this chapter are achieved.

2. Consistent with the policy described in subdivision 1 of this subsection, this chapter:

a. Precludes:

(1) The creation of any property right in any license or permit required under this chapter;

(2) The accrual of any monetary value to the privilege of participation in casino gaming operations; and

(3) Except as specifically provided by the casino gaming law and this chapter, the transfer of any license or permit issued under this chapter; and

b. Requires that participation in casino gaming operations be conditioned solely on the continuing qualifications of the person that seeks the privilege.

3. The holder of a facility operator's license may sublicense, convey, concede, or otherwise transfer its license to a third party only after the transferee:

a. Applies and pays all application and background investigation fees for a license;

b. Receives the approval of the board; and

c. Pays to the department a nonrefundable transfer fee of $15 million.

H. Continuing obligations.

1. Applicants who are awarded a license or permit shall, during the term of their license or permit, conform to all of the information contained in their applications, including all information submitted by a license applicant to a host city.

2. If information submitted by an applicant that is issued a license or permit changes during the term of the license or permit, the licensee or permit holder shall immediately submit to the department notice in writing of the change.

3. Every five years after the date a license is issued, a facility operator shall submit to the department for review and approval a reinvestment projection related to the casino gaming establishment to cover the succeeding five-year period of operations.

4. As a condition of holding a license or permit, a licensee or permit holder must comply with all requirements of the casino gaming law, this chapter, and any other law, regulation, or condition of the department related to casino gaming.

5. Failure to comply with the obligations of subdivision 1, 2, 3, or 4 of this subsection shall be grounds for the director taking enforcement action against the licensee or permit holder.

I. Identification cards.

1. The director shall issue an identification card to an individual who has been issued a supplier or service permit.

2. An identification card shall display a photograph of the individual and, at a minimum, indicate:

a. The individual's name;

b. By color, pattern, or symbol, the permit category; and

c. The permit expiration date.

3. An identification card is evidence that the individual is authorized to be employed in the designated permit category by a facility operator, supplier, or service permit holder.

4. An identification card is the property of the director.

5. An individual issued an identification card:

a. Shall wear or otherwise prominently display the identification card at all times while working unless otherwise approved by the director for a specific date and time;

b. Shall immediately report a loss or theft of the card to the individual's employer and the director;

c. May not allow another individual to possess the card; and

d. Shall comply with an order of the director to surrender the card.

6. If an identification card issued under this section is lost or stolen:

a. The individual shall immediately report the loss or theft to the individual's employer;

b. In a form or format designated by the director, the individual shall submit to the director a written description of the circumstances of the loss or theft; and

c. After verifying the permit holder's identity, the director may issue a new identification card to the individual.

7. If an identification card issued under this section is temporarily unavailable to the individual:

a. The individual shall immediately report the temporary unavailability of the card to the individual's employer;

b. In a form or format designated by the director, the individual shall submit to the director or department staff a written description as to why the card is temporarily unavailable;

c. After verifying the permit holder's identity, the director may issue an emergency credential that is valid for one day; and

d. The individual shall surrender the emergency credential to the director or department staff at the end of the shift on the day when the individual received the card.

8. If the director issues a replacement or temporary identification card to an individual, the individual's employer shall pay the director:

a. $40 for the cost of a replacement identification card; or

b. $20 for the cost of a temporary identification card.

9. The employer of an individual issued an identification card under this section shall ensure that the employee's identification card is surrendered to the director if the:

a. Director suspends or revokes the individual's service permit;

b. Service permit is not renewed;

c. Individual separates from employment with the individual's employer; or

d. The individual is otherwise ordered by the department to surrender the identification card.

10. If an identification card is not surrendered as required under this section, the individual's employer may be subject to enforcement action under this chapter.

11. If an identification card was surrendered when an individual separated employment from the individual's employer, the director may issue that individual another identification card if the:

a. Individual obtains employment with a facility operator, supplier, or service permit holder;

b. Term of the individual's service permit has not expired; and

c. Director verifies the individual's identity and confirms that the individual's service permit was in good standing when the card was surrendered, has not expired, and remains in good standing.

12. There is no fee for an identification card issued under subdivision 11 of this subsection.

13. Nothing in subdivision 11 of this subsection shall preclude the director from taking enforcement action against a service permit holder based on the circumstances related to the individual's separation from employment.

11VAC5-90-50. Investigations.

A. An applicant for a license or permit shall submit to a personal and background investigation conducted by the department.

B. A person who is required to provide personal and background information under this chapter shall provide a statement that irrevocably gives consent to the director, department staff and its investigative contractors, and persons authorized by the director to:

1. Verify all information provided in the application; and

2.Conduct a background investigation of the individual.

C. An applicant shall authorize the director, department staff, and investigative contractors to have access to any and all information the applicant has provided to any other jurisdiction while seeking a gaming or similar license in that other jurisdiction, as well as the information obtained by that other jurisdiction during the course of any investigation it may have conducted regarding the applicant.

D. The background investigation shall include a criminal history records check and fingerprinting for:

1. Every individual applying for a license or permit pursuant to this chapter;

2. Every individual who is an officer, director, or principal of a licensee or applicant for a license and every employee of the licensee who conducts gaming operations;

3. All individual security personnel of any licensee; and

4. All permit holders and officers, directors, principals, and employees of permit holders whose duties relate to gaming operations in Virginia.

E. In the form and format required by the department, each individual required by subsection D of this section to undergo a criminal history records check shall submit fingerprints and personal descriptive information to the Central Criminal Records Exchange to be forwarded to the Federal Bureau of Investigation for a national criminal records search and to the Department of State Police for a Virginia criminal history

records check. The results of the background check and national and state criminal records check shall be returned to the department.

F. Administrative costs of background investigations.

1. An applicant is responsible for the administrative costs to the department of conducting the personal and background investigations required by this chapter.

2. The administrative costs of the personal and background investigation are independent of and in addition to fingerprinting fees and, except for a service permit, any license or permit issuance fees.

3. The administrative costs associated with performing the background investigation of a particular facility operator or supplier permit applicant and any individual required to be investigated will vary depending on the:

a. Complexity of the investigation;

b. Time necessary to properly conduct the investigation;

c. Type of license or permit sought; and

d. Types of activities the license or permit will authorize the applicant to undertake if the license or permit is granted.

4. When a preferred casino gaming operator submits its application for the facility operator's license, it shall send by wire transfer to the department a nonrefundable application and background investigation fee of $50,000 per principal.

5. When an applicant for a supplier permit submits its application to the department, it shall send by wire transfer:

a. A nonrefundable application fee of $5,000; and

b. A background investigation fee of $50,000 per principal.

6. When an applicant for a service permit submits its application to the department, it shall send by wire transfer $500 as a nonrefundable fee to cover the administrative costs of conducting the personal and background check and issuing the permit.

7. In addition to other fees set out in this subsection, the forms submitted in compliance with this regulation shall be accompanied by the:

a. Fee for access to Virginia criminal history record information;

b. Mandatory processing fee required by the Federal Bureau of Investigation for a national criminal history records check; and

c. Mandatory processing fee required by Interpol for an international criminal history records check for an applicant who is a citizen of any country other than the United States.

G. An applicant for a facility operator license or supplier permit shall ensure that all principals, key managers, and other required individuals have submitted appropriate and complete applications.

H. The director may require initial and additional deposits from an applicant for the administrative costs of conducting the applicant's background investigation.

I. Promptly upon receipt of an invoice from the department, an applicant for a license or permit shall reimburse the department for:

1. The additional administrative costs associated with performing background investigations of the applicant and any individual required to provide information under this chapter; and

2. Any payments made by the director to a person approved by the director to conduct the background investigation.

J. Failure to reimburse the department shall be grounds for disqualification of the applicant.

K. Unless otherwise specified, the director shall refund to an applicant for a license or permit any unused portion of an advance deposit required to offset the additional costs of conducting the applicant's background investigation and submitted under subsection H of this section.

L. Personal and background information.

1. Except as otherwise provided by the department, application documents shall include the information under subdivision 2 of this subsection, for an individual who is:

a. The applicant;

b. A director, officer, or key manager employed by the applicant;

c. A partner of the applicant;

d. An owner of an interest of 5.0% or more in the applicant; or

e. A principal.

2. An individual listed under subdivision 1 of this subsection shall furnish the following:

a. Full name and any previous names or aliases;

b. Date of birth;

c. Physical description;

d. Home and business addresses and telephone numbers;

e. Driver's license number and state of issuance;

f. Social Security number;

g. Passport or identification photo;

h. Fingerprints for a criminal records check:

(1) For a Virginia resident, from an electronic fingerprinting service approved by the board; or

(2) For a resident from outside Virginia, one Federal Bureau of Investigation and one local fingerprint card, taken within the previous 45 days before submission to the department; and

i. Any other document or information required by the department.

3. If the applicant is a corporation, the application documents shall state the:

a. State in which the applicant is incorporated; and

b. Name and address of the applicant's agent for service of process in Virginia.

4. If an applicant is a nonprofit corporation, only an individual who is a director or officer of the applicant shall provide the information required under subdivision 2 of this subsection.

5. The department may require an applicant to furnish the information listed in subdivision 2 of this subsection with regard to the applicant's family and associates.

6. Inadvertent, nonsubstantive errors that might be made in furnishing the information required by this regulation may not be used as a reason by the board for disqualifying the applicant.

M. Information for background investigation. An individual required to provide information under this section shall complete a background form supplied by the department that includes a statement disclosing whether the individual has ever been:

1. Arrested;

2. Convicted of, pled nolo contendere to, or received probation before judgment for a felony or misdemeanor, other than a misdemeanor traffic offense;

3. Sanctioned by a government agency related to gaming;

4. Found liable in connection with a civil action related to gaming;

5. A debtor in a bankruptcy proceeding; or

6. Denied a bond.

N. If the applicant for a facility operator's license or a supplier permit is a corporation, the application shall include a:

1. Statement of when the corporation was organized;

2. Copy of the articles of incorporation and bylaws of the corporation;

3. Statement and documentation of whether the corporation has been reorganized or reincorporated during the five-year period preceding the date on which the application is submitted to the director;

4. Statement and documentation of whether the corporation has filed restated articles of incorporation; and

5. List identifying each person who:

a. Exercises voting rights in the corporation; and

b. Directly or indirectly owns 5.0% or more of the corporation.

O. If the applicant for a facility operator's license or a supplier permit is an unincorporated business association, the application shall include a:

1. Copy of each organizational document of the applicant, including any partnership agreement;

2. Description of any oral agreements involving the organization of the applicant; and

3. List identifying each person who:

a. Exercises voting rights in the applicant; or

b. Directly or indirectly owns 5.0% or more of the business association.

P. If the applicant for a facility operator's license or a supplier permit is authorized to issue capital stock, the applicant shall state, for each class of stock authorized, the:

1. Total number of shares;

2. Par value, if any;

3. Voting rights;

4. Current rate of dividend;

5. Number of shares outstanding and the market value of each share on the date of the application; and

6. Existence of any voting trust or voting agreement in which capital stock of the applicant is held, and the:

a. Name and address of each stockholder participating in the trust or agreement;

b. Class of stock involved; and

c. Total number of shares held by the trust or agreement.

Q. The application for a facility operator's license or a supplier permit shall include a certified copy of each voting trust or voting agreement in which capital stock is held.

R. The application for a facility operator's license or a supplier permit shall describe the terms of any proxy by which any capital stock may be voted and shall state the:

1. Name and address of the person holding the proxy;

2. Name and address of the stockholder who granted the proxy;

3. Class of stock for which the proxy may vote; and

4. Total number of shares voted by the proxy.

S. The application for a facility operator's license or a supplier permit shall state any provisions and the procedures by which these provisions may be modified for the redemption, repurchase, retirement, conversion, or exchange of an ownership interest.

T. The application for a facility operator's license or a supplier permit shall state whether the applicant's stock may be traded through options and whether the corporation or a stockholder has executed an agreement or contract to convey any of the corporation's or the stockholder's stock at a future date.

U. The application for a facility operator's license or a supplier permit shall include a copy or a description of each agreement or contract disclosed under subsection T of this section.

V. The application for a facility operator's license or a supplier permit shall include a copy of each prospectus, pro forma, or other promotional material given to potential investors about the permit holder applicant's operation.

W. The application for a facility operator's license or a supplier permit shall provide full disclosure for any stock options that may exist or have been granted.

X. If the applicant is not an individual, the application for a facility operator's license or a supplier permit shall include a list of the individuals who are serving, or who are designated to serve, during the first year after the date the application is submitted to the Executive Director of the Virginia Lottery, as a director, officer, partner, or principal as defined in this chapter and provide:

1. The individual's name and address;

2. Each position or office of the applicant held by the individual;

3. The individual's primary occupation during the five-year period preceding the date on which the application is submitted to the director; and

4. The nature and extent of any ownership interest that the individual has in the applicant.

Y. The application for a facility operator's license or a supplier permit shall:

1. Disclose all individuals and entities that have an ownership interest of 5.0% or more in the applicant, including any beneficial ownership as defined in Article 1 (§ 13.1-1200 et seq.) of Chapter 14 of Title 13.1 of the Code of Virginia;

2. Describe the:

a. Nature of the ownership, and

b. Extent of control exercised by the owner;

3. Include information and documents required by this chapter as to each owner; and

4. If the applicant is the subsidiary of another entity, include an explicit statement that the parent organization will fully and absolutely guarantee the performance and regulatory compliance of the subsidiary during the term of the subsidiary's license or permit.

Z. Outside interests.

1. The application documents for a facility operator's license or a supplier permit shall state whether the applicant, a director, an officer, a partner of the applicant, or an owner of 5.0% or more of an interest in the applicant:

(a) Has ever held an ownership interest personally or in an entity holding a license or permit issued by the board or the department; or

(b) Is currently engaged in the business of gaming in another state, and the nature and extent of that involvement.

2. The applicant shall describe the nature of participation stated under subdivision 1 of this subsection.

AA. Approval of institutional investors.

1. An institutional investor that holds or proposes to hold an ownership interest in a facility or supplier that would require a background investigation may request the director to waive the requirement of conducting a full background investigation of the institutional investor.

2. The board may approve the institutional investor's request for a waiver if it satisfactorily completes and submits an institutional investor waiver application as required by the department.

3. An entity for which the director has approved a waiver request is an approved institutional investor.

4. An institutional investor can maintain its approved status by:

a. Maintaining an ownership interest in an applicant, licensee, or permit holder; and

b. Providing the department with the statement of ownership percentage it reported to the Securities and Exchange Commission or a foreign equivalent approved for such reporting by the department:

(1) Annually, before the last day of April; or

(2) As otherwise directed by the department.

5. If an approved institutional investor complies with subdivision 4 of this subsection, the department's approval is valid for five years from the date of approval, and:

a. The waiver may apply to one or more applicants, licensees, or permit holders in which the entity is an institutional investor; and

b. The institutional investor shall submit an institutional waiver application every five years from the date of the department's last approval.

6. If an approved institutional investor does not meet the requirements of subdivision 4 of this subsection with respect to one or more applicants, licensees, or permit holders:

a. The approved institutional investor shall notify the department in writing if the institutional investor's ownership interest falls below 5.0%; and

b. The department may require the institutional investor to submit a new waiver application if the institutional investor acquires an ownership interest of 5.0% or greater in any applicant, licensee, or permit holder.

11VAC5-90-60. Applications for and issuance of facility operator's license.

A. In addition to the processes and requirements set out in 11VAC5-90-40 and 11VAC5-90-50, the requirements set out in this section shall apply to the applications for a facility operator's license and the applicant's related entities and individuals.

B. Who may apply.

1. Only a preferred casino gaming operator may apply for a facility operator's license.

2. Unless approved in advance by the host city and otherwise consistent with the casino gaming law, this chapter, and any other law, regulation, or condition of the department related to casino gaming, the preferred casino gaming operator may not deviate substantively from the plan it submitted to the host city and the department during the certification process set out in §§ 58.1-4107 F and 58.1-4109 of the Code of Virginia.

C. An applicant for a facility operator license shall submit with its application all required fees for:

1. The applicant itself;

2. Its owners, principals, directors, and officers;

3. Any supplier that is expected to provide casino management for the applicant; and

4. All known key managers.

D. Evaluation.

1.The department shall review an application for a facility operator's license to determine whether the applicant is qualified to hold an operator's license.

2. An applicant for a facility operator's license shall present in its application sufficient information, documentation, and assurances to establish the following qualification criteria by clear and convincing evidence:

a. Substantiation that the applicant has made or will make prior to the issuance of an operation license for a permanent casino facility or at the end of any period of operation of casino gaming in an approved temporary facility, a capital investment of at least $300 million, including the value of the real property upon which the facility is located and all furnishings, fixtures, and other improvements;

b. Substantiation that the applicant possesses an equity interest of at least 20% in the facility;

c. For an applicant that is a Virginia Indian tribe, certification that the material terms of all relevant development agreements between the Virginia Indian tribe and any development partner have been determined in the opinion of the Office of General Counsel of the National Indian Gaming Commission after review not to deprive the Virginia Indian tribe of the sole proprietor interest in the facility's gaming operations for the purposes of federal Indian gaming law;

d. Existence of an adequate plan for addressing responsible gaming issues, including the goals of the plan, procedures, and deadlines for implementation of the plan;

e. Establishment of a policy requiring that everyone who interacts directly with the public in the facility has completed a course approved by the department in how to recognize and report suspected human trafficking;

f. Substantiation that the applicant's proposed permanent facility is or will be appropriate for gaming operations consistent with the purposes of the casino gaming law and this chapter;

g. Certification from the city where the facility will be located that the proposed project complies with all applicable land use ordinances pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2 of the Code of Virginia;

h. Substantiation that any required local infrastructure or site improvements, including necessary sewerage, water, drainage facilities, or traffic flow, are to be paid exclusively by the applicant without state or local financial assistance;

i. If the applicant is an entity, demonstration that its securities are fully paid and, in the case of stock, nonassessable and have been subscribed and will be paid for only in cash or property to the exclusion of past services;

j. Uncontested and enforceable written agreement that all principals meet the criteria of this chapter and have submitted to the jurisdiction of the Virginia courts, and that all nonresident principals have designated the director as their agent for receipt of process;

k. If the applicant is an entity, substantiation that it has the right to purchase at fair market value the securities of, and require the resignation of, any person who is or becomes disqualified under subsection E of this section;

l. Substantiation that the applicant meets any other criteria established by the casino gaming law and this chapter for the granting of an operator's license, including submission to the department of adequate plans for operation of casino

gaming and on-premises mobile casino gaming as required by this chapter;

m. Substantiation that the applicant is qualified to do business in Virginia or is subject to the jurisdiction of the courts of the Commonwealth;

n. Substantiation that the applicant or its principals have not previously been denied a license pursuant to subsection E of this section;

o. Substantiation of the financial responsibility of the applicant and the applicant's ability to fulfill the requirements of the casino gaming law, this chapter, or any other law, regulation, or condition of the department related to casino gaming, including the applicant's financing plan for the casino gaming establishment; and

p. Where "minority individual" and "minority-owned business" mean the same as those terms are defined in § 2.2-1604 of the Code of Virginia, submission of:

(1) A minority investment plan disclosing any equity interest owned by a minority individual or minority-owned business or the applicant's efforts to seek equity investment from minority individuals or minority-owned businesses, and

(2) A plan for the participation of minority individuals or minority-owned businesses in the applicant's purchase of goods and services related to the casino gaming establishment.

E. Required denials.

1. The board shall deny a facility operator's license to an applicant if the board finds that for any reason the issuance of a license to the applicant would reflect adversely on the honesty and integrity of the casino gaming industry in the Commonwealth or that the applicant, or any officer, principal, manager, or director of the applicant:

a. Has failed to prove by clear and convincing evidence that the applicant and each person who owns or controls the applicant are qualified under subsection D of this section;

b. Is under current prosecution for or has been found guilty of any illegal act, conduct, or practice in connection with gaming operations in this or any other state or has been convicted of a felony, provided that, at the request of the applicant, the board may defer its decision on the application during the pendency of the charge;

c. Has had a license or permit to hold or conduct a gaming operation denied for cause, suspended, or revoked, in this or any other state or country, unless the license or permit was subsequently granted or reinstated;

d. Has at any time during the previous five years knowingly failed to comply with the provisions of the casino gaming law, this chapter, or any other law, regulation, or condition of the department related to casino gaming;

e. Has knowingly made a false statement of material fact to the department or has deliberately failed to disclose any information requested by the department;

f. Has willfully defied a legislative investigatory body or other official investigatory body of the United States, or a jurisdiction within the United States, when the body is engaged in the investigation of crimes relating to gambling, official corruption, or organized crime activity;

g. Has defaulted in the payment of any obligation or debt due to the Commonwealth and has not cured such default; or

h. Has operated or caused to be operated a casino gaming establishment for which a license is required under this chapter without obtaining such license.

F. Issuance term and conditions.

1. As a condition of accepting a facility operator's license to an applicant, the licensee expressly acknowledges its duty to adhere to its application, the plan it submitted to the host city and the department during the certification process set out in §§ 58.1-4107 F and 58.1-4109 of the Code of Virginia, all requirements of the casino gaming law, this chapter, and any other law, regulation, or condition of the department related to casino gaming.

2. The term of a facility operator's license begins on the day of issuance and continues for 10 years, subject to annual review consistent with § 58.1-4111 of the Code of Virginia.

3. A casino may not begin operations before the board has issued the facility operator's license.

4. The department may issue a facility operator's license subject to conditions.

5. No portion of any structure developed with the assistance of grants or loans provided by a redevelopment and housing authority created by § 36-4 of the Code of Virginia may be used as a casino gaming establishment.

6. The facility operator shall submit a nonrefundable issuance fee of $15 million before the operation license is issued and upon any approved transfer of the license

7. The board may issue a facility operator's license only after determining that:

a. The facility complies with the casino gaming law, this chapter, and any other law, regulation, or condition of the department related to casino gaming;

b. All gaming machines and associated equipment have been tested and comply with the casino gaming law, this chapter, and any other law, regulation, or condition of the department related to casino gaming;

c. The gaming floor plan complies with the casino gaming law, this chapter, and any other law, regulation, or condition of the department related to casino gaming;

d. The facility operator's internal controls comply with the casino gaming law, this chapter, and any other law, regulation, or condition of the department related to casino gaming;

e. The facility operator is prepared to implement the internal controls, surveillance, and security procedures that are necessary to ensure that the operation of all casino gaming is conducted safely and legally;

f. The facility operator's employees are:

(1) Properly permitted by the department; and

(2) Trained in the performance of their responsibilities;

g. The facility is prepared in all respects to receive the public;

h. The facility operator has complied with any additional pre-opening conditions imposed by the department; and

i. The facility operator has successfully completed a test period.

8. A licensed casino gaming facility operator is not prohibited from operating:

a. An online sports betting operation licensed by the Lottery under the Virginia Lottery Law (§ 58.1-4000 et seq. of the Code of Virginia) and the Sports Betting regulation (11VAC5-70); or

b. A sports betting facility for individuals to participate in sports betting activities in the casino gaming establishment, including in-person sports betting where a player places a wager directly with a gaming employee of the casino or the sports betting permit holder, or through a kiosk or device.

G. Temporary facility.

1. The holder of, or applicant for, a facility operator's license may ask the department to authorize casino gaming to occur in a temporary facility.

2. Gaming may be conducted in a temporary facility for one year.

3. Gaming in a temporary facility does not extend the 10-year term of the facility operator's license.

4. Approval to conduct casino gaming in a temporary facility shall be conditioned upon:

a. The applicant's having been issued a facility operator's license;

b. Approval by the host city and the department of the facility operator's construction schedule for the permanent facility;

c. Using the same site for the temporary facility as was approved by the host city's voters in the referendum held pursuant to § 58.1-4123 of the Code of Virginia;

d. The facility operator having secured suppliers and employees holding the permits required and sufficient for the routine operations of the site where the temporary gaming will be authorized; and

e. Posting of a performance bond in an amount acceptable to the department.

5. The department may extend the authorization to conduct casino gaming in a temporary facility for an additional year if it determines that the licensee has made a good faith effort to comply with the approved construction schedule.

H. Suspension, civil penalties, revocation, and nonrenewal.

1. In addition to any other sanctions or civil penalties, including those set out in 11VAC5-90-90, the director may impose a civil penalty or suspend, revoke, or refuse to renew a facility operator's license for:

a. Failure to comply with, or violation of, any provision of the casino gaming law, this chapter, or any other law, regulation, or condition of the department related to casino gaming;

b. Failure to disclose facts during the application process that indicate that the operation license should not have been issued;

c. Conviction of a felony under the laws of the Commonwealth of Virginia or any other state, or of the United States subsequent to issuance of the facility operator's license;

d. Failure to file any return or report, keep any record, or pay any fee or other charges required by the casino gaming law, this chapter, or any other law, regulation, or condition of the department related to casino gaming;

e. Any act of fraud, deceit, misrepresentation, or conduct prejudicial to public confidence in the integrity of gaming operations; or

f. A material change, since issuance of the facility operator's license, with respect to any matters required to be considered by the director under the casino gaming law, this chapter, or any other law, regulation, or condition of the department related to casino gaming.

2. The director may temporarily suspend a facility operator's license without notice pending any prosecution, hearing, or investigation, whether by a third party or by the director.

3. Disputes related to a suspension, revocation, or refusal to renew a facility operator's license shall be conducted pursuant to the procedures set out in 11VAC5-90-40 F.

I. Renewal.

1. A license may be renewed for additional 10-year terms.

2. The criteria and procedures for license renewal shall be the same for successive renewal terms as for the initial term of licensure, including the application fees for background and other investigations, unless the facility operator's operational and capital investment plans have been approved for amendment by the department.

3. A facility operator shall notify the department 18 months before the expiration of its license term if it does not intend to seek renewal.

4. A facility operator shall submit a completed renewal application, for itself and its principals and employees, along with any required fees, between 15 and 12 months before the expiration of its current license.

5. A facility operator shall submit a nonrefundable renewal fee of $15 million before the operation license is re-issued.

6. A license renewal request shall not be unreasonably refused by the board.

11VAC5-90-70. Applications for and issuance of supplier permits.

A. In addition to the processes and requirements set out in 11VAC5-90-40 and 11VAC5-90-50, the requirements set out in this section shall apply to the applications for a supplier permit and the applicant's related entities and individuals.

B. There are four categories of suppliers:

1. Contractor;

2. Key manager;

3. Manufacturer; and

4. Slot machine management system provider.

C. An applicant for a supplier permit shall submit with its application all required fees and applications for:

1. The applicant itself;

2. If applicable, its principals; and

3. All known key managers.

D. The fee for each supplier applicant shall be a:

1. Nonrefundable $5,000 application fee for the supplier; and

2. Unless such fee has been submitted in behalf of the same applicant pursuant to another related or contemporaneously filed application, $50,000 background investigation fee for any principal, including any applicable key manager.

E. Following a successful background investigation and prior to issuance of a supplier permit, the supplier shall submit a $5,000 annual permit fee.

F. A person is ineligible to receive a supplier's permit if:

1. The person has been convicted of a felony under the laws of the Commonwealth or any other state or of the United States;

2. The person has submitted an application for a license under this chapter that contains false information;

3. The person is a board member, employee of the department, or a member of the immediate household of a board member or department employee;

4. The person is an entity in which a person described in subdivision 1, 2, or 3 of this subsection is an officer, director, principal, or managerial employee;

5. The firm or corporation employs a person who participates in the management or operation of casino gaming authorized under this chapter;

6. A prior license or permit issued to such person to own or operate casino gaming establishments or supply goods or services to a gaming operation under this chapter or any laws of any other jurisdiction has been revoked; or

7. A. period of five years has not elapsed since the date of final action on a denial of an earlier application for a supplier permit, unless the director in the director's sole and unappealable discretion has made an exception to that waiting period.

G. Issuance.

1. The department shall consider all information submitted in the supplier permit application and any information discovered as a result of the department's background investigation.

2. As a condition of accepting a supplier permit, permit holders shall expressly acknowledge their duty to adhere to all requirements of the casino gaming law, this chapter, and any other law, regulation, or condition of the department related to casino gaming.

3. Upon request of an applicant, the director may in his sole discretion issue a temporary or conditional supplier permit to an apparently-qualified applicant pending final board approval of the permit.

4. An applicant for a supplier permit may not be considered to be apparently-qualified if:

a. The applicant has an immediately known present or prior activity, criminal record, reputation, habit, or association that would disqualify the applicant from holding a permit or license under the casino gaming law or this chapter;

b. The applicant poses a serious imminent risk of harm to the integrity, security, or profitability of the Commonwealth of Virginia's casino gaming program; or

c. There are reasonable grounds to believe that the applicant will not be able to establish the applicant's qualifications by clear and convincing evidence under this chapter.

5. A temporary or conditional supplier permit holder whose permanent supplier permit is denied shall not receive a refund of any fees paid toward the application and the costs of the department's background investigation.

6. A temporary or conditional supplier permit:

a. May not be issued until the applicant has acknowledged in writing that the Commonwealth of Virginia is not financially responsible for any consequences resulting from termination of a temporary or conditional supplier permit, or a denial of the application;

b. Expires 60 days after the date of issuance; and

c. May be extended by the director for one period of up to 60 days.

7. When the board changes a temporary or conditional supplier permit into permanent status, the date of issuance of the permanent supplier permit shall be deemed to be the date that the director issued the temporary supplier permit.

8. If, during the course of conducting an applicant's background investigation, department staff reasonably believes that there is a basis for recommending denial of a permanent supplier permit to a temporary or conditional supplier permit holder, department staff shall:

a. Notify the director and the temporary or conditional supplier permit holder; and

b. If the board has not yet issued a final decision on the application, allow the application to be withdrawn.

9. By written notice to a temporary or conditional supplier permit holder, the director may terminate, without a hearing and without following the denial process under 11VAC5-90-40, the temporary or conditional supplier permit of an applicant for:

a. Failure to pay a required fee;

b. Failure to submit required information and documentation to department staff within 15 days of responding to a request for additional information or documents;

c. Failure to comply with any other request of department staff;

d. Engaging in conduct that obstructs department staff from completing the applicant's background investigation;

e. Failure to comply with the conditions imposed by the director; or

f. Violating any provision of the casino gaming law, this chapter, or any other law, regulation, or condition of the department related to casino gaming.

10. Unless the applicant withdraws the application within seven days of the notice issued under subdivision 8 or 9 of this subsection, the director's written notice of termination of a temporary or conditional supplier permit shall be deemed a denial and referred to the board for completion of the process set out in 11VAC5-90-40 F.

11. A decision by the department not to issue or renew a temporary or conditional supplier license is not appealable.

H. Suspension, civil penalties, revocation, and nonrenewal.

1. In addition to any other sanctions or civil penalties, including those set out in 11VAC5-90-90, the director may impose a civil penalty or suspend, revoke, or refuse to renew a supplier permit for:

a. Failure to comply with, or violation of, any provision of the casino gaming law, this chapter, or any other law, regulation, or condition of the department related to casino gaming;

b. Failure to disclose facts during the application process that indicate that the supplier permit should not have been issued;

c. Conviction of a felony under the laws of the Commonwealth of Virginia or any other state, or of the United States subsequent to issuance of the supplier permit;

d. Failure to file any return or report, keep any record, or pay any fee or other charges required by the casino gaming law, this chapter, or any other law, regulation, or condition of the department related to casino gaming;

e. Any act of fraud, deceit, misrepresentation, or conduct prejudicial to public confidence in the integrity of gaming operations; or

f. A material change, since issuance of the supplier permit, with respect to any matters required to be considered by the director under the casino gaming law, this chapter, or any other law, regulation, or condition of the department related to casino gaming.

2. The director may temporarily suspend a supplier permit without notice pending any prosecution, hearing, or investigation, whether by a third party or by the director.

3. Disputes related to a suspension, revocation, or refusal to renew a supplier permit shall be conducted pursuant to the procedures set out in 11VAC5-90-40 F.

I. Portability.

1. A supplier permit holder who wishes to perform the functions approved by the department pursuant to its initial permit application at a different location or for a different licensee or permit holder shall inform the department in advance.

2. The department shall freely authorize transfers requested pursuant to subdivision 1 of this subsection.

3. The permit holder shall comply with the requirements set out in 11VAC5-90-40 for the replacement of identification cards.

J. Renewal term.

1. Unless otherwise required by law, a permit shall be automatically renewed each year after the first year for four additional successive annual terms.

2. A permit holder shall submit to the department an annual permit fee of $5,000 before the start of the next annual term.

3. The department need not conduct a new background investigation of the permit holder during the four renewal terms.

4. Every five years, a permit holder shall:

a. Submit a renewal application six to three months before the expiration date of the permit term, and

b. Pay any fees associated with the application and background investigation as directed by the department.

11VAC5-90-80. Application for and issuance of service permits.

A. In addition to the processes and requirements set out in 11VAC5-90-40 and 11VAC5-90-50, the requirements set out in this section shall apply to the applications for a service permit and the applicant's related entities and individuals.

B. There are four categories of service permits:

1. Gaming employee;

2. Nongaming employee;

3. Vendor-major; and

4. Vendor-minor.

C. The two categories of vendor described in subsection B of this section are meant to incorporate the types of concessionaires for which service permits are required under § 58.1-4118 of the Code of Virginia.

D. An applicant for a service permit shall submit with its application all required fees and applications for:

1. The applicant itself;

2. Any employees who require a service permit under this chapter; and

3. If applicable, all principals and key managers.

E. The fee for each service applicant shall be a:

1. Nonrefundable $500 application fee for the service permit applicant, plus any applicable fingerprinting fees; and

2. Unless such fee has been submitted on behalf of the same applicant pursuant to another related or contemporaneously filed application, $50,000 background investigation fee for any principal not the holder of or applicant for a supplier permit, including any applicable key manager.

F. The director shall deny a service permit if the director finds that:

1. The issuance of the service permit would not be in the best interests of the Commonwealth or would reflect negatively on the honesty and integrity of casino gaming in the Commonwealth;

2. The granting of the service permit is not consistent with the provisions of the casino gaming law or this chapter, the department's responsibilities, or any regulations promulgated by any other agency of the Commonwealth; or

3. That the applicant:

a. Has knowingly made a false statement of a material fact in the application or has deliberately failed to disclose any information requested by the department;

b. Is or has been guilty of any corrupt or fraudulent practice or conduct in connection with gaming operations in the Commonwealth or any other state;

c. Has knowingly failed to comply with the provisions of the casino gaming law, this chapter, or any other law, regulation, or condition of the department related to casino gaming;

d. Has had a service permit or license to engage in activity related to casino gaming denied for cause, suspended, or revoked in the Commonwealth or any other state, and such denial, suspension, or revocation is still in effect;

e. Is unqualified to perform the duties required for the service permit sought; or

f. Has been convicted of a misdemeanor or felony involving unlawful conduct of wagering, fraudulent use of a gaming credential, unlawful transmission of information, touting, bribery, embezzlement, distribution or possession of drugs, or any crime considered by the director to be detrimental to the honesty and integrity of casino gaming in the Commonwealth.

G. Issuance.

1. The department shall consider all information submitted in the service permit application and any information discovered as a result of the department's background investigation.

2. As a condition of accepting a service permit, permit holders shall expressly acknowledge their duty to adhere to all requirements of the casino gaming law, this chapter, and any other law, regulation, or condition of the department related to casino gaming.

3. Upon request of an applicant, the director may in his sole discretion issue a temporary or conditional service permit to an apparently-qualified applicant pending final board approval of the permit.

4. An applicant for a service permit may not be considered to be apparently-qualified if:

a. The applicant has an immediately known present or prior activity, criminal record, reputation, habit, or association that would disqualify the applicant from holding a permit or license under the casino gaming law or this chapter;

b. The applicant poses a serious imminent risk of harm to the integrity, security, or profitability of the Commonwealth of Virginia's casino gaming program; or

c. There are reasonable grounds to believe that the applicant will not be able to establish the applicant's qualifications by clear and convincing evidence under this chapter.

5. A temporary or conditional service permit holder whose permanent service permit is denied shall not receive a refund of any fees paid toward the application and the costs of the department's background investigation.

6. A temporary or conditional service permit:

a. May not be issued until the applicant has acknowledged in writing that the Commonwealth of Virginia is not financially responsible for any consequences resulting from termination of a temporary or conditional service permit, or a denial of the application;

b. Expires 60 days after the date of issuance; and

c. May be extended by the director for one period of up to 60 days.

7. When the board changes a temporary or conditional service permit into permanent status, the date of issuance of the permanent service permit shall be deemed to be the date that the director issued the temporary service permit.

8. If, during the course of conducting an applicant's background investigation, department staff reasonably believes that there is a basis for recommending denial of a permanent service permit to a temporary or conditional service permit holder, department staff shall:

a. Notify the director and the temporary or conditional service permit holder; and

b. If the board has not yet issued a final decision on the application, allow the application to be withdrawn.

9. By written notice to a temporary or conditional service permit holder, the director may terminate, without a hearing and without following the denial process under 11VAC5-90-40, the temporary or conditional service permit of an applicant for:

a. Failure to pay a required fee;

b. Failure to submit required information and documentation to department staff within 15 days of responding to a request for additional information or documents;

c. Failure to comply with any other request of department staff;

d. Engaging in conduct that obstructs department staff from completing the applicant's background investigation;

e. Failure to comply with the conditions imposed by the director, or

f. Violating any provision of the casino gaming law or this chapter, or any other law, regulation, or condition of the department related to casino gaming.

10. Unless the applicant withdraws the application within seven days of the notice provided under subdivision 8 or 9 of this subsection, the director's written notice of termination of a temporary or conditional service permit shall be deemed a denial and referred to the board for completion of the process set out in 11VAC5-90-40 F.

11. A decision by the department not to issue or renew a temporary or conditional service license is not appealable.

H. Suspension, civil penalties, revocation, and nonrenewal.

1. In addition to any other sanctions or civil penalties, including those set out in 11VAC5-90-90, the director may impose a civil penalty or suspend, revoke, or refuse to renew a service permit for:

a. Failure to comply with, or violation of, any provision of the casino gaming law, this chapter, or any other law, regulation, or condition of the department related to casino gaming;

b. Failure to disclose facts during the application process that indicate that the service permit should not have been issued;

c. Conviction of a felony under the laws of the Commonwealth of Virginia or any other state, or of the United States subsequent to issuance of the service permit;

d. Failure to file any return or report, keep any record, or pay any fee or other charges required by the casino gaming law, this chapter, or any other law, regulation, or condition of the department related to casino gaming;

e. Any act of fraud, deceit, misrepresentation, or conduct prejudicial to public confidence in the integrity of gaming operations; or

f. A material change, since issuance of the service permit, with respect to any matters required to be considered by the director under the casino gaming law, this chapter, or any other law, regulation, or condition of the department related to casino gaming.

2. The director may temporarily suspend a service permit without notice pending any prosecution, hearing, or investigation, whether by a third party or by the director.

3. Disputes related to a suspension, revocation, or refusal to renew a service permit shall be conducted pursuant to the procedures set out in 11VAC5-90-40 F.

I. Portability.

1. A service permit holder who wishes to perform the functions approved by the department pursuant to its initial permit application at a different location or for a different licensee or permit holder shall inform the department in advance.

2. The department shall freely authorize transfers requested pursuant to subdivision 1 of this subsection.

3. The permit holder shall comply with the requirements set out in 11VAC5-90-40 for the replacement of identification cards.

J. Renewal term.

1. The term of a service permit shall be five years.

2. A holder of a service permit who wishes to renew the permit shall:

a. Submit a renewal application three to two months before the expiration date of the permit term; and

b. Pay any fees associated with the application and background investigation as required by the director.

11VAC5-90-90. Enforcement.

A. Inspections.

1. A licensee or permit holder is subject to unannounced inspections conducted by the department to evaluate and verify the entity's compliance with the casino gaming law, this chapter, and any other law, regulation, or condition of the department related to casino gaming.

2. The department may conduct an unannounced inspection without a warrant and take any of the following actions:

a. Conduct an inspection of premises in which:

(1) Casino gaming is conducted;

(2) Authorized casino games, table game equipment, a central monitor and control system, or associated equipment and software are:

(a) Designed;

(b) Built;

(c) Constructed;

(d) Assembled;

(e) Manufactured;

(f) Sold;

(g) Distributed; or

(h) Serviced; or

(3) Records are prepared or maintained for activities referenced in subdivisions 2 a (1) and 2 a (2) of this subsection;

b. Conduct an inspection of a casino game, table game equipment, a central monitor control system, or associated equipment and software in, about, on, or around the premises specified in subdivision 2 a of this subsection;

c. From the premises specified in subdivision 2 a of this subsection, summarily seize, remove, impound, or assume physical control of, for the purposes of examination and inspection:

(1) A casino game;

(2) Table game equipment;

(3) A central monitor and control system; or

(4) Associated equipment and software;

d. Inspect, examine, and audit books, records, and documents concerning a licensee's or permit holder's casino gaming operations, including the financial records of a:

(1) Parent corporation;

(2) Subsidiary corporation; or

(3) Similar business entity; or

e. Seize, impound, or assume physical control of:

(1) Books;

(2) Records;

(3) Ledgers;

(4) Cash boxes and their contents;

(5) A counting room or its equipment;

(6) Other physical objects relating to casino gaming operations; or

(7) Any record or object that a licensee or permit holder is required by law or license and permit terms to maintain.

3. During an inspection, a licensee or permit holder and their employees, agents, and representatives:

a. Shall:

(1) Make available for inspection, copying, or physical control a record that a licensee or permit holder is required to maintain;

(2) Authorize any person having financial records relating to the licensee or permit holder to provide those records to the department; and

(3) Otherwise cooperate with the activities of the department described in this chapter; and

b. May not knowingly interfere with the authorized activity of the department during an unannounced inspection.

4. An unannounced inspection may be conducted:

a. Any time during reasonable business hours; and

b. Periodically, as determined by the department.

5. The refusal of a licensee or permit holder or their employees or agents to provide the department with the access necessary to perform an unannounced inspection may be the basis for enforcement action under this section.

6. In addition to subdivisions 1 through 5 of this subsection, department staff, along with agents of the Department of State Police and local law-enforcement or fire departments, may enter any casino gaming facility at any time to determine compliance with the casino gaming law, this chapter, and applicable fire prevention and safety laws.

B. Records and reports.

1. Within a reasonable time after the conclusion of the unannounced inspection, the department's inspectors shall submit a written report of the inspection to the director and the licensee or permit holder that was the subject of the unannounced inspection.

2. A written report of an unannounced inspection shall be considered a public record to the extent allowable under the Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia).

C. A licensee or permit holder may not:

1. Violate a provision of the casino gaming law, this chapter, or any other law, regulation, or condition of the department related to casino gaming;

2. Take, or attempt to take, any action that is intended to:

a. Change or influence the outcome of a casino game;

b. Influence any person or unit of government that is involved in implementing or enforcing the casino gaming law;

c. Interfere with the regular operation of:

(1) The central monitor and control system;

(2) A slot machine;

(3) Associated equipment or software; or

(4) A casino game;

3. Fail to:

a. Conform to the information contained in a license or permit application;

b. Meet a licensing or permit requirement;

c. Promptly submit to the department any change in the information contained in a license or permit application, including a subsequent conviction of a felony under the laws of Virginia, any other state, or the United States; or

d. Adequately remedy a deficiency of which the licensee or permit holder has received notice under this chapter.

D. Notice of violation.

1. After receiving a report of an alleged violation of subsection C of this section by a licensee or permit holder, the director shall notify the licensee or permit holder of the alleged violation and investigate the report.

2. The director may designate staff to serve on a review committee that:

a. Reviews the investigation into the alleged violation conducted under subdivision 1 of this subsection; and

b. Makes a recommendation to the director for addressing the alleged violation.

3. The review committee's recommendation to the director may include:

a. Requiring the licensee or permit holder to implement a corrective action plan;

b. Issuing the licensee or permit holder a warning letter;

c. Entering into a settlement agreement with the licensee or permit holder;

d. Recommending that the director initiate proceedings to impose a sanction or civil penalty on the licensee or permit holder; or

e. Any other appropriate action.

4. After considering the review committee's recommendation, the director may:

a. Initiate proceedings to impose a sanction or civil penalty on the licensee or permit holder;

b. Direct staff to:

(1) Implement the review committee's recommendation; or

(2) Take other appropriate action.

5. Department staff shall provide a licensee or permit holder with notice of the violations that describes the statute, regulation, or directive allegedly violated, along with the director's recommendation for addressing the alleged violation.

6. Nothing in this subsection shall be construed to require that:

a. The licensee or permit holder receive an opportunity to meet with staff or the director to discuss an informal settlement of a violation; or

b. The department undertake development of a corrective action plan or attempt to reach a settlement with the licensee or permit holder before the director initiates proceeding for imposition of a sanction or civil penalty against the licensee or permit holder.

7. If the report received under this subsection contains a credible complaint of an alleged criminal violation of the casino gaming law, the director shall immediately forward the report to the Office of the Attorney General and the Department of State Police for appropriate action.

E. Corrective action plan.

1. If the director instructs staff to initiate a corrective action plan with a licensee or permit holder, department staff shall give written notice to the licensee or permit holder that includes:

a. A description of the alleged violation;

b. A description of the sanctions and civil penalties that are possible because of the alleged violation; and

c. The requirement that the licensee or permit holder submit a corrective action plan to the department.

2. A corrective action plan shall include:

a. Periodic monitoring or progress reports;

b. Timelines for completing corrective action;

c. Implementation of measures to guard against recurrence of the alleged violation; and

d. Any other measures necessary to resolve the alleged violation.

3. Timeframe for implementing a corrective action plan.

a. Within 10 days of receipt of a notice under subdivision 1 of this subsection, the licensee or permit holder shall submit a corrective action plan to the director or the director's designee.

b. The director or the director's designee shall review the corrective action plan and inform the licensee or permit holder whether the corrective action plan is acceptable.

c. If the corrective action plan is acceptable, the licensee or permit holder shall implement it immediately.

d. If the corrective action plan is not acceptable, the licensee or permit holder shall submit a revised plan immediately.

4. If a licensee or permit holder fails to submit an acceptable corrective action plan within the timeframe described in this subsection, the director may:

a. Provide the licensee or permit holder additional time within which to submit an acceptable corrective action plan within five days; or

b. Initiate proceedings for imposition of a sanction or civil penalty.

5. Corrective plan outcome.

a. After a licensee or permit holder has completed, to the satisfaction of the director or the director's designee, a corrective action plan, the alleged violation is resolved, except that the alleged violation may be:

(1) The basis of a subsequent corrective action plan, settlement, sanction, or civil penalty if a similar violation occurs; or

(2) Raised during a board hearing as part of the department's enforcement record for the licensee or permit holder.

b. If, at any time during the corrective action period, the director or the director's designee determines that the licensee or permit holder has made insufficient progress toward fulfilling a requirement of the corrective action plan, the director may:

(1) For good cause, extend the time for completion of a correction action plan; or

(2) Initiate proceedings for imposition of a sanction or civil penalty.

c. If, at the end of the corrective action period, the licensee or permit holder has failed to satisfactorily complete the corrective action plan, the director may initiate proceedings for imposition of a sanction or civil penalty.

F. Settlement.

1. The director may provide a licensee or permit holder with the opportunity to discuss with staff a means of entering into a voluntary settlement agreement between the licensee or permit holder and the department by which the violation is settled without a sanction or civil penalty.

2. A settlement may involve elements of corrective action and may also include a remittance of funds to the department from the licensee or permit holder.

3. A settlement agreement shall be signed by an authorized representative of the licensee or permit holder and the director or director's designee.

4. If a licensee or permit holder violates a term of a settlement agreement, nothing in this subsection shall be construed to prevent the director or board from imposing a sanction or civil penalty against the licensee or permit holder for that, or the underlying violation.

G. Emergency suspension.

1. The director may emergently suspend a license or permit if the director determines that suspension is necessary to protect the Commonwealth's casino gaming program against a serious and imminent risk of harm to its integrity, security, or profitability.

2. If the director emergently suspends a license or permit, the director shall:

a. Promptly schedule a board hearing on the emergency suspension;

b. Provide the licensee or permit holder the written notice required under subsection E of this section,

c. Order the licensee or permit holder to immediately cease performing the functions otherwise authorized by the license or permit; and

d. Inform the licensee or permit holder that failure to comply with the director's order constitutes a separate violation for which an additional sanction or civil penalty may be imposed.

3. An emergency suspension may be resolved through a voluntary settlement agreement pursuant to subsection F of this section.

H. Imposition of sanctions and civil penalties.

1. For a violation of subsection C of this section, the director may impose:

a. A civil penalty:

(1) For a facility operator or a supplier, in an amount not to exceed $100,000; and

(2) For a holder of service permit, in an amount not to exceed $10,000; or

b. A sanction, including:

(1) Revocation of a license or permit;

(2) Suspension of a license or period for a period of time;

(3) Reprimand; or

(4) Condition that must be met within a specified time as to:

(a) Training;

(b) Staffing;

(c) Supervision;

(d) Compliance with internal controls;

(e) Probationary periods; or

(f) Any other directive to address the violation.

2. The imposition of a civil penalty or a sanction may be appealed to the board for a hearing under 11VAC5-20-180.

3. To determine the amount of a civil penalty to impose on a licensee or permit holder, the board shall consider:

a. The seriousness of the violation;

b. The harm caused by the violation; and

c. Whether the person who committed the violation acted in good faith.

4. To determine the appropriate sanction to impose on a licensee or permit holder, the board may consider the factors in subdivision 2 of this subsection, and:

a. Whether a violation was willful;

b. Whether the licensee or permit holder had, or should have had, control of the situation;

c. Whether the violation may have occurred in connection with unclear or insufficient:

(1) Information;

(2) Training;

(3) Communication; or

(4) Requirements;

d. Any extraordinary circumstances;

e. Prior disciplinary history with the board;

f. Profit that resulted, or may have resulted, from the violation;

g. Harm that resulted, or may have resulted, from the violation;

h. How the violation was detected;

i. Tailoring the discipline to address the violation;

j. Action taken by the licensee or permit holder to prevent recurrence of the violation;

k. Action taken by the department to address similar violations; and

l. Any other information that the board finds relevant.

5. Because a licensee and a permit holder is presumed to be familiar with applicable statutes and regulations governing Virginia's casino gaming program, a claim of ignorance of the law or this chapter may not be used as a defense to a finding of a violation or to the imposition of a sanction or civil penalty.

6. A sanction and a civil penalty may be imposed for each violation.

I. Board action.

1. Board action against a licensee or permit holder for a violation of subsection C of this section shall be conducted in accordance with 11VAC5-90-180, and the board shall:

a. Make a finding whether the licensee or permit holder violated a provision of subsection C of this section; and

b. If the licensee or permit holder violated a provision of subsection C of this section, decide whether, and to what extent, to impose a sanction or civil penalty.

2. A licensee or permit holder may seek judicial review of the board's decision.

3. A licensee or permit holder against whom the board ordered the imposition of suspension or revocation of a license or permit shall immediately comply with the board's order.

4. A licensee or permit against whom the board imposed a civil penalty shall remit to the board payment in full of the civil penalty within 30 calendar days.

11VAC5-90-100. General facility operator requirements.

A. Purpose.

1. The requirements of this section are in addition to any other requirements for licensees and permit holders.

2. The purposes of the casino gaming law and this chapter are to assist economic development, promote tourism, and provide for the implementation of casino gaming operations of the highest quality, honesty, and integrity and free of any corrupt, incompetent, dishonest, or unprincipled practices.

3. An application for a facility operator's license shall:

a. Be complete before it is fully evaluated by the department;

b. Shall include such information about the facility and its location as required by the department; and

c. Be evaluated as to whether:

(1) The application complies with the minimum standards provided in the casino gaming law and this chapter; and

(2) Gaming operations at the proposed location will be in furtherance of the purposes of the casino gaming law and this chapter.

B. Board and director responsibility.

1. No member of the board shall:

a. Have any direct or indirect financial, ownership, or management interest in any casino gaming operation.

b. Receive or share in, directly or indirectly, the receipts or proceeds of any casino gaming operation.

c. Have an interest in any contract for the manufacture or sale of gaming devices, the conduct of any gaming activity, or the provision of independent consulting services in connection with any gaming establishment or gaming activity.

2. The board may issue subpoenas for the attendance of witnesses before the board, administer oaths, and compel production of records or other documents and testimony of such witnesses whenever in the judgment of the board it is necessary to do so for the effectual discharge of its duties.

3. In addition to any other audits provided for under this chapter, the board may order such audits as it deems necessary and desirable.

4. The director shall have the authority to:

a. Inspect and investigate and have free access to the offices, facilities, or other places of business of any licensee or permit holder and may compel the production of any of the books, documents, records, or memoranda of any licensee or permit holder for the purpose of ensuring compliance with the casino gaming law, this chapter, and any other law, regulation, or condition of the department related to casino gaming.

b. Compel any person holding a license or permit to file with the department such information as shall appear to the director to be necessary for the performance of the department's functions, including financial statements and information relative to principals and all others with any pecuniary interest in such person.

c. Apply to the appropriate circuit court for an injunction against any person who has violated or may violate any provision of this chapter or any regulation or final decision of the department, and the order granting or refusing such injunction shall be subject to appeal as in other cases in equity.

d. In addition to and not limited by any action taken against a regulated entity, licensee, or permit holder, impose a fine or penalty not to exceed $1 million upon any person determined in proceedings commenced pursuant to § 58.1-4105 of the Code of Virginia to have violated any of the provisions of the casino gaming law, this chapter, any other regulation promulgated by the board, or any other law, regulation, or condition of the department related to casino gaming.

C. License or permit required.

1. A person may not operate a casino gaming establishment without having obtained an operator's license in accordance with the provisions of the casino gaming law and this chapter.

2. Only the holder of a supplier's permit may sell or lease, or contract to sell or lease, casino gaming equipment and supplies, or provide management services, to any licensee involved in the ownership or management of gaming operations to the extent provided in the permit.

3. Any person that supplies any casino gaming equipment, devices, or supplies to a licensed gaming operation or manages any operation, including a computerized network of a casino gaming establishment shall first obtain a supplier's permit.

4. A supplier shall:

a. Furnish to the department a list of all management services, equipment, devices, and supplies offered for sale or lease in connection with the games authorized under the casino gaming law, this chapter, and any other law, regulation, or condition of the department related to casino gaming;

b. Keep books and records for the furnishing of casino gaming equipment, devices, and supplies to gaming operations separate and distinct from any other business that the supplier might operate;

c. File a quarterly return with the department listing all sales and leases for which a permit is required; and

d. Permanently affix its name to all its equipment, devices, and supplies for gaming operations.

5. Gaming equipment, devices, and supplies may not be distributed unless the equipment, devices, and supplies conform to standards adopted by the department.

6. A supplier's equipment, devices, or supplies that are used by any person in an unauthorized gaming operation shall be forfeited to the Commonwealth.

7. No person shall participate in any gaming operation as a casino gaming employee or concessionaire or employee of either or in any other occupation that has determined necessary to regulate in order to ensure the integrity of casino gaming in the Commonwealth unless such person possesses a service permit.

8. A person who conducts a gaming operation without first obtaining a license to do so, or who continues to conduct such games after revocation of the person's license, in addition to other penalties provided, shall be subject to a civil penalty assessed by the board equal to the amount of gross receipts derived from wagering on games, whether unauthorized or authorized, conducted on the day, as well as confiscation and forfeiture of all casino gaming equipment, devices, and supplies used in the conduct of unauthorized games. Any civil penalties collected pursuant to this

subdivision shall be payable to the State Treasurer for deposit to the general fund.

D. Facility operator requirements.

1. A facility operator shall be the person primarily responsible for the gaming operations under the facility operator's license and compliance of such operations, and the compliance of the facility operator's affiliates and contractors, with the provisions of the casino gaming law, this chapter, and any other law, regulation, or condition of the department related to casino gaming.

2. A facility operator shall submit to the department any updates or revisions to the capital investment plan the facility operator provided with its initial license application pursuant to subdivision B 4 of § 58.1-4109 of the Code of Virginia.

3. A facility operator may operate its own equipment, devices, and supplies and may utilize casino gaming equipment, devices, and supplies at such locations as may be approved by the department for the purpose of training enrollees in a school operated by the licensee and approved by the department to train individuals who desire to become qualified for employment or promotion in gaming operations.

4. A facility operator shall be subject to review by the department on an ongoing basis and annually to determine compliance with the casino gaming law, this chapter, and any other law, regulation, or condition of the department related to casino gaming.

5. Annual reviews under subdivision 4 of this subsection shall include a certification from the host city of the status of the operator's compliance with local ordinances and regulations.

6. If the certification under subdivision 5 of this subsection states that the facility operator is not in compliance, the department shall require the operator to submit a plan of compliance, corrective action, or request for variance consistent with this chapter.

7. Department staff may be present in any facilities under the control of a licensee.

8. A facility operator shall file an annual report with the department listing its inventories of casino gaming equipment, devices, and supplies related to its operations in the Commonwealth of Virginia.

9. Within 90 days after the end of each fiscal year, a facility operator shall transmit to the department a third-party, independent audit of the financial transactions and condition of the licensee's total operations.

10. Every five years, a facility operator shall submit to the department for review and approval a reinvestment projection related to the facility to cover the succeeding five-year period of operations.

11. Consistent with requirements of the casino gaming law and the contract between a host city and its preferred casino gaming operator, a facility operator shall submit to the department evidence that:

a. Any contractor hired for construction at the facility has:

(1) Paid the local prevailing wage rate as determined by the U.S. Secretary of Labor under the provisions of the Davis-Bacon Act, 40 USC § 276 et seq., to each laborer, workman, and mechanic the contractor employs on the site;

(2) Participated in apprenticeship programs that have been certified by the Department of Labor and Industry or the U.S. Department of Labor;

(3) Established preferences for hiring residents of the eligible host city and adjacent localities, veterans, women, and minorities for work performed on the site;

(4) Provided health insurance and retirement benefits for all full-time employees performing work on the site; and

(5) Required that the provisions of subdivisions 11 a (1) through 11 a (4) of this subsection are included in every subcontract; and

b. The facility operator has:

(1) Paid its full-time employees performing work at the facility an hourly wage or a salary, including tips, that equates to an hourly rate no less than 125% of the federal minimum wage;

(2) Established preferences for hiring residents of the host city and adjacent localities, veterans, women, and minorities for work performed at the facility in compliance with any applicable federal law;

(3) Provided access to health insurance and retirement savings benefit opportunities for all full-time employees of the facility operator performing work at the facility; and

(4) Required that any contract for goods or services performed at the facility, other than construction, with projected annual services fees exceeding $500,000, meet the requirements of subdivisions 11 b (1), 11 b (2), and 11 b (3) of this subsection with regard to full-time personnel of the subcontractor who performed services at the facility.

E. Junkets.

1. Junket agreements and final reports

a. A facility operator shall ensure that:

(1) A junket agreement between a facility operator and a junket enterprise, or junket representative, is in writing; and

(2) An executed copy of the junket agreement is submitted to the department before a junket arrives at the facility.

b. A junket agreement shall include at least the following provisions:

(1) If the department disapproves a term of the junket agreement or determines that a junket enterprise or junket representative has engaged in an activity prohibited under the casino gaming law, this chapter, or any other law, regulation, or condition of the department related to casino gaming:

(a) The department shall notify the facility operator that is a party to the junket agreement of the disapproval or determination; and

(b) The operations under the agreement shall be suspended as of the date of the department's disapproval until it is amended by the parties to the satisfaction of the department;

(2) The junket enterprise or junket representative shall:

(a) Maintain good standing with the Commonwealth of Virginia; and

(b) Obtain and maintain all required business licenses and permits; and

(3) The services of the junket enterprise and junket representative will comply with all applicable laws.

c. Junket final reports shall:

(1) Be prepared by a facility operator for a junket engaged in or on its property and shall include:

(a) The origin of a junket and its date and time of arrival and departure;

(b) The name of all junket enterprises and junket representatives involved in the junket;

(c) A junket manifest that lists the names and addresses of the junket participants;

(d) The nature, amount, and value of complimentary services, accommodations, and other items provided by the facility to a junket participant; and

(e) The total amount of services or other items of value provided to or for the benefit of a player participating in a junket that was paid for by the junket enterprise, a junket representative, or an agent or employee of a junket enterprise or junket representative;

(2) Be prepared and signed by an employee of the facility operator;

(3) Be prepared at the beginning of the month following completion of the junket; and

(4) Be submitted to the department by the 15th day of the month following completion of the junket.

2. Prohibited activities. A facility operator shall ensure that a junket enterprise or a junket representative or an agent or employee of a junket enterprise or a junket representative does not:

a. Unless approved in writing by the department, accept compensation on any basis other than theoretical win;

b. Engage in collection efforts;

c. Solicit, receive, or accept any fee or gratuity from a player for the privilege of participating in a junket or for performance of any function for which the junket enterprise or junket representative is licensed;

d. Unless disclosed in writing to the facility operator for which the junket was arranged, pay for transportation or any other service or item of value that is provided to or for the benefit of a player participating in a junket;

e. Extend credit to or grant credit on behalf of a facility operator to a player participating in a junket;

f. Accept an advance of money or a loan from a player participating in a junket;

g. Engage in conduct that would bring the Commonwealth of Virginia into disrepute;

h. Pursue economic gain in an occupational manner or context that is in violation of the laws of the Virginia, if the pursuit creates a reasonable belief that participation of the junket enterprise or junket representative would be inimical to the policies of the laws of the Commonwealth, including the casino gaming law, this chapter, and any other law, regulation, or condition of the department related to casino gaming;

i. Engage in activities that create a reasonable belief that the junket enterprise or junket representative is or is an associate of a criminal or criminal enterprise; or

j. Perform junket services under an agreement that has not been reduced to writing.

F. Central monitor and control system.

1. Each casino game that operates electronically shall be connected to a central monitor and control system established and operated by the department.

2. In addition to complying with the minimum design standards of 11VAC5-90-150 V, the central monitor and control system shall:

a. Provide the ability to audit and account for casino revenues and distributions in real time; and

b. Collect the following information from each electronically operated casino game, as applicable:

(1) Cash in;

(2) Cash out;

(3) Points played;

(4) Points won;

(5) Gross gaming income;

(6) Net gaming income;

(7) The number of plays of the game;

(8) The amounts paid to play the game;

(9) Door openings;

(10) Power failures;

(11) Remote activations and disabling; and

(12) Any other information required by the department.

G. Conduct of casino gaming; prohibited acts.

1. A person licensed or holding a permit under this chapter shall allow no form of wagering that is not authorized by the casino gaming law and this chapter.

2. A facility operator may accept wagers only from an individual present at the facility.

3. A person present at a facility may not place or attempt to place a wager on behalf of another person who is not present at the facility.

4. No person younger than 21 years of age shall be permitted to make a wager or be present where casino gaming is being conducted.

5. No person shall place or accept a wager on youth sports.

6. No licensee or permit holder shall accept postdated checks in payment for participation in any gaming operation.

7. No licensee, permit holder, or any person on the premises of a casino gaming establishment shall extend lines of credit or accept any credit card or other electronic fund transfer in payment for participation in any gaming operation.

8. Casino gaming wagers shall be conducted only with tokens, chips, or electronic tickets or cards purchased from the facility operator.

9. Tokens, chips, or electronic tickets or cards may be used only for the purpose of:

a. Making wagers on casino games;

b. Converting to cash; or

c. Making a donation to a charitable entity granted tax-exempt status under § 501(c)(3) of the Internal Revenue Code, provided that the donated tokens, chips, or electronic tickets or cards are redeemed by the same charitable entity accepting the donation.

10. No person shall:

a. Operate casino gaming where wagering is used or to be used without a license issued by the department;

b. Operate casino gaming where wagering is permitted in a manner other than as specified by the casino gaming law, this chapter, or any other law, regulation, or condition of the department related to casino gaming;

c. Offer, promise, or give anything of value or benefit to a person who is connected with a gaming operation, including an officer or employee of a licensed operator or permit holder, pursuant to an agreement or arrangement or with the intent that the promise or thing of value or benefit will influence the actions of the person to whom the offer, promise, or gift was made in order to affect or attempt to affect the outcome of a game, or to influence official action of a member of the board, the director, a department employee, or a local governing body;

d. Solicit or knowingly accept a promise of anything of value or benefit while the person is connected with a gaming operation, including an officer or employee of a licensed operator or permit holder, pursuant to an understanding or arrangement or with the intent that the promise or thing of value or benefit will influence the actions of the person to affect or attempt to affect the outcome of a game, or to influence official action of a member of the board, the director, a department employee, or a local governing body;

e. Use or possess with the intent to use a device to assist in:

(1) Projecting the outcome of a game;

(2) Keeping track of the cards played;

(3) Analyzing the probability of the occurrence of an event relating to a game; or

(4) Analyzing the strategy for playing or betting to be used in a game except as permitted by department regulation;

f. Cheat at gaming;

g. Manufacture, sell, or distribute any card, chip, dice, game, or device that is intended to be used to violate any provision of the casino gaming law, this chapter, or any other law, regulation, or condition of the department related to casino gaming;

h. Alter or misrepresent the outcome of a game on which wagers have been made after the outcome is made sure but before it is revealed to the players;

i. Place a bet after acquiring knowledge not available to all players of the outcome of the game that is the subject of the bet or to aid a person in acquiring the knowledge for the purpose of placing a bet contingent on that outcome;

j. Claim, collect, or take, or attempt to claim, collect, or take money or anything of value in or from a game with intent to defraud, without having made a wager contingent on winning the game or claim, collect, or take an amount of money or thing of value of greater value than the amount won;

k. Use counterfeit chips or tokens in a game; or

l. Except for a permit holder or licensee authorized by the facility operator, possess any key or device designed for the purpose of opening, entering, or affecting the operation of a game, drop box, or electronic or mechanical device connected with the game or for removing coins, tokens, chips, or other contents of a game.

H. In addition to any criminal actions brought against the person, a person convicted of a violation of the activities listed

in subsection G of this section shall be barred for life from gaming operations under the jurisdiction of the board.

I. Any credential, license, or permit issued by the department if used by the holder thereof for a purpose other than identification and in the performance of legitimate duties in a casino gaming establishment, shall be automatically revoked.

J. Voluntary exclusion; responsible gaming.

1. In addition to the requirements of 11VAC5-90-60, a facility operator shall comply with the requirements of this subsection.

2. A facility operator may disclose information about an individual on the voluntary exclusion list to:

a. The department;

b. The facility's:

(1) Manager;

(2) Security department;

(3) Surveillance department; or

(4) Employees who are directly responsible for excluding unauthorized individuals from the facility; and

c. If the facility operator pursues criminal charges against an individual on the voluntary exclusion list who is suspected of trespassing at a facility, to:

(1) A law enforcement officer; or

(2) A person who is legally authorized to be involved in the criminal prosecution of an individual on the voluntary exclusion list who is suspected of trespassing at a facility.

3. If an individual on the voluntary exclusion list is found on the premises of a facility, the facility operator:

a. Shall immediately notify the department; and

b. May pursue criminal charges against the individual for trespassing or any other appropriate criminal charge.

4. A facility operator may not:

a. Permit an individual on the voluntary exclusion list to:

(1) Enter the facility; or

(2) Play a casino game;

b. Knowingly fail to exclude from the premises an individual on the voluntary list; or

c. Disclose information about individuals on the voluntary exclusion list beyond the disclosures that are authorized by subdivision 2 of this subsection.

5. Responsible gaming plan.

a. A facility shall establish a responsible gaming plan that sets forth the facility's plan for addressing problem gambling at the facility.

b. The responsible gaming plan shall include at least the following elements:

(1) Goals;

(2) Procedures and deadlines for implementation;

(3) Identification of facility personnel responsible for implementation;

(4) Responsibilities of facility personnel identified as responsible for implementation;

(5) Training for facility personnel on problem gambling and voluntary exclusion;

(6) Means of controlling access to records pertaining to voluntary exclusion;

(7) Means of educating players about:

(a) Problem gambling;

(b) Problem gambling treatment resources; and

(c) Voluntary exclusion;

(8) Placement of responsible gambling awareness materials in the facility;

(9) Procedures for ensuring that an individual in the voluntary exclusion program is not permitted to:

(a) Enter the facility;

(b) Play a casino game; or

(c) Claim a jackpot;

(10) The facility's response to the discovery of an individual who is enrolled in the voluntary exclusion program on facility property, which may include pursuing criminal charges against the individual; and

(11) Any other element required by the department.

c. A facility operator shall submit to the department its responsible gaming plan at least 60 days before operations are to commence.

d. A facility operator shall submit any amendments to its responsible gaming plan to the department prior to implementation.

e. A facility operator shall submit to the department an annual report describing the facility's responsible gaming plan.

6. A facility operator shall:

a. Post signage that prominently bears the gambling assistance message and the underage warning message approved by the department at each customer entrance to the gaming floor;

b. Ensure that the gambling assistance message approved by the department is included in an advertisement that is intended to encourage casino game play at its facility, including advertisements that are:

(1) In print medium;

(2) On a billboard;

(3) Broadcast on radio, television, or other means, including social media;

(4) Printed on a paper product that is associated with player consumption of food or beverage if the paper product is:

(a) Special ordered; and

(b) Branded with the facility's logo; or

(5) Printed on ticket stock; and

c. Place in the facility responsible gambling awareness materials according to its responsible gaming plan.

K. Mandatory exclusion.

1. This subsection establishes a mechanism by which the department:

a. Maintains a list of individuals who are to be mandatorily excluded or ejected from a facility; and

b. Establishes standards that require a facility operator to:

(1) Exclude or eject an individual from the premises of the facility; and

(2) Ensure that intoxicated individuals and individuals younger than 21 years of age are not allowed:

(a) To play casino games, engage in sports betting, participate in on-premises mobile casino gaming; or

(b) To be in areas of the facility where casino games, sports betting facilities, are located or onsite mobile casino gaming is conducted.

2. The department shall establish and maintain a mandatory exclusion list that identifies individuals whom the department has directed be mandatorily excluded or ejected by a facility operator.

3. The director may place on the mandatory exclusion list an individual who:

a. Has exhibited behavior:

(1) In an occupational manner or context for the purpose of economic gain; and

(2) Utilizes methods that are deemed by the department as criminal violations inimical to the interest of the Commonwealth;

b. Has been convicted of a criminal offense under the laws of the United States or any jurisdiction within the United States that is a criminal offense involving moral turpitude or a gambling offense;

c. Would adversely affect the interests of the Commonwealth, the licensee, or the individual if the individual were to be present at a facility;

d. Is the subject of any administrative or judicial order directing the individual to stay away from a casino or other gaming facility;

e. Presents a threat to the safety of any individual on the premises of a facility;

f. Engages in, or has a documented history of engaging in, disruption of casino game play;

g. The director or a facility operator has a reasonable belief that such individual has cheated, or attempted to cheat at a facility by engaging in conduct including:

(1) Altering or misrepresenting the outcome of a game or event on which bets have been placed;

(2) Placing, canceling, increasing, or decreasing a bet based on knowledge that is not available to other players;

(3) Claiming or collecting a prize from a facility that the individual did not win or earn or that the individual was not otherwise authorized to claim or collect;

(4) Manipulating a casino game, a central monitor and control system, or associated equipment or software to affect the outcome of a game or bet; or

(5) Altering the elements of chance or methods of selection or criteria that determine the outcome of a game or bet;

h. Has been banned for life from casino play or operations pursuant to the gaming law or this chapter; or

i. Engages in any conduct that may adversely affect public confidence in, or perception of, casino gaming operations in the Commonwealth.

4. In evaluating whether to place an individual on the mandatory exclusion list related to an incident or series of incidents, the director may specify monetary amounts and circumstances, including:

a. The nature of the incident;

b. Whether the individual was an employee of a licensee or permit holder at the time of the incident;

c. If the individual was a licensee or the holder of a permit, whether the individual was working at a facility while the individual engaged in conduct described in subdivision 3 of this subsection;

d. Whether the incident or incidents had a direct impact on:

(1) A facility;

(2) A player;

(3) A licensee; or

(4) The amount or type of loss to:

(a) A facility;

(b) A player; or

(c) A licensee or permit holder;

e. Whether the individual made restitution;

f. Whether the individual was involved in a prior incident that meets the criteria of subdivision 3 of this subsection;

g. Whether a facility has other information the director finds relevant; and

h. Any other information the director finds relevant.

5. The entry of an individual on the mandatory exclusion list shall include sufficient information to identify the excluded individual.

6. The mandatory exclusion list shall be subject to disclosure under the Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia).

7. Inclusion on mandatory exclusion list

a. Upon receipt of information that reasonably indicates that an individual meets any criteria under subdivision 3 of this subsection, and after making any considerations described in subdivision 3 of this subsection, the director shall:

(1) Evaluate the information;

(2) Ensure that the information sufficiently identifies the individual; and

(3) Decide whether to place the individual on the mandatory exclusion list.

b. Prior to placing an individual on the mandatory exclusion list, the director or the director's designee may provide a facility with:

(1) Information used to identify an individual who may be excluded;

(2) The factual basis for placing an individual on the mandatory exclusion list; and

(3) An opportunity to provide the director with information identified in subdivision 3 of this subsection.

c. If the director decides to place an individual on the mandatory exclusion list, department staff shall deliver to the individual via U.S. Postal Service mail, a written notice explaining:

(1) The factual basis for placing the individual on the mandatory exclusion list;

(2) The availability of a reconsideration meeting with the director or the director's designee;

(3) The requirements for submitting a request for a reconsideration meeting;

(4) That if a timely request for a reconsideration meeting is not submitted, the individual's name shall be:

(a) Placed on a mandatory exclusion list;

(b) Distributed to all Virginia facility operators; and

(c) Made publicly available; and

(5) That the excluded individual shall be:

(a) Prohibited from entering any facility and from playing any casino game in the Commonwealth of Virginia;

(b) Subject to criminal charges for trespassing or any other appropriate criminal charge; and

(c) Required to redeem or liquidate an unredeemed item with monetary value that the individual has received since being placed on the mandatory exclusion list and surrender those redeemed or liquidated sums to the Problem Gambling Treatment and Support Fund established under § 37.2-314.2 of the Code of Virginia.

8. Reconsideration meeting.

a. An individual may submit to the director a written request for a reconsideration meeting within 15 days of the date of the individual's receipt of the notice described in subdivision 7 of this subsection.

b. If an individual fails to timely submit a request for a reconsideration meeting, the individual shall be placed on the mandatory exclusion list.

c. A reconsideration meeting may be held by the director or the director's designee.

d. During a reconsideration meeting, an individual may:

(1) Be represented by counsel; and

(2) Present evidence as to why the individual does not meet the criteria for mandatory exclusion.

e. The director or the director's designee shall deliver to the individual via U.S. Postal Service mail, a written notice of the decision following the reconsideration meeting.

f. An individual dissatisfied with the result of a reconsideration meeting may submit a written request to the board for an appeal hearing.

g. The request for an appeal hearing shall:

(1) Be submitted within 15 days of the date of the individual's receipt of the written notice of the decision following the reconsideration meeting; and

(2) Describe the individual's legal and factual bases for disagreeing with placement on the mandatory exclusion list.

h. If an individual fails to timely submit a written request for an appeal hearing, the individual shall be placed on the mandatory exclusion list.

i. Upon receipt of a timely written request for an appeal hearing, the board shall provide the individual with a notice for the appeal hearing.

9. Appeal hearing.

a. If after an appeal hearing the board decides that the excluded individual does not meet any criteria under subdivision 3 of this subsection, the individual's name may not be placed on the mandatory exclusion list.

b. If after an appeal hearing, the board decides that the excluded individual meets any criteria under subdivision 3 of this subsection:

(1) The individual's name shall remain on the mandatory exclusion list;

(2) The department shall notify all facility operators of the individual's addition to the mandatory exclusion list;

(3) The individual may seek judicial review of the board's decision; and

(4) The individual may request to be removed from the mandatory exclusion list only as provided in subdivision 10.

10. Removal from mandatory exclusion list

a. After an excluded individual has been on the mandatory exclusion list for at least five years, the individual may request removal from the mandatory exclusion list.

b. An excluded individual's request for removal shall be submitted to the director in writing and shall include a detailed statement about why there is:

(1) Good cause for removal of the individual from the list; and

(2) A material change in the individual's circumstances since the individual's name was placed on the list.

c. The director or the director's designee shall investigate the request and make a recommendation to the department whether to grant or deny the request.

d. If the director or the director's designee recommends removing the individual from the list, the department may approve the recommendation without a hearing, and department staff shall:

(1) Remove the individual from the mandatory exclusion list;

(2) Deliver to the individual via U.S. Postal Service mail a notice of removal from the mandatory exclusion list; and

(3) Notify all facility operators of the individual's removal from the mandatory exclusion list.

e. If the director or the director's designee recommends continued inclusion on the mandatory exclusion list, the excluded individual may submit to the board a written request for an appeal hearing.

11. Appeal hearing.

a. The request for an appeal hearing shall:

(1) Be submitted within 15 days of the date of the individual's receipt of the written notice of the recommendation of the director or the director's designee; and

(2) Describe the individual's legal and factual bases for disagreeing with the recommendation.

b. If an individual fails to timely submit a written request for an appeal hearing, the individual shall remain on the mandatory exclusion list.

c. Upon receipt of a timely written request for an appeal hearing, the director shall provide the individual with notice for a hearing.

12. If after a hearing the board denies the individual's request for removal, the board shall deliver to the individual via U.S. Postal Service mail a notice that the:

a. Request was denied; and

b. Individual shall remain on the mandatory exclusion list.

13. Separate from the individual's ability to request removal from the mandatory exclusion list, the director shall periodically review the mandatory exclusion list and may consider the following in order to determine if an individual should be removed:

a. Whether the individual is living;

b. Whether there are changed circumstances; or

c. Any other relevant information.

14. Judicial review. The board's decision under subdivisions 9 and 11 of this subsection may be subject to judicial review.

L. Enforcement. A facility operator may not:

1. Knowingly fail to exclude or eject from the facility premises an excluded individual;

2. Fail to notify the department if an excluded individual is excluded or ejected from the facility;

3. Permit an intoxicated individual or individual younger than 21 years of age to:

a. Play a casino game; or

b. Be in areas of the facility where casino games are located;

4. Knowingly allow the following individuals to collect a jackpot:

a. An excluded individual; or

b. An individual younger than 21 years of age; or

5. Fail to obtain any unredeemed items and prizes in the possession of an excluded individual and transfer them to the Problem Gambling Treatment and Support Fund established under § 37.2-314.2 of the Code of Virginia.

M. Facility exclusion plan.

1. A facility operator shall establish a plan for identifying and:

a. Excluding or ejecting from a facility:

(1) Excluded individuals; and

(2) Individuals who may be eligible for placement on the mandatory exclusion list; and

b. Ensuring that intoxicated individuals and individuals younger than 21 years of age are not allowed:

(1) To play casino games; and

(2) In areas of the facility where casino games are located.

2. The plan required under subdivision 1 of this subsection shall include at least the following elements:

a. Goals;

b. Procedures and deadlines for implementation;

c. Identification of facility personnel responsible for implementation;

d. Responsibilities of facility personnel identified as responsible for implementation;

e. Training for facility personnel on the requirements of this chapter;

f. Regular monitoring of the mandatory exclusion list;

g. Prompt reports to the department about the presence on facility premises of an individual who:

(1) Is included on the mandatory exclusion list; and

(2) Is required to be prevented from playing casino games;

h. Prompt reports to the department about an individual who is permanently excluded from the facility;

i. The facility's response to the discovery of an individual who is on the mandatory exclusion list on facility property, which may include pursuing criminal charges against the individual; and

j. Any other element required by the department.

3. A facility operator shall submit to the department for its approval:

a. The exclusion plan required under subdivision 1 of this subsection at least 60 days before operations are to commence;

b. Any amendments to a facility's exclusion plan prior to implementation; and

c. An annual report describing the operation of the facility's exclusion plan.

N. Collection of taxes, fees, and civil penalties.

1. A tax on the adjusted gross receipts of each facility operator received from games authorized under this chapter other than for sports betting shall be imposed as required by § 58.1-4124 of the Code of Virginia.

2. A tax on adjusted gross revenue of each facility received from sports betting shall be imposed as required by § 58.1-4037 of the Code of Virginia.

3. The department shall send to facility operators an invoice for slot machine adjusted gross receipts on the first workday of each month, where "workday" means when Commonwealth of Virginia government offices are open for business.

4. A facility operator shall certify its adjusted gross receipts from gaming sources other than slot machines and submit the certification to the department on a monthly basis.

5. The taxes imposed on a facility operator for adjusted gross receipts as described in this subsection shall be paid by wire transfer to the department by a facility operator no later than the fifth day of each month for the month preceding when the adjusted gross receipts were received and shall be accompanied by any additional forms and returns required by the department, including the certification required by subdivision 3 of this subsection.

6. Funds received from an applicant, licensee, or permit holder for taxes, fees, or civil penalties shall be paid to the appropriate fund as established by the Code of Virginia.

7. For a fee or civil penalty:

a. The department shall issue an invoice or other order to pay; and

b. The applicant, licensee, or permit holder shall remit payment to the department within 30 days after the date of the invoice or order to pay by wire transfer or other method specified by the department.

8. The department may suspend or revoke a license or permit for willful failure to submit payments in full within the specified time.

9. The department may recover from an applicant or licensee whose payment of taxes, fees, or penalties is overdue:

a. The unpaid amount of the taxes, fees, or penalties;

b. Revenues lost to the Commonwealth as the result of the nonpayment;

c. Attorney fees; and

d. Any other penalty, interest, cost, and expense allowable by law.

10. The failure of a licensee or permit holder to timely pay a tax, fee, or penalty is a violation of an order of the department.

11. The department's election to seek recovery under subdivision 9 of this subsection does not preclude the department or the Commonwealth from enforcing other rights, or seeking other remedies, for the same failure to pay.

11VAC5-90-110. Casino gaming facility internal control standards.

A. Accounting records.

1. A facility operator shall maintain complete, accurate, and legible records of all transactions pertaining to the revenues and expenses of the facility.

2. General ledger records shall be maintained on a double entry system of accounting with transactions recorded on a basis consistent with generally accepted accounting principles in the United States.

3. Subsidiary ledgers and records supporting general ledger records shall be prepared in accordance with generally accepted accounting principles in the United States.

4. Subsidiary ledgers and records shall include, at a minimum, documents that:

a. Support the financial statements and all transactions impacting the financial statements including contracts or

agreements with manufacturers, contractors, and management companies;

b. Pertain to proceeds including generation of, accounting for, and transmission into the Gaming Proceeds Fund (§ 58.1-4125 of the Code of Virginia);

c. Identify for each casino game on a week-to-date, month-to-date, and year-to-date basis, the:

(1) Handle;

(2) Payout;

(3) Win amount;

(4) Win percentage; and

(5) Average payout percentage;

d. Identify all costs and expenses associated with the operation of a facility;

e. Are prepared in compliance with the internal controls approved by the department under this chapter; and

f. Relate to:

(1) Loans and other amounts payable by a facility operator;

(2) Player disputes including player complaint forms filed with the department under this section;

(3) Negotiable instruments accepted, deposited, returned as uncollected or ultimately written-off by a facility operator under this chapter; and

(4) Investments in property and equipment for the benefit of a facility.

B. Forms and documents.

1. A form or document required by this chapter, including stored data, shall have:

a. All information placed on the form or document recorded in ink or another permanent form; and

b. The title of the form or document and the name of the facility imprinted or preprinted on it.

2. If under this section multiple copies are required of a form or document, all copies shall have the name of the recipient receiving the copy preprinted on the bottom of the copy in order to differentiate between the copies.

3. If under this section a form or document is required to be accounted for by series number or copies of a form or document are required to be compared for agreement, the responsible department shall report exceptions in writing to the facility's internal audit department not later than two days after identification of the exception.

4. A facility operator may prepare more copies of a form or document than required by this section.

C. Content of internal controls

1. A facility operator shall develop a written description of its administrative and accounting procedures, including the system of internal controls over casino gaming operations.

2. A facility operator's internal controls are subject to review and approval by the department.

3. Internal controls shall, at a minimum, include:

a. Administrative controls and recordkeeping that document the authorization of transactions;

b. Accounting controls that provide reasonable assurance that:

(1) Transactions or financial events that occur in connection with the operation of a casino game are:

(a) Executed in accordance with the facility operator's authorization protocols;

(b) Recorded to permit preparation of financial statements in conformance with generally accepted accounting principles in the United States and the requirements of this chapter; and

(c) Recorded to permit proper and timely reporting and calculation of proceeds and to maintain accountability for assets;

(2) Access to assets is permitted only in accordance with the facility operator's authorization protocols; and

(3) The recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with regard to a discrepancy;

c. Procedures and controls for ensuring:

(1) That a slot machine accurately and timely communicates all required activities and financial details to the:

(a) Department's central monitor and control system; and

(b) Casino management system;

(2) That all functions, duties, and responsibilities are segregated and performed in accordance with sound financial practices by qualified personnel; and

(3) Through the use of a surveillance and a security department, that the facility is secure at all times during normal operation and during any emergency due to malfunctioning equipment, loss of power, natural disaster, or any other cause;

(4) Access controls that address, at a minimum, the:

(a) Content of, and administrative responsibility over, the manual or computerized access control matrix governing employee access to restricted areas;

(b) Issuance of a temporary access credential; and

(c) Comprehensive key controls;

(5) A record retention policy in accordance with this chapter;

(6) Procedures and controls over the movement of cash and the count room;

(7) Procedures and standards for conducting internal audits; and

(8) Other procedures and controls the department may require to be included in a facility operator's internal controls.

4. A facility operator shall make available a current edition of its department-approved internal controls, in hard copy or through secure computer access, to:

a. All mandatory departments required under this section; and

b. The department's onsite office.

5. A facility operator shall maintain, in hard copy or electronic form, all superseded internal controls together with the written representations required under this section for at least five years after the date the internal controls were superseded.

D. Review of internal controls.

1. At least 60 days before casino gaming operations are to commence, a facility operator shall submit its internal controls to the department for review and written approval.

2. The internal controls shall be accompanied by:

a. A certification by the facility operator's chief executive officer or chief legal officer that, to the best of their knowledge, the submitted internal controls conform to the requirements of the casino gaming law, this chapter, and any other law, regulation, or condition of the department related to casino gaming;

b. A certification by the facility operator's director of finance that the submitted internal controls:

(1) Establish a consistent overall system of internal controls;

(2) Provide reasonable assurance that financial reporting conforms to generally accepted accounting principles in the United States; and

(3) Conform to the requirements of the casino gaming law, this chapter, and any other law, regulation, or condition of the department related to casino gaming; and

c. An opinion letter by an independent certified public accountant expressing an opinion as to:

(1) The effectiveness of the design of the submitted system of internal controls over financial reporting;

(2) Whether the submitted system of internal controls conforms to the requirements of the casino gaming law, this chapter, and any other law, regulation, or condition of the department related to casino gaming; and

(3) If applicable, whether a deviation from the requirements of the casino gaming law, this chapter, or any other law, regulation, or condition of the department related to casino gaming identified by the independent certified public accountant in the course of its review of the submitted system of internal controls is material.

3. A facility operator may not commence operations until its internal controls are approved in writing by the director.

4. If the director determines that a submitted internal control is deficient, the:

a. Department shall provide the facility operator with written notice of the deficiency; and

b. Facility operator shall revise the internal control as appropriate and resubmit to the director for review.

5. A facility operator may not implement a change or amendment in its approved internal controls without the prior written approval of the director.

6. A facility operator's initial internal controls submission and a change or amendment to its approved internal controls shall be reviewed and approved in accordance with a process and timeframe developed and implemented by the department.

7. The process developed by the department under subdivision 6 of this subsection shall, at a minimum, require the facility operator to:

a. Submit a redlined copy of any section of the approved internal controls to be changed or amended with added text underlined and deleted text lined out;

b. Document on the redlined copy the date the director approved the section to be changed or amended and the date the revision was submitted to the director for review;

c. Submit a narrative explaining the reason for the change or amendment that includes the facility operator's target date for implementation;

d. Submit the written representations required in subdivision 2 of this subsection with regard to the proposed change or amendment;

e. Maintain a log of all changes or amendments in approved internal controls that includes the initial approval date and the effective date of any change or amendment approved by the director; and

f. Mark each page of approved internal controls with the date on which it was approved by the director.

E. Standard financial and statistical reports.

1. The department may require a facility operator to submit daily, weekly, monthly, quarterly, and annual reports of financial and statistical data.

2. Reports required under this chapter shall be in a form and submitted in accordance with a timeframe specified by the department.

3. Unless otherwise specified by the department, reports to the department shall be signed by the:

a. Chief executive officer if the facility operator is a corporation;

b. General partner if the facility operator is a partnership;

c. Manager if the facility operator is a limited liability company;

d. Chief executive officer or functional equivalent if the facility operator is any other form of business association; or

e. Owner if the facility operator is a sole proprietorship.

4. A facility operator shall submit a report to the department on the due date specified by the department unless an extension has been approved in writing by the director.

5. The department, on written notice to a facility operator, may require an interim report to be submitted in a form and in accordance with a timeframe specified by the director.

F. Annual audit and other regulatory reports.

1. A facility operator shall cause its annual financial statements to be audited in accordance with generally accepted auditing standards by an independent certified public accountant.

2. The annual financial statements shall be prepared on a comparative basis for the current and prior fiscal year and present financial position and results of operations in conformity with generally accepted accounting principles in the United States.

3. The audited financial statements shall include a footnote reconciling and explaining any difference between the financial statements included in any report submitted to the department under subsection E of this section and the audited financial statements.

4. A facility operator shall with regard to adjustments resulting from the annual audit:

a. Disclose to the department all adjustments whether or not recorded in the accounting records; and

b. Record the adjustment in the accounting records of the year to which the adjustment relates.

5. No later than 90 days after the end of its fiscal year, a facility operator shall submit to the department:

a. A copy of its audited financial statements; and

b. Any management letter or report prepared with regard to the financial statements by its independent certified public accountant.

6. A facility operator shall require the independent certified public accountant auditing its financial statements or other qualified entity approved by the department to render the following additional reports:

a. A report identifying:

(1) Material weaknesses or significant deficiencies in the facility operator's department-approved internal controls noted in the course of the examination of the financial statements; and

(2) Recommendations as to how to eliminate each material weakness or significant deficiency identified; and

b. A report assessing the adequacy and effectiveness of the facility operator's information technology security controls and system configurations with recommendations as to how to eliminate each material weakness or significant deficiency identified.

7. A facility operator shall prepare a written response to the reports required by subdivision 6 of this subsection that includes details as to any corrective action taken.

8. No later than 120 days after the end of its fiscal year, a facility operator shall submit to the department a copy of:

a. The reports required under subdivision 6 of this subsection;

b. The response required under subdivision 7 of this subsection; and

c. Any other report on internal controls or other matters relative to its accounting or operating procedures rendered by its independent certified public accountant.

9. If a facility operator or any of its affiliates are publicly held, the facility operator shall submit to the department a copy of:

a. Any report required to be filed with the Securities and Exchange Department.

b. Any other report required to be filed with a domestic or foreign securities regulatory agency.

10. A report required to be filed under subdivision 9 of this subsection shall be submitted to the department no later than 10 days after the date of filing with the applicable agency.

11. A facility operator shall submit a written report to the department if an independent certified public accountant who is engaged as the principal accountant to audit its financial statements:

a. Resigns;

b. Is dismissed as the facility operator's principal accountant; or

c. Is replaced by another independent certified public accountant as principal accountant.

12. A report required to be filed under subdivision 11 of this subsection shall include:

a. The date of the resignation, dismissal, or new engagement;

b. Whether in connection with the audits of the two most recent years preceding a resignation, dismissal, or new

engagement there were any disagreements, resolved or unresolved, with the former accountant on:

(1) Accounting principles or practices;

(2) Financial statement disclosure; or

(3) Auditing scope or procedure;

c. The nature of any disagreement disclosed in subdivision 12 b of this subsection;

d. Whether the principal accountant's report on the financial statements for either of the past two years contained an adverse opinion or disclaimer of opinion or was qualified;

e. The nature of any adverse opinion, disclaimer of opinion, or qualification; and

f. A letter from the former principal accountant addressed to the director stating whether the principal accountant concurs with the statements made by the facility operator in the report to the department submitted under this subsection.

13. A report required to be filed under subdivision 11 of this subsection shall be submitted to the department no later than 10 days after the end of the month in which the resignation, dismissal, or new engagement occurred.

14. No later than seven days after the date of filing with the applicable agency, a facility operator shall file with the department a copy of each Suspicious Activity Report-Casino filed under 31 CFR § 103.21.

15. A facility operator or a director, officer, employee, or agent of a facility operator who reports suspicious activity under 31 CFR § 103.21 may not notify an individual involved in the suspicious activity that the suspicious activity has been reported.

16. No later than seven days after the date of filing with the applicable agency, a facility operator shall file with the department a copy of each Currency Transaction Report by Casino filed under 31 CFR § 103.22.

17. At least 30 days before casino gaming operations are to commence, a facility operator shall submit to the department a copy of its compliance program required under 31 CFR § 103.64.

18. On or before its effective date, a facility operator shall submit to the department any change or amendment to its compliance program required under 31 CFR § 103.64.

G. Record retention.

1. All original books and records shall be:

a. Prepared and maintained in a complete, accurate, and legible form;

b. Stored in a format that ensures readability, regardless of whether the technology or software that created or maintains it has become obsolete;

c. Retained in a secure location equipped with a fire notification system:

(1) At the facility; or

(2) An off-site location approved by the department for the express purpose of document storage;

d. Kept immediately available for inspection by the department during all hours of operation;

e. Organized and indexed in a manner designed to provide immediate accessibility to the department; and

f. Destroyed only after expiration of the minimum retention period required under this section.

2. The department may, on submission of a written request or alternate record retention schedule by a facility operator, authorize destruction prior to the expiration of the minimum retention period required by this chapter.

3. Unless a request for destruction or alternate record retention schedule is submitted in writing and approved in writing by the department, a facility operator shall retain indefinitely original books and records documenting:

a. Ownership of the facility;

b. Internally initiated investigations and due diligence;

c. Personnel matters;

d. Signature cards of current employees; and

e. Destruction of documents including:

(1) The identity of the document;

(2) Period of retention; and

(3) Date of destruction.

4. Unless a request for destruction or alternate record retention schedule is submitted in writing and approved in writing by the department, a facility operator shall retain for a minimum of five years all original books and records not:

a. Identified for indefinite retention under subdivision 3 of this subsection; or

b Subject to an exemption under subdivision 5 of this subsection.

5. Exceptions. The following exceptions apply to the retention period in subdivision 3 of this subsection:

a. A minimum retention period of four years shall apply to documentation pertaining to cashiers' cage transactions;

b. A minimum retention period of three years shall apply to:

(1) Signature cards of terminated employees;

(2) Insurance records relating to claims by players;

(3) Surveillance and security department:

(a) Employee duty logs;

(b) Visitor logs;

(c) Incident logs;

(d) Recording logs; and

(e) Equipment malfunction reports; and

(4) Documentation pertaining to gaming tickets or promotional play instruments reported to the department as possibly counterfeit, altered, or tampered with;

c. A minimum retention period of 30 days shall apply to:

(1) Canceled promotional play instruments for which all reconciliations required by the facility operator's approved internal controls have been conducted and resolved;

(2) Voided gaming tickets; and

(3) Gaming tickets redeemed at a location other than a casino gaming machine or ticket redemption unit; and

d. A minimum retention period of seven days shall apply to gaming tickets redeemed at a casino gaming machine or ticket redemption unit.

6. On submission of a written request by the facility operator, the department may approve a location outside the facility to store original books and records.

7. A facility operator requesting to store original books and records outside the facility shall submit to the department:

a. A description of the proposed location, including details with regard to security and fire notification systems;

b. Details with regard to the ownership of the proposed storage facility; and

c. Procedures for department access to original books and records retained at the proposed location.

8. A facility operator may not store books and records outside the facility without the prior written approval of the director.

9. On submission of a written request by a facility operator, the department may approve a microfilm, microfiche, or other suitable media system for the copying and storage of original books and records.

10 A facility operator submitting a system for the copying and storage of original books and records shall demonstrate to the satisfaction of the director that the:

a. Processing, preservation, and maintenance methods to be utilized will make books and records readily available for review and reproduction;

b. Inspection and quality control methods to be utilized will ensure that when books and records are viewed or reproduced they will exhibit a high degree of legibility and readability;

c. Equipment necessary to readily locate, read, and reproduce books and records is available to the department at the facility or approved off-site storage location; and

d Detailed index of all microfilmed, microfiched, or other stored data maintained and arranged to facilitate the immediate location of particular books and records is available to the department at the facility or approved off-site storage location.

11. A facility operator may not utilize a microfilm, microfiche, or other suitable media system for the copying and storage of original books and records without the prior written approval of the department.

12. A facility operator may utilize the services of a contractor for the destruction of books and records permitted to be destroyed under this section.

13. Nothing in this section shall be construed as relieving a facility operator of any obligation to prepare or maintain books and records required by any other federal, state, or local governmental entity.

H. Table of organization.

1. For the purposes of this subsection, the title used to describe a department head is intended to indicate responsibility for the functions of the enumerated department and does not obligate the facility operator to use that particular title.

2. Subject to the requirements of this subsection, a facility operator shall tailor its table of organization to meet its needs and policies.

3. At least 30 days before casino game operations begin, a facility operator shall submit to the department for review and written approval a table of organization depicting all direct and indirect reporting lines for:

a. The chief executive officer required by this subsection;

b. Mandatory departments required by this subsection; and

c. The cashiers' cage manager required by this subsection.

4. A facility operator may not commence operations until the table of organization submitted under subsection is approved in writing by the director.

5. A facility operator's table of organization shall include:

a. A system of personnel and chain of command that permits management and supervisory personnel to be held accountable for actions or omissions within their areas of responsibility;

b. The segregation of incompatible functions, duties, and responsibilities so that no individual is in a position to both:

(1) Commit an error or to perpetrate a fraud; and

(2) Conceal the error or fraud in the normal course of the individual's duties;

c. All functions, duties, and responsibilities of qualified personnel;

d. Areas of responsibility that are not so extensive as to be impractical for one individual to monitor;

e. A chief executive officer who is:

(1) Based for employment purposes at the facility;

(2) The holder of a supplier permit as key manager; and

(3) Ultimately responsible for the daily conduct of all operations at the facility; and

f. The following mandatory departments and supervisors:

(1) A surveillance department supervised by a director of surveillance who is:

(a) Based for employment purposes at the facility;

(b) Subject to the reporting requirements of this section;

(c) The holder of a supplier permit as a key manager; and

(d) Responsible for the surveillance of all aspects of casino game operations;

(2) An internal audit department supervised by a director of internal audit who is:

(a) Responsible for managing the internal audit function and internal audit employees based at the facility;

(b) Subject to the reporting requirements of section;

(c) The holder of a supplier permit as a key manager; and

(d) Responsible for assessing compliance with approved internal controls, applicable laws and regulations, the reliability of financial reporting, deterring and investigating fraud, and the safeguarding of assets;

(3) An information technology department supervised by a director of information technology who is:

(a) Based for employment purposes at the facility;

(b) The holder of a supplier permit as a key manager; and

(c) Responsible for the quality, reliability, accuracy, and security of all casino and casino management systems and associated equipment and software utilized by the facility operator regardless of whether the data, software, or systems are located in or outside the facility;

(4) A security department supervised by a director of security who is:

(a) Based for employment purposes at the facility;

(b) The holder of a supplier permit as a key manager; and

(c) Responsible for the overall security of the facility;

(5) An accounting department supervised by a director of finance who is:

(a) Based for employment purposes at the facility;

(b) The holder of a supplier permit as a key manager; and

(c) Responsible for all accounting and finance functions, including the control and supervision of cashiers' cage, satellite cages, and count room; and

(6) A gaming operations department supervised by a director of gaming operations who is:

(a) Based for employment purposes at the facility;

(b) The holder of a supplier permit as a key manager; and

(c) Responsible for the operation and conduct of casino games.

6. Nothing in this section shall preclude a facility operator from establishing a casino games department supervised by a director of casino gaming machine operations and a director of table games operations.

7. The director of surveillance and the director of internal audit required by this subsection shall be independent of the chief executive officer regarding matters of policy, purpose, responsibility, and authority and shall report to an:

a. Individual based for employment purposes at the facility with no incompatible functions; or

b. Audit committee of:

(1) The facility operator; or

(2) A department-authorized licensed affiliate of the facility operator.

8. The individual or audit committee to whom the director of surveillance and the director of internal audit report under subdivision 7 of this subsection shall also control the hiring, termination, and salary of those directors.

9. The director of surveillance and the director of internal audit may report to the chief executive officer with regard to daily operations.

10. Mandatory departments and the supervisors over them shall cooperate with, yet perform independently of, all other mandatory departments and supervisory positions.

11. A facility operator may designate more than one individual to serve jointly as the director of a mandatory department required by this section.

12. A joint director of a mandatory department under subdivision 11 of this subsection shall be:

a. Based for employment purposes at the facility; and

b. Individually and jointly accountable and responsible for the operation of the department.

13. A department that is not mandatory may operate under, or in conjunction with, a mandatory department where the table of organization is consistent with the requirements of this section.

14. A facility operator's cashiers' cage manager shall hold a supplier's permit as a key manager.

15. Unless another key manager required by this section is present at the facility, on any shift for which the cashiers' cage manager is not present in the facility, the cashiers' cage shift manager responsible for the cashiers' cage shall hold a supplier's permit as a key manager.

16. A facility operator may not implement a change in the table of organization approved by the department without the prior written approval of the department.

17. A facility operator shall ensure that an individual employed at the facility is trained in the policies, procedures, and internal controls relevant to the individual's function.

18. If there is a vacancy in the chief executive officer position or any mandatory department director position required by this subsection, the following shall apply:

a. No later than five days after the date of a vacancy, a facility operator shall notify the department in writing of:

(1) The vacant position;

(2) The date on which the position will become or became vacant; and

(3) The date on which the facility operator anticipates that the vacancy will be filled on a permanent basis;

b. No later than 30 days after the date of a vacancy, a facility operator shall fill the vacant position on a temporary basis;

c. No later than 120 days after the original date of the vacancy, a facility operator shall fill the vacant position on a permanent basis; and

d. No later than five days after filling a vacancy, a facility operator shall notify the department in writing of:

(1) The vacant position filled;

(2) The name of the individual designated to fill the position;

(3) The date that the vacancy was filled; and

(4) Whether the vacancy has been filled on a temporary or permanent basis.

I. Surveillance system design standards.

1. A facility operator shall install in its facility a surveillance system that complies with the requirements of this subsection and is reviewed and approved by the department.

2. A facility operator's surveillance system shall include:

a. Light sensitive cameras enabled by:

(1) Lenses of sufficient magnification to read a casino gaming machine's reel strip and credit meter;

(2) Lighting that is continuous and of sufficient quality to produce clear video recordings and still pictures; and

(3) 360-degree pan, tilt, and zoom capability, without camera stops, configured to clandestinely monitor and record:

(a) Play and transactions conducted at casino games;

(b) Transactions conducted in the cashiers' cage and any satellite cage, including the face of each individual transacting business with a cashier;

(c) Transactions conducted at ticket redemption units, automated jackpot payout machines, and automated teller machines;

(d) Activity in the count room;

(e) Movement of cash and cash storage boxes within the facility;

(f) Entrances and exits to the facility and the gaming floor;

(g) Activities in all other restricted areas; and

(h) Other areas and events designated by the director;

b. A monitor room located in the facility:

(1) Staffed by employees of the facility operator's surveillance department 24 hours per day; and

(2) Equipped with:

(a) A communication system capable of monitoring all security department communications;

(b) Connections, direct or through a documented communication protocol with the security department, to all facility alarm systems;

(c) A surveillance failure notification system that provides an audible, as well as a visual, notification of any failure in the surveillance system or the digital video recording media storage system;

(d) An emergency power system, tested by the facility operator in the presence of the department at least once a year, that can be used to operate the surveillance system in the event of a power failure;

(e) Computer terminals permitting event notification to, and read only access by authorized surveillance department employees to, the casino management system;

(f) An updated photo library, consisting of photographs that are no more than five years old, of all current employees of the facility;

(g) A copy of the facility operator's gaming floor plan;

(h) A copy of the procedures addressing the evacuation of the facility in the event of fire or other emergency; and

(i) Copies of the surveillance system contingency plans;

c. Digital video recording capability equipped to:

(1) Superimpose the date and time on all monitoring and recording;

(2) Identify and locate, through the use of a meter, counter, or other device or method, a particular event that was recorded;

(3) Identify on video recording disks or other storage media the type of media player and software prerequisite to viewing the digital images; and

(4) Be authenticated through use of an embedded video verification encryption code or watermark;

d. Audio recording capability in the count room that is installed and disclosed to employees of the facility; and

e. An access system that:

(1) Controls:

(a) Physical and logical access to the surveillance system; and

(b) Physical access to the surveillance monitor room; and

(2) Restricts access to the security administration capabilities of the system.

3. A facility operator shall configure its surveillance system to record all areas and transactions required by subdivision 2 a (3) of this subsection to no less than the minimum specifications required by the department.

4. With the approval of the department, a facility operator may configure its surveillance system to record activity in areas of the facility not covered by subdivision 2 a (3) of this subsection at lower specifications than that required by subdivision 3 of this subsection.

5. Except as provided in subdivision 6 of this subsection, a facility operator shall retain surveillance recordings:

a. For a minimum of 14 days for transactions or event in the areas covered by subdivision 3 of this subsection.

b. For a minimum of seven days for transactions or events in the areas covered by subdivision 4 of this subsection; and

6. Upon the request of the department or a law enforcement agency that has proper jurisdiction over the facility, a recording shall be retained and stored in accordance with the directives of the department or law enforcement agency pertaining to that recording.

7. Except as provided in this subsection, the surveillance system shall be under the exclusive control of the facility operator's surveillance department.

8. A facility operator shall provide the department with timely and unfettered access to its surveillance monitor room, surveillance system, and all transmissions.

9. A facility operator shall timely comply with a request from the department to:

a. Use, as necessary, any monitor room in the facility;

b. Display on the monitors in its monitor room or in the department's onsite monitor room any event capable of being captured by the surveillance system;

c. Relinquish control of a camera or monitor;

d. Discontinue monitoring a particular camera or recording activity captured by it;

e. Make a video recording or photograph of any event capable of being captured by the surveillance system; and

f. Restrict or deny access to a recording or photograph.

10. A surveillance system may not be remotely accessed from a location outside the surveillance monitor room without the prior written approval of the department.

11. An entrance to a surveillance monitor room may not be visible from the gaming floor.

J. Surveillance department operating procedures

1. At least 60 days before casino gaming operations commence, a facility operator shall submit to the department for review and written approval:

a. A surveillance system meeting the requirements of subsection J of this section, at a minimum, details pertaining to:

(1) Camera configuration inside and outside the facility;

(2) Monitor room configuration;

(3) Video recording format and configuration specifications;

(4) Authentication of digital recordings, including department access to the system's video verification encryption code or watermark;

(5) Audio recording format; and

(6) System access controls; and

b. Surveillance department operating procedures conforming to this section.

2. A facility operator may not commence operations until its surveillance system and surveillance department operating procedures are approved in writing by the department.

3. A facility operator's surveillance department operating procedures shall, at a minimum, require:

a. Coverage of all areas and transactions enumerated in subsection J of this section;

b. Contingency plans addressing:

(1) Full and partial failure of the surveillance system including:

(a) A contact list with telephone numbers for individuals required to be notified in the event of a failure; and

(b) Facility closure protocols; and

(2) Planned shutdown of the surveillance system;

c. A surveillance incident log:

(1) Maintained by monitor room employees in:

(a) A book with bound numbered pages that cannot be readily removed; or

(b) An electronic format equipped with software that prevents modification of an entry after it has been initially entered into the system; and

(2) Documenting the scheduled coverage in subdivision 3 of this subsection and all other nonroutine surveillance activity, including:

(a) Date and time surveillance is commenced;

(b) Name and department identification license or permit number of the individual initiating, performing, or supervising the surveillance;

(c) Reason for the surveillance;

(d) Whether the suspicious activity involves an alleged regulatory violation or criminal activity;

(e) Name, if known, alias, or description of an individual being monitored;

(f) Description of the activity in which the individual being monitored is engaged;

(g) Reading on a meter, counter, or device that identifies the point on the video recording at which the event was recorded;

(h) Time at which a video recording is commenced and terminated if different than when surveillance is commenced or terminated;

(i) Date and time surveillance is terminated;

(j) Summary of the results of the surveillance; and

(k) Description of the time, date, and cause of any equipment or camera malfunction that occurred during the conduct of surveillance;

d. A surveillance room entry log:

(1) To be signed by an individual entering the surveillance monitor room who is not a surveillance department employee assigned to the monitor room's work shift at the time of entry;

(2) Maintained by monitor room employees in:

(a) A book with bound numbered pages that cannot be readily removed; or

(b) An electronic format equipped with software that prevents modification of an entry after it has been initially entered into the system; and

(3) Documenting the:

(a) Date and time of entering the monitor room;

(b) Entering individual's name and department or affiliation;

(c) Reason for entering the monitor room;

(d) Name of the individual authorizing the individual's entry into the monitor room; and

(e) Date and time of exiting the monitor room;

e. That surveillance monitor room employees notify:

(1) Security department supervisory personnel within five minutes of an incident of equipment failure affecting coverage of the facility; and

(2) The department within 30 minutes of an incident of equipment failure affecting coverage of the facility citing:

(a) Date and time;

(b) Cause of the malfunction; and

(c) Time the facility operator's security department was notified of the malfunction;

f. That the facility operator confirms in writing a notice given verbally to the department under subdivision 3 e of this subsection; and

g. That, on a daily basis, the facility operator synchronizes the date and time on the surveillance system to the date and time on the central monitor and control system and the casino management system.

4. A facility operator may not implement a change or amendment in its surveillance system or surveillance department operating procedures approved by the department without the prior written approval of the department.

5. Surveillance department employees shall be reasonably segregated and independent of all other departments at the facility.

6. A surveillance department employee may not transfer to any other department in the facility without the prior written approval of the department.

K. Surveillance department minimum staffing.

1. At least 60 days before casino gaming operations are to commence, a facility operator shall submit its surveillance department minimum staffing plan to the department for review and written approval.

2. A facility operator may not commence operations until its surveillance department minimum staffing plan is approved in writing by the department.

3. A surveillance department minimum staffing plan shall assess, on a per-shift basis, the minimum number of on duty surveillance department employees necessary to:

a. Provide adequate and effective surveillance of all activities in and outside the facility;

b. Ensure the physical safety of employees of and invitees to the facility;

c. Comply with all applicable laws, regulations, and directives of the department and director, including department-approved internal controls and operating procedures;

d. Monitor the facility to ensure that the following individuals are identified, prohibited from entering the facility, and, if necessary, immediately removed from the facility:

(1) An intoxicated individual;

(2) An individual who is mandatorily excluded; and

(3) An individual who is voluntarily excluded;

e. Monitor the gaming floor to ensure that an individual younger than 21 years of age is identified, prohibited from accessing the gaming floor, and, if necessary, immediately removed from the gaming floor; and

f. Monitor the facility to identify potential victims of human trafficking and respond appropriately.

4. A facility operator's proposed surveillance department minimum staffing plan shall consider:

a. Square footage and layout of the facility;

b. Number and configuration of casino gaming machines and other casino gaming activities;

c. Use of fixed and roving security posts;

d. Activity level on a per-shift basis and identify it as slow, normal, or peak;

e. Department supervisory needs; and

f. A limit of one employee per monitor station.

5. A facility operator may not implement a change or amendment in the surveillance department minimum staffing plan approved by the department under subdivision 2 of this subsection without the prior written approval of the department.

L. Security department operating procedures.

1. At least 60 days before casino gaming operations are to commence, a facility operator shall submit to the department for review and written approval its security department operating procedures.

2. A facility operator may not commence operations until its security department operating procedures are approved in writing by the department.

3. A facility operator's security department operating procedures shall, at a minimum, include:

a. A security zone plan for the facility, employing fixed security posts and roving security officers designed to ensure:

(1) The physical safety of employees of and invitees to the facility;

(2) The safeguarding of assets;

(3) Compliance with all applicable laws, regulations, and directives of the department, including department-approved internal controls and operating procedures;

(4) That the following individuals are identified, prohibited from entering the facility, and, if necessary, immediately removed from the facility:

(a) An intoxicated individual;

(b) An individual who is mandatorily excluded; and

(c) An individual who is voluntarily excluded;

(5) That an individual younger than 21 years of age is identified, prohibited from accessing the gaming floor, and, if necessary, immediately removed from the gaming floor; and

(6) That potential victims of human trafficking are identified and an appropriate response is made.

b. Procedures and controls addressing:

(1) Facility access controls, including:

(a) An access badge system;

(b) If utilized, specifications pertaining to a computerized access control system; and

(c) Administrative responsibility over a manual or computerized access control system;

(2) A temporary access credential;

(3) Key controls;

(4) Emergency alarm and fire command responsibilities, including communication protocols with the surveillance department;

(5) Evacuation of the facility in the event of fire or other emergency;

(6) The identification and immediate removal of an intoxicated individual, an individual younger than 21 years of age, an individual who is mandatorily excluded, and an individual who is voluntarily excluded;

(7) Player disputes; and

(8) The notice requirements of subdivision 3 d of this subsection;

c. A security department incident log:

(1) Maintained by security department employees in:

(a) A book with bound numbered pages that cannot be readily removed; or

(b) An electronic format equipped with software that prevents modification of an entry after it has been initially entered into the system; and

(2) Documenting the following:

(a) Assignment number of the incident;

(b) Date and time;

(c) Name and department identification license of the individual covering the incident;

(d) Nature of the incident; and

(e) Resolution of the incident; and

d. A requirement that a facility operator notify in the department upon detection of:

(1) An individual engaged in, attempting to engage in, or suspected of cheating, theft, embezzlement, or other illegal activities;

(2) An individual possessing a firearm, electronic control device, dangerous weapon, or other device or object prohibited under this chapter; or

(3) An individual who is:

(a) Younger than 21 years of age;

(b) Intoxicated;

(c) Mandatorily excluded;

(d) Voluntarily excluded; or

(e) A victim of human trafficking.

M. Security department minimum staffing

1. At least 60 days before casino gaming operations are to commence, a facility operator shall submit its security

department minimum staffing plan to the department for review and written approval.

2. A facility operator may not commence operations until its security department minimum staffing plan is approved in writing by the department.

3. A security department minimum staffing plan shall assess, on a per-shift basis, the minimum number of on-duty security department employees necessary to:

a. Ensure the physical safety of employees of and invitees to the facility;

b. Effectively safeguard assets;

c. Comply with all applicable laws and regulations, including department-approved internal controls and operating procedures;

d. Monitor the facility to ensure that the following individuals are identified, prohibited from entering the facility, and, if necessary, immediately removed from the facility:

(1) An intoxicated individual;

(2) An individual who is mandatorily excluded; and

(3) An individual who is voluntarily excluded; and

e. Monitor the gaming floor to identify any individual younger than 21 years of age, prohibit them from accessing the gaming floor, and if necessary, immediately remove them from the gaming floor.

4. A facility operator's proposed security department minimum staffing plan shall consider the:

a. Square footage and layout of the facility;

b. Number and configuration of casino gaming activity;

c. Use of fixed and roving security posts;

d. Activity level on a per-shift basis and identify it as slow, normal, or peak; and

e. Department's supervisory needs.

5. A facility operator may not implement a change or amendment in the security department minimum staffing plan approved by the department without the prior written approval of the department.

N. Internal audit department standards.

1. At least 60 days before casino gaming operations are set to commence, a facility operator shall submit to the department for review and approval internal audit department operating standards and procedures that:

a. Meet the requirements of the casino gaming law, this chapter, and any other law, regulation, or condition of the department related to casino gaming;

b. Conform to this section; and

c. Direct that an internal audit be conducted in accordance with generally accepted auditing standards in the United States.

2. A facility operator's internal audit department operating procedures and standards shall, at a minimum, require the internal audit department to:

a. Work independently of the departments of the facility that are subject to audit;

b. Assess whether the facility's internal controls comply with applicable law and department directives;

c. Test the facility's compliance with its internal controls;

d. Timely report a deficiency in, or noncompliance with, the facility's internal controls to:

(1) The audit committee;

(2) The chief executive officer;

(3) Management; and

(4) The department;

e. Recommend resolution for eliminating a deficiency in, or noncompliance with, the facility's internal control system;

f. Meet periodically with the audit committee or director of internal audit;

g. Perform audits of:

(1) Unless an alternate risk assessment and audit plan is submitted in writing and approved in writing by the department, all departments of the facility that are designated under subdivisions 3 and 4 of this subsection; and

(2) Any component of the facility designated by the department;

h. Prepare an audit report for each audit conducted;

i. Accurately document the audit process and results in an audit report that, at a minimum, shall include:

(1) Audit objectives;

(2) Audit procedures and scope;

(3) Findings and conclusions;

(4) A recommendation for addressing a deficiency in, or noncompliance with, the facility's internal controls;

(5) Resolution of all exceptions; and

(6) Management's response;

j. Submit audit reports to the department on a schedule specified by the department; and

k. Within 90 days of the issuance of an audit report, verify that:

(1) A deficiency or noncompliance revealed during an audit has been corrected; and

(2) An exception disclosed during an audit has been resolved.

3. The audit department shall audit at least semiannually the functions and operations of the facility's:

a. Cashiers' cage;

b. Main bank;

c. Collection of cash storage boxes;

d. Cash count;

e. Revenue audit;

f. Operations department;

g. Key control; and

h. Table game operations.

4. The audit department shall audit at least annually:

a. Responsible gaming program;

b. Security department;

c. Currency transaction reporting;

d. Suspicious activity reporting;

e. Information technology controls;

f. Accounts payable;

g. Purchasing;

h. Player tracking system; and

i. Surveillance department.

5. The internal audit department shall conduct an audit on an unannounced basis when possible.

O. Access to central monitor and control system equipment

1. Central monitor and control system equipment shall reside in an area physically segregated from other systems and equipment utilized by the facility operator and shall conform to the requirements of the department.

2. At least 10 days before casino gaming operations are to commence, the department shall issue to the facility operator a list of individuals that it has approved to have access to the central monitor and control system equipment.

3. A facility operator may not implement a change or amendment in its approved access list without the prior written approval of the department.

4. A facility operator shall develop and include in the internal controls submitted to and approved by the department under subsection E of this section procedures that address physical access to central monitor and control system equipment located in the facility.

5. Central monitor and control system equipment may be accessed by:

a. An individual on the list described in subdivision 2 of this subsection;

b. A compliance agent of the department; and

c. Department staff authorized by the director.

6. The facility operator's internal controls shall require:

a. All keys that access the segregated area where the central monitor and control system equipment resides to be maintained by representatives of the:

(1) Department; and

(2) Central monitor and control system operator; and

b. An individual requiring access to the segregated area where the central monitor and control system equipment resides who is not included on the department-approved access list maintained under subdivision 2 of this subsection to be:

(1) Authorized by the department; and

(2) At all times, escorted by a department compliance agent, or department staff authorized by the director; and

(3) Reported in the entry log maintained in accordance with subdivision 7 of this subsection.

7. The department shall maintain an entry log for the segregated area where the central monitor and control system equipment resides that is:

a. Kept inside the segregated area in a book with bound numbered pages that cannot be readily removed; and

b. Utilized by an individual entering the segregated area to record:

(1) Date and time of entering;

(2) Entering individual's name and department or affiliation;

(3) Reason for entering;

(4) Name of the individual authorizing the individual's entry into the segregated area; and

(5) Date and time of exiting.

P. Cashiers' cage design standards.

1. A facility operator shall have on, adjacent, or proximate to the gaming floor a physical structure known as a cashiers' cage to house the cashiers and to serve as the central location in the facility for:

a. The custody of the cash, accounting records, and forms and documents required under this chapter to conduct casino gaming operations;

b. The initial financial consolidation of all transactions pertaining to casino gaming activity; and

c. Other functions normally associated with the operation of a cashiers' cage.

2. A cashiers' cage shall include the following design features:

a. A manually triggered silent alarm system connected:

(1) Directly to the security department; or

(2) Directly, or through a documented communication protocol, to the monitor room of the surveillance department;

b. A double door entry and exit system that will not permit an individual to pass through the second door until the first door is securely locked, as follows:

(1) The first door leading from the gaming floor shall be controlled by the security department, the surveillance department, or a department-approved computerized access control system;

(2) The second door leading into the cashiers' cage shall be controlled by the cashiers' cage or a department-approved computerized access control system;

(3) The double door entry and exit system shall be equipped with surveillance capability sufficient to allow monitoring of:

(a) All ingress and egress; and

(b) The interior compartment; and

(4) Both doors of the double door entry and exit system shall be equipped with:

(a) Separate locks with a key or release mechanism that is different on each door; and

(b) Locks that are operational in the event of a power failure; and

c. Any entrance to the cashiers' cage that is not a double door entry and exit system shall be equipped as an alarmed emergency exit door.

3. As approved by the department, a facility may have one or more satellite cages physically separate from the cashiers' cage that:

a. May perform all of the functions of a cashiers' cage; and

b. Shall be equipped with an alarm system.

4. A facility operator shall make readily available to the department:

a. An access control matrix indicating which employee job descriptions are authorized to have access to the cashiers' cage and any satellite cage; and

b. A list of employees, with department identification number, who are authorized:

(1) To have access to the:

(a) Cashiers' cage and any satellite cage;

(b) Keys to the manual locks securing the double door entry and exit system; and

(c) Release button on magnetic locks securing the double door entry and exit system;

(2) To activate or deactivate alarm systems for the cashiers' cage and any satellite cage; and

(3) To grant access to the cashiers' cage and any satellite cage through the access control matrix or a computerized access control system.

Q. Accounting controls for a cashiers' cage.

1. A facility operator may only conduct transactions with individuals at its cashiers' cage and any satellite cage during the hours of operation approved by the department for the facility.

2. A facility operator shall at all times maintain in its cashiers' cage a reserve cash bankroll sufficient to pay all winning wagers.

3. A facility operator shall:

a. Compute its reserve cash bankroll requirement based on a calendar year; and

b. Submit its computation to the department:

(1) At least 30 days prior to the commencement of casino gaming operations; and

(2) On or before January 30 of each year subsequent to the year in which operations are commenced.

4. A facility operator shall develop and include in the internal controls submitted to and approved by the department procedures that address the segregation of the cashiers' cage and the general conduct of cashiers' cage transactions.

5. A facility operator's internal controls shall require:

a. The cashiers' cage and any satellite cage to be physically segregated by personnel and function as follows:

(1) General cashiers shall be responsible for:

(a) An individual imprest inventory of cash;

(b) Receipt and payout of cash, negotiable instruments, gaming tickets, and other documentation from and to players subject to the limitations imposed under this chapter;

(c) Preparation of jackpot documents; and

(d) Other functions designated by the facility operator that are not incompatible with the functions of a general cashier; and

(2) Main bank cashiers shall be responsible for:

(a) Receipt of cash, negotiable instruments, gaming tickets, jackpot, and other documentation from general cashiers in exchange for cash or documentation;

(b) Replenishment of ticket redemption units and automated jackpot payout machines;

(c) Receipt of unsecured cash and unsecured gaming tickets;

(d) Receipt of cash and documentation from the count room;

(e) Preparation of the overall cashiers' cage reconciliation;

(f) Preparation of bank deposits;

(g) Compliance with reserve cash bankroll requirements; and

(h) Other functions designated by the facility operator that are not incompatible with the functions of a main bank cashier;

b. Each general cashier and main bank cashier to prepare a cashier count sheet on each shift:

(1) Recording the amount of the inventory in the window or bank;

(2) Reconciling the total closing inventory with the total opening inventory; and

(3) Including the signature of the:

(a) Outgoing general or main bank cashier; and

(b) Incoming general or main bank cashier;

c. At the end of the gaming day, the cashiers' cage is to forward a copy of each cashiers' count sheet and related documentation to the accounting department for:

(1) Agreement of opening and closing inventories; and

(2) Comparison of forms or documents; and

d. No more than 48 hours after the discovery of an employee's unresolved cage or count room overage or shortage of $500 or more, a facility operator shall submit a written report to the department describing:

(1) The reason for the overage or shortage and corrective action taken or adjustment made; or

(2) That a notice of investigation is ongoing and the written report will be submitted within the following 48 hours.

R. Checks accepted from a player.

1. A facility operator may accept a negotiable instrument in the form of a check meeting the requirements of this regulation from a player to enable the player to take part in gaming.

2. A facility operator may accept a check only during the hours of operation approved by the department for the facility.

3. A facility operator may accept a personal check that is:

a. Made payable to the facility operator;

b. Drawn on a bank, savings and loan association, or credit union subject to federal or State banking regulation;

c. Drawn for a specific amount;

d. Currently dated, not postdated; and

e. Payable on demand.

4. Subject to the requirements of subdivision 5 of this subsection, a facility operator may accept a check issued by a:

a. Facility operator; or

b. Person that:

(1) Is an affiliate of the facility operator; and

(2) Holds a valid gaming license in another jurisdiction.

5. A facility operator shall only accept a check under subdivision 4 of this subsection that has been issued to an individual as:

a. Employment compensation; or

b. A payout in connection with casino gaming activity.

6. A facility operator may not:

a. Except as provided under subdivision 3 of this subsection, accept a check that is payable to an individual, including:

(1) A Social Security check;

(2) An unemployment insurance check;

(3) A disability payment check; or

(4) A public assistance check; or

b. Except for a check issued under subdivision 5 of this subsection, accept from a player a check or multiple checks that in the aggregate exceed $50,000 during a gaming day.

7. For a personal check equaling or exceeding $5,000, a facility operator shall confirm the availability of funds by:

a. Directly contacting the bank, savings and loan association, or credit union upon which the check is drawn;

b. Obtaining an authorization and guarantee of the check from a check verification and warranty service holding a service permit as a contractor under this chapter; or

c. Alternating procedures addressing acceptance and verification of personal checks submitted in writing and approved by the department.

8. A facility operator shall develop and include in the internal controls submitted to and approved by the department procedures addressing the acceptance and verification of checks meeting the requirements of this subsection.

9. A facility operator's internal controls shall require a check accepted from a player by a general cashier to be:

a. If a personal check other than an electronic check, restrictively endorsed "for deposit only" to the bank account designated for this purpose by the facility operator and:

(1) Initialed by the accepting general cashier;

(2) Date and time stamped;

(3) Documented on the face of the check the number on the player's government-issued photographic identification; and

(4) If a personal check equaling or exceeding $5,000, confirmed for availability of funds under subdivision 7 of this subsection;

b. Verified for signature authenticity by a general cashier who shall:

(1) Obtain from the player one form of identification that is a valid, unexpired government-issued photographic identification; and

(2) Satisfactorily compare the:

(a) Signature of the player on the personal check or endorsing the payroll or payout check with the signature on an identification credential; and

(b) Player's physical appearance with the photograph contained on the valid, unexpired government-issued photographic identification presented by the player;

c. If presented by a player as a payroll or payout check under subdivision 5 of this subsection, confirmed to have been issued as employment compensation or as a payout in connection with casino gaming activity; and

d. Immediately exchanged for:

(1) Cash;

(2) If the facility operator has the capability, a gaming ticket;

(3) A chip or plaque;

(4) A player account in accordance with this chapter; or

(5) At the request of the individual, a combination of subdivisions 9 d (1), 9 d (2), and 9 d (3) of this subsection.

S. Wire transfers.

1. A facility operator may accept a negotiable instrument in the form of a wire transfer from a player to enable the player to take part in gaming.

2. A facility operator shall record in its cashiers' cage accountability any funds accepted by wire transfer with no documented business purpose other than to enable a player to take part in gaming within 24 hours of receipt of the wire transfer.

3. A facility operator shall develop and include in the internal controls submitted to and approved by the department procedures addressing the acceptance, verification, and sending of wire transfers meeting the requirements of this subsection.

4. A facility operator's internal controls shall:

a. Require preparation of a cashiers' cage wire transfer log to record the following information pertaining to a wire transfer accepted by a facility operator on behalf of a player:

(1) A sequential number assigned by the facility operator to the wire transfer accepted;

(2) Date and time notice of the wire transfer was received;

(3) Name of the financial institution to which the funds were sent;

(4) Amount transferred;

(5) Name of the player for whose benefit the funds were accepted;

(6) The name of the financial institution from which the funds were transferred;

(7) The method by which the facility operator was notified of the receipt of the wire transfer;

(8) If noticed by telephone, the name and title of the individual providing notice;

(9) The signature of the cashiers' cage employee receiving and recording the information required by this section; and

(10) If applicable, a notation that the wire transfer has been returned under subdivision 5 of this subsection;

b. Require that a cashiers' cage supervisor other than the cashiers' cage employee who initially documented acceptance of the wire transfer:

(1) Independently confirm:

(a) Date, time, and method by which the facility operator was notified of the wire transfer; and

(b) If noticed by telephone, the name and title of the individual providing notice;

(2) Record the date and time of confirmation in the wire transfer log; and

(3) Sign the wire transfer log as completing the confirmation process;

c. Document the procedures used to:

(1) Establish, verify, and document the identity of a player sending a wire transfer;

(2) Make the wire transfer proceeds available to a player at the cashiers' cage; and

(3) Adjust the cashiers' cage accountability;

d. Require preparation of a cashiers' cage wire transfer log to record the following information pertaining to a wire transfer sent by a facility operator on behalf of a player:

(1) A sequential number assigned by the facility operator to the wire transfer sent;

(2) Name of the player;

(3) Date of the transaction;

(4) Amount wired;

(5) Source of funds;

(6) The name and address of the financial institution to which the funds were wired;

(7) Account number to which the funds are credited;

(8) If the request to send a wire transfer is made in person at the cashiers' cage, the signature of the player;

(9) If the request to send a wire transfer is not made in person at the cashiers' cage, documentation supporting the receipt of a request by the facility operator to send a wire transfer on behalf of a player;

(10) The signature of the cashiers' cage employee receiving and recording the information required by this regulation; and

(11) The signature of the cashiers' cage supervisor or accounting department supervisor authorizing the wire transfer; and

e. Document the procedures used to:

(1) Establish, verify, and document the identity of a player requesting that a wire transfer be sent;

(2) Send the wire transfer; and

(3) Adjust the cashiers' cage accountability.

5. A facility operator shall take immediate action to return to a player by wire transfer funds initially accepted by wire transfer under the following circumstances:

a. The wired funds received by the facility operator have no documented business purpose other than to enable a player to take part in gaming;

b. All or a substantial portion of the wired funds remain in the facility operator's cashiers' cage accountability more than 14 days following transfer to that accountability; and

c. The player has engaged in minimal or no casino gaming play since receipt of the wire transfer.

6. A wire transfer returned in accordance with subdivision 5 of this subsection shall be sent to the same individual, financial institution, and account number from which the funds were debited.

7. Return of a wire transfer shall be recorded in the wire transfer log maintained under subdivision 4 of this subsection.

T. Cash equivalents.

1. A facility operator may accept a negotiable instrument in the form of a cash equivalent from a player to enable the player to take part in gaming.

2. A facility operator may accept a cash equivalent only during the hours of operation approved by the department for the facility.

3. A facility operator shall develop and include in the internal controls submitted to and approved by the department procedures addressing the acceptance and verification of cash equivalents meeting the requirements of this chapter.

4. A facility operator's internal controls shall:

a. Enumerate the type of cash equivalents complying with this chapter to be accepted;

b. Detail the specific verification procedures required by each issuer;

c. Require that a general cashier:

(1) Perform the specific verification procedures required by each issuer;

(2) Prepare and maintain documentation evidencing the verification of a cash equivalent accepted; and

(3) Examine a cash equivalent for counterfeiting, forgery, or alteration;

d. Detail the criteria for cashiers' cage supervisor involvement in the verification process; and

e. Include procedures for verifying the authenticity of a player's signature on a cash equivalent in conformance with the signature authentication procedures in subdivision R 9 of this section.

U. Player accounts.

1. In this subsection, "on-premises player account transactions" includes transactions that occur at an off-site customer service location approved by the department under subsection OO of this section.

2. A facility operator may establish a player account to enable the player to take part in gaming, which shall be subject to the following requirements:

a. The information necessary to initiate a player account shall be recorded and maintained for a period of five years and shall include at least:

(1) Player's legal name;

(2) Player's date of birth;

(3) Player's residential address (other than a post office box) and mailing address if different;

(4) Player's phone number;

(5) Player's active email address;

(6) Player's social security number (SSN) or equivalent for a foreign player who intends to place a wager within the Commonwealth of Virginia, such as a passport or taxpayer identification number. The player may enter only the last four digits of a SSN if other factors are sufficient to determine the entire nine-digit SSN within a reasonable time;

(7) Verification that the player is not prohibited by the gaming law or this chapter from participating in casino gaming; and

(8) Documentation of the government-issued identification credentials entered or other methodology for remote, multi-source authentication, which may include third-party and governmental databases as approved by the director.

b. A facility operator shall record the player's acceptance of the terms and conditions and privacy policy and acknowledgment that the information provided is accurate and the player is prohibited from allowing any other person to access or use the player's account.

c. If a facility operator determines that the information provided by a player to make a deposit or process a withdrawal is inaccurate or incapable of verification; fails to verify the identity of the player; or the player violates the policies and procedures of the facility operator, the facility operator shall, within 21 days, require the submission of additional information from the player that can be used to remedy any violation or failure to verify the identity or funds deposit or withdrawal information of the player. If such information is not provided or does not result in verification of the player's identity or deposit or withdrawal information, the facility operator shall:

(1) Immediately suspend the player account and not allow the player to place wagers;

(2) Submit any winnings attributable to the player to the director for distribution to the Commonwealth's Problem Gambling Treatment and Support Fund;

(3) Refund the balance of deposits made to the account to the source of such deposit or by issuance of a check; and

(4) Deactivate the account.

d. A facility operator shall notify a player of the establishment of the player account by email, text message, or first-class mail. When a player account is created, a secure personal identification (e.g., a unique username and password) for the player authorized to use the player account shall be established that is reasonably designed to prevent unauthorized access to or use of the player account by any individual other than the player for whom the player account is established.

e. A player may have only one player account for each facility operator.

3. A facility operator shall perform all procedures required by this subsection before depositing funds accepted by means of check, wire transfer, cash equivalent, or other negotiable instrument into a player account. A player account may also be funded using:

a. A debit card;

b. An electronic bank transfer, including a transfer through third parties;

c. An online or mobile payment systems that supports online money transfers;

d. Winnings or payouts;

e. Bonuses and promotions;

f. A reloadable prepaid card that has been verified as being issued to the player and is nontransferable; or

g. Any other means approved by the department.

4. A facility operator may accept an on-premises player account transaction only during the hours of operation approved by the department.

5. A facility operator shall develop and include in the internal controls submitted to and approved by the department procedures addressing the acceptance of player account transactions meeting the requirements of this subsection.

6. A facility operator's internal controls shall:

a. Address player account set-up and administration, including:

(1) The procedures utilized to create a unique access code to, and a unique player identification number for, a player account; and

(2) The controls employed to secure a player's access code;

b. Require on-premises acceptance of player account deposits at:

(1) The cashiers' cage; or

(2) An off-site customer service location;

c. Require preparation of a receipt documenting the:

(1) Amount deposited;

(2) Date of the deposit; and

(3) Signature of the general cashier accepting the player account deposit;

d. Provide for full or partial on-premises withdrawal from a player account:

(1) By a player at the cashiers' cage; or

(2) Upon receipt by the facility operator of a written request for withdrawal for which validity has been established; and

e. Include procedures for documenting on-premises acceptance of and withdrawal from a player account including a verification of the authenticity of a player’s signature on a player account transaction document in conformance with the signature authentication procedures in subdivision R 9 of this section.

7. Funds may be withdrawn from a player account through:

a. Wagers;

b. Cashier's check, wire transfer, or money order by the facility operator made payable to the player and issued directly or delivered to the player's address on file with the facility operator;

c. Credits to the player's debit card;

d. Electronic bank transfers, including transfers through third parties;

e. Online or mobile payment systems that support online money transfers;

f. Reloadable prepaid card, which has been verified as being issued to the player and is nontransferable; or

g. Any other means approved by the department.

8. A player's request for withdrawal of funds (i.e., deposited and cleared funds or funds won) in the individual's player

account shall be completed within 10 days unless there is a pending unresolved player dispute or investigation prompted by a player dispute or the director. Funds for withdrawal may be withheld from withdrawal until the funding transaction clears or the chargeback period ends.

9. All adjustments to a player account for individual amounts of $500 or less shall be periodically reviewed by the facility operator consistent with the facility operator's internal control standards. All other adjustments shall be authorized by the facility operator's management before being entered.

10. A facility operator shall not allow the transfer of funds or credits between players.

11. Each transaction with respect to a player account between a player and facility operator shall be confirmed by email, telephone, text message, or other means agreed upon by the player and facility operator.

12. A facility operator shall provide an account statement to a player on demand. An account statement shall include detailed account activity for at least six months preceding the 24-hour period before the request. In addition, facility operators shall, upon request, be capable of providing to a player a summary statement of all player activity during the previous 12 months.

13. A facility operator shall provide an account statement of player account activity shall upon:

a. Submission of a signed request for the statement at the cashiers' cage or off-site customer service location; and

b. Establishing the authenticity of the player's identity or signature on the request for the statement in accordance with the identity or signature authentication procedures in the internal controls submitted to and approved by the department.

14. The statement of player account activity required under this subsection shall summarize, at a minimum, a player's activity during the month prior to the date of the request for a statement and include the:

a. Player's beginning credit balance;

b. Credits earned during the month;

c. Credits transferred to a casino game;

d. Credits transferred from a casino game to a player account; and

e. Player's ending credit balance.

15. The statement of player account activity required under this subsection need not include promotional play credits transferred to a player without regard to the identity of the player.

16. A facility operator shall suspend wagers from being made and immediately re-verify a player's identification upon reasonable suspicion that the player's identification or player account has been compromised.

17. A facility operator shall offer an easily accessible method for a player to close the player's account. Any balance remaining in an account closed by a player shall be refunded pursuant to the facility operator's internal control standards within 10 days of notice from the player.

18. A facility operator shall suspend a player account if:

a. The player asks for suspension for a specified period not less than 72 hours as a self-limiting measure;

b. Required by the director; or

c. The facility operator knows or has reason to know of:

(1) Illegal activity related to the account;

(2) A negative account balance;

(3) Five failed Automated Clearing House deposit attempts within a 24-hour period; or

(4) A violation of the terms and conditions that has taken place on the player's account.

19. When a player account is suspended, the player shall be prevented from:

a. Wagering;

b. Depositing funds, unless the reason for the deposit is to clear a negative balance that resulted in the suspension;

c. Withdrawing funds, unless the reason for the suspension would not prohibit a withdrawal;

d. Making changes to the player account; or

e. Removing the player account from the facility operator.

20. A suspended player account may be restored:

a. Upon expiration of the time period established by the player;

b. When permission is granted by the director; or

c. When the facility operator has lifted the suspended status.

21. If a player account is inactive or dormant for five years:

a. The facility operator shall attempt to contact the account holder by mail, phone, and electronic mail;

b. If the account holder does not respond to the facility operator; the facility operator shall close the account; and

c. Any funds remaining in the account at the time of closing shall be paid 50% to the facility operator and 50% to the Commonwealth's general fund.

22. A facility operator shall ensure that account holders are made aware of the provisions of this subsection prior to opening a player account.

V. Returned checks.

1. All checks returned after deposit shall be:

a. Returned directly to an accounting department employee with no incompatible functions; and

b. Maintained by a check bank cashier with no incompatible functions.

2. A facility operator shall:

a. Limit collection efforts pertaining to a returned check to the following persons:

(1) A gaming employee or key manager of the accounting department with no incompatible functions; or

(2) An attorney representing the facility operator;

b. Inform the employee or attorney authorized to conduct collection efforts of any verbal or written communication with a player regarding collection efforts;

c. Document all collection efforts in the player's account file; and

d. Send a statement to a player at reasonable intervals.

3. After reasonable collection efforts, returned checks may be considered uncollectible for accounting purposes if the write off is authorized by the:

a. Chief executive officer; and

b. Director of finance or other designated key manager approved by the department.

W. Accounting controls in a check bank.

1. A facility operator shall record in a player's account file all transactions related to the player, including:

a. Transactions recorded in chronological order;

b. Documentation of:

(1) For counter checks, the date, amount, and series number;

(2) For each substitution check:

(a) The date, amount, and check number of the substitute check; and

(b) The series number of the counter check or check number of the replacement check returned to the player;

(3) For each consolidation check:

(a) The date, amount, and check number of the consolidation check; and

(b) The series numbers of the counter check or check number of the replacement check returned to the player;

(4) For each redemption check:

(a) The date, amount, and check number of the redemption check;

(b) An indication as to whether the redemption was partial or full; and

(c) The series number of the counter check or check number of the replacement check returned to the player;

(5) Date, amount, and series or check number of each check:

(a) Deposited; and

(b) Returned;

(6) If a check has been returned, the reason for its return;

(7) Player's account balance after each transaction;

(8) Date, amount, and series or check number of a check that has been partially or completely written off by the facility operator; and

(9) If a write off, the reason for the write off.

2. A facility operator shall maintain original copies of counter checks and replacement checks accepted in substitution, consolidation, and redemption transactions in its check bank.

3. A facility operator's check bank shall prepare and maintain for each shift, manually or by computer, a log of all counter checks exchanged and of all replacement checks received in substitution, consolidation, and redemption transactions that includes the following:

a. The balance of the checks on hand in the check bank at the beginning of each shift;

b. For counter checks accepted and for replacement checks received in substitution, consolidation, or redemption on the shift:

(1) Date of the check;

(2) Name of the drawer of the check;

(3) Amount of the check;

(4) If a counter check, the series number;

(5) If a replacement check, the check number; and

(6) If applicable, an indication that the check was accepted in a substitution, consolidation, or redemption transaction;

c. For checks deposited, substituted, consolidated, or redeemed by a player on the shift:

(1) Date on which the check was deposited, substituted, consolidated, or redeemed;

(2) Name of the drawer of the check;

(3) Amount of the check;

(4) If a counter check, the series number;

(5) If a replacement check, the check number; and

(6) An indication as to whether the check was deposited, substituted, consolidated, or redeemed; and

d. The balance of the checks on hand in the check bank at the end of each shift.

4. A facility operator shall develop and include in the internal controls submitted to and approved by the department procedures addressing the facility operator's accounting controls over the check bank, including end of shift and end of gaming day deposits and reconciliations.

X. Prohibition on the wagering with cash, credit cards, or debit cards.

1. A casino game may not be played or activated in any way by insertion, directly or indirectly, or use of:

a: Cash;

b. Credit card;

c. Debit card; or

d. Electronic transfer of funds from a credit card or debit card.

2. A casino game may be played only with tokens, chips, or electronic tickets or cards purchased from the facility operator.

3. It shall not be considered a violation of this subdivision to:

a. Use cash, a credit card, a debit card, or an electronic transfer of funds from a credit card or debit card to purchase from the facility operator tokens, chips, or electronic tickets or cards;

b. Convert cash, promotional play instruments, or electronic tickets or cards to purchase tokens or chips at a table game; or

c. Use cash to engage in sports betting in a sports betting facility within the casino gaming facility.

Y. Player tracking system.

1. A facility operator shall utilize a player tracking system meeting the requirements of this subsection.

2. A facility operator may not collect or monitor the activity of an individual who it knows, suspects, or has reason to know or suspect is:

a. Younger than 21 years of age;

b. Mandatorily excluded; or

c. Voluntarily excluded.

3. A facility operator shall provide a player with a record of casino game spending levels if:

a. The player:

(1) Has registered with the facility for inclusion in the player tracking system; and

(2) Submits a signed request for the spending level documentation at:

(a) The cashiers' cage; or

(b) Other location at the facility approved by the department; and

b. The identification of the player and the authenticity of the player's signature on the request is established by an employee satisfactorily comparing the:

(1) Player's information recorded on the spending level request documentation with the information contained on the valid, unexpired government-issued photographic identification presented by the player; and

(2) Player's physical appearance with the photograph contained on the valid, unexpired government-issued photographic identification presented by the player.

Z. Gaming ticket.

1. A facility operator shall develop and include in the internal controls submitted to and approved by the department procedures addressing the issuance and redemption of a gaming ticket in compliance with this subsection and 11VAC5-90-150 W.

2. A facility operator's internal controls shall:

a. Include procedures and controls to maintain a record of all unredeemed gaming tickets for a minimum of two years from the date of issuance of the gaming ticket unless a request to remove or relocate system records is submitted in writing and approved in writing by the department; and

b. Address the following events:

(1) Calculation and transmittal by the facility operator of its outstanding expired unredeemed gaming ticket balance to the Commonwealth of Virginia;

(2) An election by a facility operator to pay a gaming ticket when the gaming ticket system is inoperable or otherwise unable to verify the validity of the gaming ticket at the time of payment; and

(3) An election by a facility operator to pay a gaming ticket where the gaming ticket system fails to verify and electronically cancel the gaming ticket when it is presented by the player and scanned for verification.

3. A facility operator shall redeem at its cashiers' cage a gaming ticket of $5,000 or more by:

a. Cash or check; or

b. Check on the request of the player.

4. A facility operator shall immediately report to the department evidence that a gaming ticket has been counterfeited, tampered with, or altered in any way that would affect the integrity, fairness, or reliability of the gaming ticket.

5. A facility operator shall, in a form and in a timeframe specified by the department, submit a report to the department detailing any adjustment made to the amount of a gaming ticket.

AA. Promotional play.

1. A facility operator may:

a. Issue promotional play if it is not awarded as cashable credit; and

b. Utilize a promotional play system that has been tested, certified, and approved under this chapter.

2. A facility operator may not issue to a player promotional play equaling or exceeding $5,000 per gaming day without specific approval from the chief executive or the chief executive's designee.

3. A facility operator shall fully and accurately disclose the material terms of all promotional play offers involving casino gaming at the time any such offer is advertised and provide full disclosure of the terms of and limitations on the offer before the player provides anything of value in exchange for the offer.

4. If the material terms of a promotional play offer cannot be fully and accurately disclosed within the constraints of a particular advertising medium, the material terms and conditions shall be accessed by hyperlink that takes the individual directly to the material terms or directs the individual to the site to access the offer or bonus terms and in reasonably prominent size.

5. No promotional play available to a player who sets up a new player account may contain terms that delay full implementation of the offer by the facility operator for a period of longer than 90 days, regardless of the number or amount of wagers in that period by the player.

6. A facility operator shall develop and include in the internal controls submitted to and approved by the department procedures addressing the requirements of this subsection and:

a. Methods utilized to:

(1) Issue promotional play; and

(2) Redeem promotional play; and

b. A promotion play instrument, including a requirement that it document:

(1) Name or trade name of the facility operator;

(2) Amount in noncashable credits;

(3) Unique series number automatically generated by the promotional play system;

(4) Locations where a promotional instrument may be redeemed and any restrictions applicable to redemption;

(5) A bar code or magnetic strip that enables the promotional play system to identify the numeric information required by this section; and

(6) Notice to the player of the terms of expiration.

7. A facility operator shall immediately report to the department evidence that a promotional play instrument has been counterfeited, tampered with, or altered in any way that would affect the integrity, fairness, or reliability of the promotional play instrument.

8. A facility operator shall submit to the department in a form and in accordance with a timeframe specified by the department a quarterly report summarizing:

a. Promotional play awarded for the period, including:

(1) Total amount in promotional play awarded in noncashable credits; and

(2) Other forms of promotional play; and

b. Promotional play redeemed by players for the period, including:

(1) Total amount in promotional play redeemed in noncashable credits; and

(2) Other forms of promotional play redeemed.

BB. Ticket redemption unit.

1. A facility operator may utilize a ticket redemption unit meeting the requirements of this section.

2. A facility operator shall locate a ticket redemption unit on the gaming floor subject to the surveillance coverage requirements of this section.

3. A facility operator shall develop and include in the internal controls submitted and approved by the department procedures addressing a ticket redemption unit.

4. A facility operator's internal controls shall address:

a. Distribution of cash to a ticket redemption unit;

b. Removal of gaming tickets and cash accepted by a ticket redemption unit;

c. Reconciliations associated with the replenishment process;

d. Directing a player attempting to redeem a gaming ticket of $5,000 or more to the cashiers' cage.

CC. Jackpot payout.

1. A facility operator shall utilize a multipurpose jackpot or credit meter payout document meeting the requirements of this subsection to pay:

a. A jackpot not totally and automatically paid by a casino gaming machine; or

b. Credits accumulated by a player on a casino gaming machine if:

(1) The number of accumulated credits exceeds the amount that may be paid utilizing a gaming ticket under this section;

(2) Due to malfunction, the credits cannot be paid by the casino gaming machine; or

(3) A single jackpot event requires the filing of IRS Form W-2G, Certain Gambling Winnings.

2. A facility operator shall:

a. Prepare and timely file IRS Form W-2G, Certain Gambling Winnings, in accordance with IRS rules and regulations; and

b. Immediately report to the department any incident in which a casino gaming machine fails to lock up and

preclude play following a single jackpot event of $1,200 or more.

3. A facility operator shall pay a jackpot or credit meter payout of:

a. $50,000 or more by check; and

b. Less than $50,000 by:

(1) Cash or check; or

(2) On the request of a player, any combination of cash, gaming ticket, check, or other method of payment approved by the department.

4. A facility operator shall develop and include in the internal controls submitted to and approved by the department procedures addressing the payment of a jackpot or credit meter payout not totally and automatically paid by a casino gaming machine.

5. A facility operator's internal controls shall include:

a. The use of a two-part computer-generated jackpot or credit meter payout document initiated on the request of a gaming operations department attendant or gaming operations department supervisor or above after verifying the:

(1) Winning combination of characters on the casino game and the amount of the jackpot; or

(2) Number of accumulated credits;

b. Unless a request for an alternate verification procedure is submitted in writing and approved by the department, a requirement that if a jackpot or credit meter payout is $1,200 or more but less than $15,000, a security department employee or a gaming operations department attendant or gaming operations department supervisor or above other than the preparer of the document sign the jackpot or credit meter payout document after verifying the payment of the jackpot or credit meter payout to the player and:

(1) Winning combination of characters on the casino gaming machine and the amount of the jackpot; or

(2) Number of accumulated credits;

c. A provision that only the preparer is required to sign the jackpot or credit meter payout document if:

(1) A jackpot or credit meter payout is less than $10,000;

(2) A casino or casino management system can independently verify a jackpot or credit meter payout;

(3) The casino or casino management system and the central monitor and control system are fully operational; and

(4) Overrides or adjustments are not required;

d. A requirement that, if a jackpot or credit meter payout is $15,000 or more but less than $35,000, a security department employee or a gaming operations department supervisor or above other than the preparer of the document sign the jackpot or credit meter payout document after verifying the payment of the jackpot or credit meter payout to the player and:

(1) Winning combination of characters on the casino gaming machine and the amount of the jackpot; or

(2) Number of accumulated credits;

e. A provision that if a jackpot or credit meter payout document generated incompliance with this subsection is requested by a gaming operations department supervisor or above, the verification required by this subsection may be completed by a gaming operations department attendant, a gaming operations department supervisor or above, or a security department employee;

f. A requirement that if a jackpot or credit meter payout is $35,000 or more, an operations department shift manager or higher level operations department employee other than the preparer of the document sign the jackpot or credit meter payout document after verifying the payment of the jackpot or credit meter payout to the player and:

(1) Winning combination of characters on the casino gaming machine and amount of the jackpot; or

(2) Number of accumulated credits;

g. A provision that if a jackpot or credit meter payout document required in compliance with this subsection is requested by a gaming operations department shift manager or higher level gaming operations department employee, the verification required by this subsection may be completed by a gaming operations department attendant, a gaming operations department supervisor or above, or a security department employee;

h. A requirement that the following information be on a two-part computer-generated jackpot or credit meter payout document:

(1) Date and time;

(2) Asset number of the casino gaming machine or table game on which the jackpot was registered or credits accumulated;

(3) Winning combination of characters constituting the jackpot or a code corresponding to the winning combination of characters constituting the jackpot or an indication that a credit meter payout is to be made;

(4) Amount to be paid;

(5) Unique transaction number generated by the casino management system;

(6) Signature or identification code of the preparer of the document;

(7) If the payout is $1,200 or more, the signature or identification code of a verifying witness in accordance with this regulation; and

(8) Unless an automated jackpot payout machine or a cash wallet is utilized to affect the payment, the signature or identification code of the cashier issuing the funds;

i. If utilized, procedures and controls applicable to a jackpot or credit meter payout:

(1) Using an automated jackpot payout machine meeting the requirements of subsection EE of this section; and

(2) By a gaming operations department attendant from a cash wallet impressed with $10,000 or less;

j. If utilized, procedures and controls to be implemented if the facility operator resets the casino gaming machine or credit meter before the player is paid;

k. A requirement that the surveillance department:

(1) Be notified of a jackpot or credit meter payout of $25,000 or more;

(2) Log all notices regarding a jackpot or credit meter payout in the surveillance log required under this section; and

(3) Obtain and retain a photograph of the face of the player receiving the payout;

l. Details pertaining to:

(1) Payment of a jackpot or credit meter payout at the:

(a) Cashiers' cage;

(b) Casino gaming machine; and

(c) Table game;

(2) The use of an accounting drop box; and

(3) Audit procedures to be performed by the facility operator's accounting department at the conclusion of each gaming day;

m. Procedures addressing unclaimed jackpots or accumulated credits abandoned on a casino game;

n. Details that establish the ability of the casino or casino management system to:

(1) Ensure that a two-part computer-generated jackpot or credit meter payout document is not susceptible to change or deletion from the system after preparation;

(2) Process and document system overrides or adjustments to jackpot or credit meter payouts, including:

(a) Overrides or adjustments where the payout requested does not match the payout amount sent from the casino gaming machine to the casino or casino management system; and

(b) Identification of the level of employee having override authority; and

(3) Process voided jackpot or credit meter payout documents; and

o. Procedures utilized to issue a manual jackpot or credit meter payout document that:

(1) Are to be used only when the casino or casino management system is unable to generate a jackpot or credit meter payout document;

(2) Conform to the jackpot payout or credit meter payout verification and signature requirements of this regulation;

(3) Involve use of a three-part serially prenumbered manual jackpot or credit meter payout document residing in a book, wiz machine, or functional equivalent;

(4) Require manual jackpot or credit meter payout books or their functional equivalent to be maintained in a secured locked cabinet in the cashiers' cage; and

(5) Require the key to the cabinet to be:

(a) Controlled by the security department or the accounting department; and

(b) Limited to sign out by a gaming operations department supervisor or above.

DD. Annuity jackpot.

1. In this subsection, unless the context clearly indicates otherwise,

"Discount rate" means a discount rate equal to the United States Treasury constant maturity rate for 20-year United States government securities for the week ending prior to the date of the jackpot, as identified in the applicable H.15 Statistical Release issued by the Federal Reserve Board plus 0.5%.

2. A facility operator may not offer an annuity jackpot without the prior written approval of the department.

3. A facility operator submitting a request for approval of an annuity jackpot to the department shall submit details pertaining to the annuity jackpot, including:

a. The specific terms of:

(1) The annuity; and

(2) Any cash payout option;

b. The written trust agreement supporting the trust fund used to make future cash payments on the annuity jackpot, including details pertaining to:

(1) Administration and funding of the trust agreement;

(2) Liability for payments owed to a player; and

(3) Designation of a trustee;

c. Internal controls addressing the offer and award of an annuity jackpot; and

d. Documentation supporting that the average payout percentage on the casino gaming machine offering the annuity jackpot will comply with this subsection.

4. A facility operator that offers an annuity jackpot payable over 10 years or more may offer a player the option to be paid in a single cash payout provided that payout is equal to

the present value of the annuity jackpot as calculated in subdivision 5 of this subsection.

5. The present value of a cash payout option on an annuity jackpot shall be determined by:

a. Applying the discount rate to each of the future annuity jackpot payments;

b. Multiplying the number of years until each jackpot payment would otherwise have been received; and

c. Adding to that amount the amount of the first cash payment that would otherwise have been received.

6. A facility operator shall pay a cash payout requested by a player in lieu of an annuity jackpot in accordance with subsection DD of this section.

7. A facility operator shall develop and include in the internal controls submitted to and approved procedures addressing the offer and award of an annuity jackpot.

8. A facility operator's internal controls shall include:

a. Procedures to be followed by a player to exercise a cash payout option; and

b. Procedures utilized to document payment of an annuity jackpot.

EE. Merchandise jackpot.

1. A facility operator may not offer a merchandise jackpot without the prior written approval of the department.

2. A facility operator submitting a request for approval of a merchandise jackpot to the department shall submit details pertaining to the merchandise jackpot, including:

a. The specific terms of:

(1) The merchandise offer; and

(2) Any cash payout option;

b. Documentation supporting the acquisition of the merchandise and its cash equivalent value under subdivision 4 of this subsection;

c. Internal controls addressing the offer and award of a merchandise jackpot; and

d. Documentation supporting that the average payout percentage on the casino gaming machine offering the merchandise jackpot will comply with this subsection.

3. If a facility operator offers a merchandise jackpot consisting of merchandise or an optional cash payout, the optional cash payout shall equal the cash equivalent value of the merchandise determined in accordance with subdivision 5 of this subsection.

4. The cash equivalent value of merchandise shall be determined as follows:

a. Merchandise that the facility operator sells directly to the public in the normal course of business shall be valued at an amount equal to the full retail price normally charged for the merchandise;

b. Merchandise that the facility operator does not sell directly to the public in the normal course of business, but that is provided directly to a player by the facility operator, shall be valued at an amount equal to the actual cost to the facility operator of the merchandise;

c. Merchandise that is provided directly or indirectly to a player on behalf of a facility operator by a third party not related to the facility operator shall be valued at an amount equal to the actual cost to the facility operator of having the third party provide the merchandise; and

d. Merchandise that is provided directly or indirectly to a player on behalf of a facility operator by a third party who is related to the facility operator shall be valued as if the related party were the facility operator under subdivisions 4 a and 4 b of this subsection.

5. For the purpose of determining adjusted gross receipts, the cash equivalent value of any merchandise paid as, or as a portion of, a jackpot shall be included in total winnings paid.

6. A facility operator shall pay a cash payout portion of a merchandise jackpot and a cash payout requested by a player in lieu of a merchandise jackpot in accordance with subsection DD of this section.

7. A facility operator shall develop and include in the internal controls submitted to and approved by the department procedures addressing the offer and award of a merchandise jackpot.

8. A facility operator's internal controls shall include:

a. Procedures to be followed by a player to exercise a cash payout option; and

b. Procedures utilized to document payment of a merchandise jackpot.

FF. Automated jackpot payout machine.

1. A facility operator may utilize an automated jackpot payout machine meeting the requirements of this subsection.

2. A facility operator may locate an automated jackpot payout machine on the gaming floor subject to the surveillance coverage requirements of this section.

3. A facility operator shall configure an automated jackpot payout machine to process only a jackpot or credit meter payout of less than $50,000.

4. A facility operator shall develop and include in the internal controls submitted to and approved by the department procedures addressing the payment of a jackpot or credit meter payout utilizing an automated jackpot payout machine.

5. A facility operator's internal controls shall include procedures and controls documenting:

a. A jackpot or credit meter payout transaction at an automated jackpot payout machine; and

b. Reconciliation and replenishment of an automated jackpot payout machine.

GG. Access to bill validators, cash storage, and table game drop boxes.

1. Access.

a. A facility operator shall control access to a bill validator, a cash storage box housed in a slot machine, table game, or other casino game drop box in accordance with this subsection.

b. Access to a bill validator shall be controlled by:

(1) At least one lock; and

(2) A key to the lock that is required to be maintained by the security department.

c. The cash storage box shall be secured to a bill validator by two separate locks, the keys to which are different from each other, and, for the lock on the belly door or main door of the casino gaming machine:

(1) The key shall be controlled by the casino gaming machine department in:

(a) A manual key box; or

(b) An automated key tracking system;

(2) Immediately prior to the commencement of the drop, the casino gaming machine department may issue its belly door or main door key to the accounting department;

(3) A key transferred from the casino gaming machine department to the accounting department shall be returned immediately following the conclusion of the drop;

(4) The facility operator shall establish sign in and sign out procedures in its internal controls documenting the transfers; and

(5) If an automated key tracking system is used, a facility operator shall require dual access from the security department and accounting department to obtain keys.

d. The lock on the release mechanism securing the cash storage box to the bill validator shall be controlled by the security department.

e. Access to the contents of a cash storage box shall be controlled by:

(1) At least one lock; and

(2) A key to the lock that is required to be maintained by the accounting department.

2. Control. A facility operator shall either:

a. Assign to a cash storage box an asset number that:

(1) Is permanently imprinted or affixed to the outside of the cash storage box; and

(2) Corresponds to the asset number of the casino gaming machine in which the cash storage box is installed; or

b. With the written approval of the department, utilize a computerized system for:

(1) Assigning a unique identification number to a cash storage box; and

(2) Attributing it to the casino gaming machine in which the cash storage box is installed.

3. A facility operator shall ensure that an asset number or unique identification number on a cash storage box is clearly visible to:

a. An employee involved in removing or replacing a cash storage box; and

b. The surveillance department.

4. A facility operator may maintain an emergency cash storage box without an asset number or a unique identification number if:

a. The word "emergency" is permanently imprinted or affixed on the box; and

b. When put into use, the cash storage box is temporarily marked with the asset number of the casino gaming machine in which it is installed.

5. Table game drop box.

a. A table game shall have a secure tamper-resistant table game drop box attached to it in which the following shall be deposited:

(1) Copies of fill request slips, fill slips, and table inventory slips; and

(2) Other table game wagering instruments approved by the department.

b. A table game drop box shall have:

(1) One lock securing the contents deposited into it;

(2) A separate lock securing the table game drop box to the gaming table, the key to which must be different from the keys to the locks securing the contents of the table game drop box;

(3) A slot opening through which currency, value chips, or poker rake chips for nonbanking games, other table game wagering instruments approved by the department, and required instruments can be inserted into it;

(4) A mechanical device that automatically closes and locks the slot opening upon removal of the table game drop box from the gaming table; and

(5) Permanently imprinted or impressed thereon, and clearly visible to surveillance, either:

(a) A number corresponding to a unique permanent number on the gaming table to which the table game drop box is attached and at least one letter indicating the type of game; and

(b) The word "emergency".

c. In addition to the requirements of subdivision 5 b (5) of this subsection, a table game drop box may also be identified by a bar code label that is securely affixed to the table game drop box and shall be:

(1) At a minimum, encoded with the information required by subdivision 5 b (5) of this subsection; and

(2) Prepared in accordance with the facility operator's approved internal controls.

d. The security department shall control the key used to release a table game drop box from a table game in a manual key box or an automated key tracking system.

(1) Immediately prior to the commencement of the table game count process, the security department may issue its release key to the count room supervisor for the purpose of resetting the release mechanism on empty table game drop boxes;

(2) A key transferred by the security department shall be immediately returned after the conclusion of the table game drop box count;

(3) In its internal controls, a facility operator shall establish sign-in and sign-out procedures governing key transfers and control of a key during breaks taken by count room personnel; and

(4) If an automated key tracking system is used, a facility operator shall require dual access from the security department and accounting department to obtain keys.

e. The keys to the table game drop box locks required under subdivision 5 b (1) of this subsection shall be controlled by the accounting department.

f. Before using a table game drop box labeled "Emergency" for a table game, a facility manager shall:

(1) Obtain verbal approval of department compliance personnel; and

(2) Temporarily mark the emergency table game drop box with the number of the gaming table and at least one letter indicating the game type.

HH. Collection of cash storage and table game drop boxes.

1. At least 30 days before casino gaming operations are to commence, a facility operator shall submit to the department in writing a drop schedule setting forth:

a. Specific pick-up days and times for collection of cash storage and table game drop boxes and requirements that:

(1) Cash storage boxes may not be commingled with table game drop boxes;

(2) Unless a drop box is from a table game pit that was never opened for gaming on that gaming day, table game drop boxes shall be collected once each gaming day; and

(3) The facility operator shall notify the department by telephone and in writing one hour in advance of changes to the table game drop box collection schedule.

b. Specifications as to what areas of the gaming floor will be covered on each pick-up day; and

c. Specific transportation routes to be utilized from the gaming floor to the count room on each pick-up day.

2. A facility operator shall notify the department:

a. In writing of a permanent change in the drop schedule including a pick-up day or time, area of the floor to be dropped, or transportation route; and

b. Prior to any temporary deviation from the drop schedule.

3. A facility operator shall make readily available to the department:

a. An access control matrix indicating which employee job descriptions are authorized to participate in the cash storage and table game drop box collection process; and

b. A list of employees, with license numbers, who are authorized to participate in the cash storage and table game drop box collection process.

4. A facility operator shall develop and include in the internal controls submitted to and approved by the department procedures addressing the collection of cash storage and table game drop boxes.

5. A facility operator's internal controls shall:

a. Detail the actual procedures to be performed and documentation to be generated by drop team employees collecting cash storage and table game drop boxes:

(1) In accordance with the drop schedule; and

(2) On an emergency basis; and

b. Require:

(1) Cash storage and table game drop boxes to be transported directly to, and secured in:

(a) The count room; or

(b) A trolley storage area approved by the department;

(2) The cash storage and table game drop box collection process to involve the participation of at least three employees, at least one of whom is an employee of the:

(a) Security department; and

(b) Accounting department;

(3) Prior to the movement of a trolley containing cash storage boxes from the gaming floor into the count room, an accounting department supervisor to verify that the number of cash storage boxes being transported from the gaming floor equals the number of cash storage boxes scheduled for collection that day;

(4) Prior to the movement of a trolley containing table game drop boxes from the gaming floor into the count room, an accounting department supervisor or floorperson or above to verify that the number of table game drop boxes being transported from the gaming floor equals the

number of table game drop boxes scheduled for collection; and

(5) Prior to changing the type of table game offered or removing a casino gaming machine or table game from the gaming floor, that an emergency drop shall be conducted.

6. A facility operator shall transport cash storage and table game drop boxes in an enclosed trolley secured by one lock that has a key that is controlled by the security department.

7. A facility operator shall store cash storage and table game drop boxes not attached to a bill validator, including emergency cash storage and table game drop boxes that are not actively in use:

a. In the count room in an area approved by the department;

b. In a trolley storage area approved by the department; or

c. In another location at the facility approved by the department.

8. The cabinet or trolley used for storage under subdivision 7 of this subsection shall be secured by one lock that has a key which is controlled by the security department in:

a. A manual key box; or

b. An automated key tracking system.

9. Immediately prior to the commencement of the count process, the security department may issue its key to the storage cabinet or trolley required under subdivision 7 of this subsection to a count room supervisor for the purpose of allowing count room personnel to gain access to the cash storage or table game drop boxes to be counted.

10. A trolley storage area utilized to store cash storage or table game drop boxes prior to the count process shall meet the design standards for a count room under subsection JJ of this section.

II. Count room design standards.

1. A facility operator shall have a count room designated, designed, and used for counting the contents of cash storage and table game drop boxes at a location approved by the department.

2. A count room shall:

a. Be constructed of materials and have an interior design that provides maximum security over the assets stored, and the activities conducted in, the room;

b. Meet the surveillance requirements of subsection J of this section, including audio coverage of the count process; and

c. Be constructed with doors equipped with:

(1) An alarm system that tracks all ingress to and egress from the room and that:

(a) Directly alerts the security department; or

(b) Directly, or through a documented communications protocol, alerts the surveillance department; and

(2) A locking mechanism with key backup, or a key that is:

(a) Different from the key to any other door to the count room;

(b) Different from the keys to the locks securing each cash storage and table game drop box; and

(c) Controlled by the security department or the accounting department.

3. A facility operator shall install in its count room a table constructed of clear glass or similar transparent material to be used for the emptying, counting, and recording of the contents of cash storage and table game drop boxes.

JJ. Accounting controls for a count room.

1. At least 30 days before casino gaming operations are to commence, a facility operator shall submit to the department a count schedule setting forth the specific times during which cash storage and table game drop boxes are to be counted and recorded.

2. A facility operator shall notify the department in writing of any:

a. Permanent change in the count schedule; and

b. Temporary deviation from the count schedule.

3. Count frequency.

a. A facility operator shall count the contents of each cash storage box at least once every seven days unless an alternative count schedule is submitted in writing to and approved in writing by the department.

b. A facility operator shall count the contents of each table game drop box at least once each gaming day unless an alternative count schedule is submitted to, and approved in writing by, the department.

c. Unless no gaming is conducted or otherwise offered at the casino gaming facility, a facility operator shall count the contents of each table game drop box at least once each gaming day.

d. The following shall be counted and recorded separately:

(1) Table game drop boxes from banking games; and

(2) Table game drop boxes from nonbanking games.

4. A facility operator shall develop and include in the internal controls submitted to and approved by the department procedures to address the counting and recording of cash storage and table game drop boxes.

5. A facility operator's internal controls shall:

a. Detail all hardware, software, and related equipment utilized by the facility operator to conduct the count;

b. Detail the actual procedures to be performed and documentation to be generated by:

(1) Count team employees conducting the counting process; and

(2) The main bank cashier in verifying and accepting the count;

c. Require computerized equipment utilized to count and strap currency, gaming tickets, and promotional play instruments to:

(1) Conduct two separate counts;

(2) If the separate counts are not in agreement, document the discrepancy;

(3) Be capable of determining the amount of a gaming ticket or promotional play instrument by independently examining information printed on the gaming ticket or promotional play instrument and:

(a) Calculating the amount internally; or

(b) Obtaining the amount directly from a gaming ticket system or promotional play system in a secure manner; and

(4) If a gaming ticket system or promotional play system is utilized to obtain the amount of a gaming ticket or promotional play instrument, require the system to perform a calculation or integrity check to ensure that the amount of the gaming ticket or promotional play instrument has not been altered in the system in any manner since the time of issuance;

d. Require a count room employee to:

(1) Wear a one-piece, pocketless garment;

(2) Carry only a handbag or other container constructed of transparent material; and

(3) Remove the count room employee's hands from, or return them to, a position on or above the count table or counting equipment only after holding the backs and palms of the hands straight out and exposing them to the view of other employees of the count team and a surveillance camera; and

e. Prior to the commencement of the count, require a count room employee to notify the surveillance department and receive confirmation that recording of the count process has commenced.

6. Table game drop box count requirements.

a. The department may require that the table game drop box be conducted in the presence of a department compliance representative.

b. After the contents of each table game drop box from a banking table game are counted, a member of the count team shall record on a three-part Daily Banking Table Game Count Report or electronic equivalent prepared on a computer system, the:

(1) Value of each denomination of currency counted;

(2) Total value of all denominations of currency counted;

(3) Gaming date of the items being recorded;

(4) Total number of banking table game drop boxes opened and counted; and

(5) Current date.

c. After the contents of each table game drop box from a nonbanking table game are counted, a member of the count team shall record on a three-part Daily Nonbanking Table Game Count Report or electronic equivalent prepared on a computer system the:

(1) Value of poker rake chips counted;

(2) Value of value chips counted;

(3) Total value of poker rake chips and value chips counted;

(4) Gaming date of the items being recorded;

(5) Total number of nonbanking table game drop boxes opened and counted; and

(6) Current date.

d. After the preparation of the Daily Banking Table Game Count Report and the Daily Nonbanking Table Game Count Report, the count team members and the count room supervisor shall sign the reports attesting to the accuracy of the information recorded thereon.

e. After the contents of all table game drop boxes have been counted, all cash, value chips, and poker rake chips shall be presented in the count room by a count team member to a main bank cashier or cage supervisor who, prior to having access to the information recorded on the Daily Banking Table Game Count Report and Daily Nonbanking Table Game Count Report, and in the presence of the count team members and, if required, a department compliance representative, shall recount the currency, value chips, and poker rake chips as follows:

(1) The main bank cashier or cage supervisor may bulk count all strapped currency;

(2) The department compliance representative may direct that currency straps be recounted by the main bank cashier or cage supervisor if a discrepancy is discovered during the initial bulk recount; and

(3) All partial straps, loose currency, mutilated or torn currency, value chips, and poker rake chips shall be recounted by the main bank cashier or cage supervisor.

f. Upon completion of the recount, the main bank cashier or cage supervisor shall attest to the accuracy of the count by signature on the Daily Banking Table Game Count Report and Daily Nonbanking Table Game Count Report.

g. The Daily Banking Table Game Count Report and the Daily Nonbanking Table Game Count Report shall be distributed as follows:

(1) Immediately after leaving the count room, the count room supervisor shall deliver the original to revenue audit

or place it in a secure locked box controlled by revenue audit;

(2) The department compliance representative who observed the count shall retain the second copy; and

(3) The cage supervisor or main bank cashier shall retain the third copy.

h. Immediately after leaving the count room, the count room supervisor shall deliver any additional documents contained in the table game drop boxes to revenue audit or place the documents in a secured locked box controlled by revenue audit, including:

(1) Requests for fills;

(2) Fill slips; and

(3) Table inventory slips.

i. A count room employee shall conduct a thorough inspection of the count room and all counting equipment in the count room to verify that no currency, chips, checks, vouchers, coupons, or other documentation remains in the room.

7. A gaming ticket or promotional play instrument accepted by a cash storage or table game drop box shall be counted and included in the calculation of proceeds without regard to the validity of the gaming ticket or promotional play instrument.

8. A promotional play instrument that is not canceled upon acceptance or during the count process shall be canceled prior to the conclusion of the count.

9. A facility operator shall report in writing to the department within 72 hours of the count:

a. Any variance between the actual count of cash, gaming tickets, and promotional play instruments in a cash storage box as determined in the count room and the amount for that particular cash storage box recorded on the:

(1) Facility operator's casino gaming machine; and

(2) If the data has been made available to the facility operator, the central monitor and control system;

b. The reason for the variance; and

c. Corrective action taken or adjustments made.

KK. Player complaints.

1. A facility operator shall attempt to timely resolve a dispute with a player concerning operation of a casino game, or payment of alleged winnings by establishing a process that includes:

a. Developing and publishing procedures by which a player may file a complaint with the facility operator in person, in writing, online, or by other means concerning operation of a casino game or payment of alleged winnings;

b. Responding to any such complaint in writing, via email, or via live chat within 15 days of the filing of the complaint, and if a player requests relief in a complaint and the requested relief or part thereof will not be granted, including in the response to the complaint the reasons for the denial of relief with specificity; and

c. If the response to a complaint is that additional information is needed, providing the player the form and nature of the information that is necessary, and when the additional information is received, responding to the complaint within seven days of receipt of the additional information.

2. A facility operator that is unable to satisfactorily resolve a dispute with a player within three days of notice of the dispute shall notify the department of the dispute.

3. On receipt of notice by the facility operator of the dispute, the department shall provide the player with a department player complaint form together with instructions for completing and submitting the form.

4. The department shall investigate a complaint submitted to the department and notify the player and facility operator of its determination.

5. The department may provide a player with a complaint form at any time upon request.

6. All complaints received by a facility operator from a player and the facility operator's responses to complaints, including email and live chat transcripts, shall be retained by the facility operator for at least four years and made available to the department within seven days of any request from the department.

LL. Possession of a weapon in a facility.

1. Except as otherwise provided in this subsection, an individual may not possess in a facility a firearm, stun weapon as defined in § 18.2-308.1 of the Code of Virginia; other dangerous weapon, including any defined in § 18.2-308 of the Code of Virginia; or other device or object designed to be used to inflict pain or cause injury.

2. The prohibition in subdivision 1 of this subsection:

a. Applies to all employees and contractors of the facility operator including security department employees; and

b. Does not apply to:

(1) An on-duty officer or agent of a local, state, or federal law-enforcement agency having proper jurisdiction over the facility when the officer or agent is acting in an official capacity;

(2) An individual who is employed by an armored car company or other entity that is under contract with the facility to transport cash or a cash equivalent; or

(3) An individual authorized by the department to possess a weapon or device identified in subdivision 1 of this subsection.

3. An individual requesting department authorization to possess a weapon identified in subdivision 1 of this subsection in a facility shall submit to the department in writing a request documenting:

a. A compelling need to possess a weapon in the facility;

b. That the individual is lawfully in possession of the weapon under applicable federal and state law; and

c. That the individual has received training in the possession and use of the weapon.

MM. Signs.

1. A facility operator shall construct all signs required under this chapter using a color scheme and font size reasonably expected to produce a sign that is readily visible to and readable by an individual entering the facility.

2. A facility operator shall post signs containing the following messages in a conspicuous location not more than 20 feet from each customer entrance to the facility: "An individual, including an off-duty officer or agent of a local, state or federal law enforcement agency, may not possess a weapon or other device designed to be used to inflict pain or cause injury in (name of facility) without the prior written approval of the Virginia Lottery."

NN. Acceptance of tips or gratuities.

1. Except as otherwise provided in this subsection:

a. A supervisory gaming employee of a facility is prohibited from soliciting or accepting a tip or gratuity directly from a player;

b. A gaming employee is prohibited from soliciting a tip or gratuity from a player; and

c. A facility operator may permit an employee who is authorized to accept a gratuity from a player to accept a gaming ticket if the gaming ticket is redeemed:

(1) At the cashiers' cage; and

(2) With approval of the employee's department supervisor, if the amount of the gaming ticket exceeds $100.

2. At least 30 days before table game operations are to commence, a facility operator shall submit to the department for approval internal controls relating to the acceptance of tips or gratuities by dealers at banking and nonbanking table games.

3. Except as provided in subdivision 7 of this subsection, a dealer shall immediately deposit all tips and gratuities into a transparent locked box reserved for tips and gratuities, and:

a. If roulette chips are received as a tips or gratuity, the marker button indicating the specific value of the roulette chips may not be removed until after the dealer, in the presence of a floorperson or above, has converted the roulette chips into value chips that shall then be immediately deposited in the transparent locked box reserved for tips and gratuities;

b. Tip and gratuities shall be:

(1) Collected and accounted for at least once each gaming day; and

(2) Placed in a common pool for distribution pro rata among all dealers in accordance with subdivision 5 of this subsection; and

c. A facility operator may include dealer supervisors in the common pool.

4. Upon receipt of a tip or gratuity from a player, the dealer shall extend the dealer's arm in an overt motion and deposit the tip or gratuity in the locked box reserved for tips and gratuities.

5. Tips and gratuities placed in a common pool shall be distributed pro rata among the dealers in the pool based on the number of hours worked and based on any standards for distribution established by a facility operator, which may include:

a. Hours of vacation time, personal leave time, or any other authorized leave of absence in the number of hours worked by each employee; and

b. Different full-time or part-time employees.

6. A distribution of tips and gratuities from a common pool shall occur no more than once every seven calendar days.

7. Notwithstanding the requirements of subdivision 3 of this subsection, a facility operator that offers the game of poker:

a. May establish a separate common pool for tips and gratuities received by its poker dealers; or

b. If it allows a poker dealer to retain the poker dealer's own tips and gratuities, shall require:

(1) Tips and gratuities received by a poker dealer to be deposited in a transparent locked box assigned to the particular dealer; and

(2) That the transparent locked box be moved from table to table with the dealer.

8. If a facility operator elects to follow the requirements of subdivision 7 b of this subsection, at the end of the poker dealer's shift:

a. The dealer shall take the transparent locked box assigned to the dealer to a cage cashier; and

b. The cage cashier shall open the container and count the tips and gratuities in the presence of the poker dealer, and record the total amount of the tips and gratuities received by the dealer, and:

(1) Return the tips and gratuities to the dealer; or

(2) Retain all or a portion of the tips and gratuities for inclusion in the dealer's paycheck.

9. If a facility operator elects to follow the requirements of subdivision 7 b of this subsection and has established a gaming industry tip and compliance agreement, subdivision 8 of this subsection does not apply.

10. A facility operator shall specify in its internal controls how dealer tips and gratuities will be reported to the Internal Revenue Service.

OO. Off-site customer service location.

1. A facility operator may establish an off-site customer service location for a player to create a player account and make a deposit under subsection U of this section.

2. A facility operator that uses an off-site customer service location shall have internal controls that require:

a. Establishment of a compliance program that is updated to include the off-site customer service location operation;

b. Identification of the:

(1) Address of the off-site customer service location;

(2) Date the off-site customer service location is expected to open;

(3) Name and contact information of the off-site customer service location manager;

(4) Off-site customer service location telephone numbers;

(5) Off-site customer service location normal hours of operation; and

(6) An organization chart listing all positions that will have responsibility over Virginia operations related to the off-site customer service location;

c. Commencement of operations at an off-site customer service location operation only after receiving department approval;

d. An Off-Site Customer Service Location Report to be maintained by the licensee and updated quarterly to include the following for each off-site customer service location:

(1) Address and telephone numbers;

(2) If applicable, opening and closing date;

(3) Name of the off-site customer service location manager;

(4) Off-site customer service location normal hours of operation; and

(5) Year-to-date and previous calendar year dollar amounts of the following Virginia-specific transactions received or disbursed and controlled by the off-site customer service location:

(a) Cash deposits, noncash deposits, and total deposits; and

(b) Cash withdrawals, noncash withdrawals, and total withdrawals;

e. An Off-Site Customer Service Location Report to be submitted to the department no later than 30 days after the end of the calendar year;

f. An off-site customer service location to maintain the following records for Virginia casino gaming operations:

(1) A separate monthly log, by day, of all funds deposited and withdrawn that includes:

(a) Player's name on an account to which the funds are being applied;

(b) Name of the individual making the payment;

(c) Date of deposit or withdrawal;

(d) Amount of deposit or withdrawal;

(e) Whether the transfer of funds was made by cash, check, or other financial instrument; and

(f) New ending account balance; and

(2) Monthly record of currency exchange rate gains and losses and money changer fees in conjunction with a player's transactions that includes:

(a) Player's name;

(b) Date of receipt; and

(c) Amount of payment; and

g. Any costs associated with the department's audit or review of an off-site customer service location operation to be reimbursed by the facility operator to the department.

3. An off-site customer service location may not open until the department approves:

a. The internal controls required by this subsection; and

b. An activation request submitted by the facility to the department.

11VAC5-90-120. Casino gaming facility standards.

A. Hours of operation.

1. A facility operator may not offer fewer hours of operation than provided for by law without the prior written approval of the director.

2. A facility operator that has received approval to offer fewer hours of operation may, upon written notice to the director, extend its hours of operation up to and including those allowable by law.

B. Facility design standards.

1. A facility operator shall, at its own expense, construct its facility in accordance with specifications established by the director, including:

a. Computer space for the central monitor and control system contractor that is:

(1) Equipped with heating, ventilation, and air conditioning;

(2) Supplied with power including an uninterruptible backup power supply;

(3) Secured with a key or alternative locking mechanism maintained and controlled by representatives of the department and the central monitor and control system operator in accordance with this chapter;

(4) Equipped with a door that, when opened, audibly signals the facility operator's surveillance monitoring room; and

(5) Covered by a surveillance system enabled to record all entry and exit to the computer space and activity in the area;

b. Equipment storage space for the central monitor and control system contractor;

c. Cable infrastructure access to the gaming floor;

d All necessary wiring for the gaming floor, unless the department requires its central monitor and control system contractor to install its wiring;

e. A base and high-backed seat for each slot machine;

f. At least 1,000 square feet of office space for use by department staff that is located immediately adjacent to the gaming floor and is equipped with:

(1) Partitioned work space, computers, telephones, copy capability, and supplies sufficient to meet the department's data processing and related needs;

(2) Computer terminals permitting read only access by authorized department staff to any computerized slot monitoring system, casino management system, or player tracking system used by the facility operator; and

(3) Keys or alternative locking mechanisms which are under the exclusive control of the department;

g. A surveillance system approved in writing by the department that is:

(1) Configured to provide surveillance of all slot machine and table game related activities within the facility in accordance with standards established by the department;

(2) Enabled with a digital video recording format in accordance with standards established by the department; and

(3) Equipped with a monitoring station for the exclusive use of the department which is configured with full camera control capability over the surveillance system and is capable of overriding the camera control capability of the facility operator;

h. An alarm system connected to all emergency exits from the gaming floor that:

(1) Produces a distinguishable warning sound that is discernible in the vicinity of an exit when the emergency door is opened; and

(2) Requires deactivation and reset by means of a key or alternative locking mechanism maintained and controlled by the security department;

i. An area for the detention of individuals taken into custody by any law-enforcement agency that has jurisdiction over the facility;

j. Adequate space for use by the department in connection with conducting background investigations of applicants or licensees;

k Any signage required by the department;

l. Communication systems capable of effecting timely communication between the facility and the department, law enforcement exercising proper jurisdiction over the facility, and emergency first responders; and

m. Any other equipment or design feature required by the department.

2. Virginia Lottery games.

a. A facility operator shall provide at least two locations in the facility for the sale of Virginia Lottery games that are offered by or through the department.

b. Virginia Lottery game sales locations shall be situated as near as practicable to a cashiers' cage.

C. Table games surveillance requirements.

1. In addition to the general surveillance system required by subsection B of this section and 11VAC5-90-110, a facility operator that offers table games shall have a surveillance system that includes:

a. Light sensitive cameras with lenses of sufficient magnification to allow the operator to clandestinely monitor in detail:

(1) The gaming conducted at each gaming table in the facility with sufficient clarity and coverage to simultaneously:

(a) Identify players and dealers; and

(b) View the table and determine the configuration of wagers, card, dice and tile values, and game outcomes;

(2) The movement of cash, gaming chips, and plaques, tip boxes, and drop boxes within the facility; and

(3) Any other activity or areas designated by the department; and

b. Stationary cameras dedicated to table games, including:

(1) Except for craps, baccarat, roulette and big six wheel, at least one stationary camera for each table game offered by the facility;

(2) At least two stationary cameras for each craps table, with one camera covering each end of the table;

(3) At least two stationary cameras for each baccarat table, with one camera covering each end of the table;

(4) At least two stationary cameras for each roulette table, with one camera covering the roulette wheel and one camera covering the roulette table layout;

(5) At least two stationary cameras for each big six wheel, with one camera covering the big six wheel and one camera covering the big six wheel table layout;

(6) Additional cameras as required by the department, which may include cameras with 360-degree pan, tilt, and zoom capabilities; and

(7) Single stationary cameras that:

(a) Are capable of clearly identifying the entire table layout, conduct, and outcome of the game; and

(b) May be used by a facility operator with the approval of the department in lieu of cameras identified in subdivisions 1 b (2) through 1 b (5) of this subsection.

2. A facility's surveillance system must continuously record transmissions from cameras used to observe the:

a. Gaming conducted at table games;

b. Collection of drop boxes and tip boxes;

c. Distribution of cards, dice, and tiles to gaming pits;

d. Inspection of cards, dice, and tiles in the gaming pits and at the gaming tables;

e. Retrieval of cards, dice, and tiles from the gaming pits at the end of the gaming day; and

f. Delivery of cards, dice, and tiles to the location designated and approved by the department for inspection, cancellation, destruction, or, if applicable, packaging for reuse.

3. Retention of recordings.

a. The surveillance recordings required under subdivision 2 of this subsection shall be retained for a minimum of 14 days.

b. A surveillance recording of suspicious activity, suspected or alleged regulatory violations, or suspected or alleged criminal activity shall be retained for a minimum of 30 days.

c. A surveillance recording shall be made available for review upon request by law enforcement.

4. Department approval of monitoring rooms.

a. Prior to the commencement of table game operations, a facility shall submit to the department a minimum staffing submission for the facility operator's surveillance monitor rooms.

b. The minimum staffing submission must consider the size and layout of the licensed facility as well as the number of table games and must at all times provide for surveillance of activities inside and outside the licensed facility.

c. A facility operator may not implement a surveillance plan, or an amendment to a surveillance plan or minimum staffing submission, without prior department approval.

D. Gaming floor plan.

1. At least 60 days before gaming operations are to commence, a facility operator shall submit a floor plan depicting its gaming floor and all restricted areas to the department for review and written approval.

2. A facility operator may not commence operations until its gaming floor plan is approved in writing by the department.

3. A gaming floor plan that a facility operator submits to the department shall:

a. Be drawn to 1/8-inch scale, unless another scale is approved by the department;

b. Be certified by an architect licensed to practice in the Commonwealth of Virginia;

c. Depict the gaming floor with a notation as to:

(1) Total square feet;

(2) Total square feet utilized for the placement of slot machines, table games and any other types of casino games;

(3) Total square feet reserved for future placement of casino games;

(4) Each casino game location, identified by number and notation as to whether it is proposed for present use or reserved for future use;

(5) Number of casino game locations proposed for use on the gaming floor;

(6) Number of casino game locations reserved for future use;

(7) Each seat on the gaming floor;

(8) Perimeter of the gaming floor;

(9) A clearly delineated route for and individual who is not allowed to play casino games to bypass the gaming floor;

(10) Each automated bill breaker, gaming ticket redemption, coupon redemption, and jackpot payout machine; and

(11) Each security department zone, including a notation as to whether it is a fixed or roving post;

d. Depict all restricted areas within the facility with a notation as to:

(1) Cashiers' cage, any satellite cashiers' cage, and ancillary offices, inclusive of each cashiers' cage window location and location number;

(2) Computer space allocated to the central monitor and control system;

(3) Count rooms and any trolley storage areas;

(4) An area designated for the storage or repair of equipment or slot machines or table game equipment;

(5) Information technology department operations centers;

(6) Progressive controller locations;

(7) Surveillance monitoring room;

(8) Vault and armored car bay locations; and

(9) Any area designated as restricted by the facility operator in its department-approved internal controls;

e. Depict each surveillance camera with a notation as to camera type and location number; and

f. Depict each automated teller machine.

4. If a gaming floor includes an outdoor area, in addition to the requirements of subdivision 3 of this subsection, an operator shall submit to the department a gaming floor plan that includes:

a. The amenities that the operator intends to offer in the outdoor area;

b. An affidavit from the chief executive officer attesting that the outdoor area and its intended use meet all applicable local and state requirements; and

c. A plan for player and equipment safety during inclement weather.

5. A facility operator may not implement any change to its approved gaming floor plan without the prior written approval of the department.

11VAC5-90-130. On-premises mobile casino gaming.

A. A facility operator may offer to its players at the facility on-premises mobile casino gaming.

B. The on-premises mobile casino gaming permitted by under this section shall be subject to the provisions of and may be preempted and superseded by any applicable federal law.

C. A facility operator shall locate its primary on-premises mobile casino gaming operation, including facilities, equipment, and personnel who are directly engaged in the conduct of the gaming, within a restricted area of the facility.

D. Backup equipment used on a temporary basis may be located off-site with the approval of the department.

E. The area in a facility used to conduct and support on-premises mobile casino gaming shall:

1. Be arranged in a manner promoting optimum security;

2. Be incorporated into the surveillance system installed in the rest of the facility;

3. Meet the standards set by 11VAC5-90-120, with department staff allowed access to both the system and the signal of the operation;

4. Be designed to permit the department to monitor the mobile gaming operations; and

5. Comply in all respects with the casino gaming law, this chapter, and any department policy or directives.

F. A facility operator shall ensure that only people physically on-premises at the facility are able to place wagers through the facility operator's mobile casino gaming platform, by establishing systems and practices that provide that:

1. All wagers on casino games authorized by the gaming law, this chapter, or any other law, regulation, or condition of the department related to casino gaming shall be initiated, received, and otherwise made on the premises of the facility;

2. Before a facility operator begins its mobile gaming operations, all equipment and software used in conjunction with its operation shall be submitted to an independent testing laboratory approved by the director;

3. A mobile casino gaming platform submitted to an approved independent testing laboratory shall contain:

a. A complete, comprehensive, technically accurate description and explanation of the mobile casino gaming platform;

b. Detailed operating procedures of the mobile casino gaming platform;

c. A description of the risk management framework, including:

(1) User access controls for all facility operator personnel;

(2) Information regarding segregation of duties;

(3) Information regarding automated risk-management procedures;

(4) Information regarding identifying and reporting fraud and suspicious activity;

(5) Controls for ensuring regulatory compliance;

(6) A description of anti-money laundering compliance standards;

(7) A description of all software applications that comprise the system;

(8) A description of all types of wagers available to be offered by the system; and

(9) A description of all types of third-party systems proposed for utilization;

4. Upon request, a facility operator shall promptly provide the director with relevant reports and documentation that shall include, at a minimum:

a. Complete access to all wagers;

b. The ability to query or sort wagering data; and

c. The ability to export wagering data;

5. A facility operator or the supplier providing a facility operator's mobile casino gaming platform shall maintain all transactional wagering data for a period of five years;

6. The rules that apply to wagers placed on a mobile casino gaming platform shall be readily available to a player;

7. At least once every 24 hours, a mobile casino gaming platform shall perform an authentication process on all software used to offer, record, and process wagers to ensure there have been no unauthorized modifications. As part of this authentication process, the mobile casino gaming platform must be able to detect if any system component is determined to be invalid in the event of an authentication failure;

8. In the event of an authentication failure, the facility operator shall notify the director within 24 hours of the failure. The results of all authentication attempts shall be recorded by the mobile casino gaming platform and maintained for a period of 90 days;

9. A facility operator and a supplier providing a facility operator's mobile casino gaming platform shall grant the director access to wagering systems, transactions, and related data as deemed necessary and in the manner required by the director;

10. A mobile casino gaming platform shall provide a process for the director to query and export, in the format required by the director, all mobile casino gaming platform data; and

11. Additional system specifications may be specified by the director through the issuance of technical standards.

G. Geolocation systems.

1. A facility operator shall keep its geolocation systems up to date, including integrating current solutions in real time that can detect the use of remote desktop software, rootkits, virtualization, or any other programs identified by the director as having the ability to circumvent geolocation measures.

2. At least every 90 days, the integrity of the geolocation system shall be reviewed by the facility operator to ensure that the system detects and mitigates existing and emerging location fraud risks.

3. In order to prevent unauthorized placement of a wager by an individual on the premises of the facility, the mobile casino gaming platform must utilize a geofencing system to reasonably detect the physical location of an individual attempting to access the mobile casino gaming platform and place a wager and to monitor and block unauthorized attempts to place a wager when an individual is not within the permitted area inside the facility.

4. The geofencing system must ensure that an individual is located within the permitted area inside the facility when placing a wager and must be equipped to dynamically monitor the individual's location and block unauthorized attempts to place a wager when an individual is not within the permitted area inside the facility.

5. The director may issue additional geolocation requirements in the form of technical standards.

H. Player accounts and limitations.

1. A facility operator may offer on-premises mobile casino gaming only to an individual who has established an account and uses such account to place wagers as follows:

a. Any wager shall be placed directly with the facility operator by the account holder;

b. The facility operator shall verify the account holder's physical presence on site at the facility at the time of wagering;

c. The account holder shall provide the facility operator with the correct authentication information for access to the player account; and

d. A facility operator shall disable a player account after three failed login attempts and require multi-factor authentication to recover or reset a password or user name.

2. A facility operator may not allow a player to establish more than one user name or more than one player account per mobile casino gaming platform.

3. A facility operator shall take commercially and technologically reasonable measures to verify a player's identity and shall use such information to enforce the provisions of this section.

4. A facility operator shall implement procedures to terminate all accounts of any player who establishes or seeks to establish more than one user name or more than one account whether directly or by use of another individual as proxy; although such procedures may allow a player who establishes or seeks to establish more than one user name or more than one account to retain one account, provided that the facility operator investigates and makes a good faith determination that the player's conduct was not intended to commit fraud or otherwise evade the requirements of the gaming law, this chapter, or any other law, regulation, or condition of the department related to casino gaming.

5. A facility operator shall not allow a player to use a proxy server for the purpose of misrepresenting the player's location in order to engage in on-premises mobile casino gaming.

6. A facility operator shall take commercially and technologically reasonable measures to prevent one player from acting as a proxy for another, including use of geolocation technologies to prevent simultaneous logins to a single account from geographically inconsistent locations.

7. A facility operator may not accept a wager in an amount more than the funds on deposit in the player's account.

8. A mobile casino gaming platform shall employ a mechanism that can detect and prevent any player-initiated

wagering or withdrawal activity that would result in a negative balance of a player account.

I. If an on-premises mobile casino gaming player account is inactive or dormant for five years:

1. The facility operator shall attempt to contact the account holder by mail, phone, and electronic mail;

2. If the account holder does not respond to the facility operator, the facility operator shall close the account; and

3. Any funds remaining in the account at the time of closing shall be paid 50% to the facility operator and 50% to the Commonwealth's general fund.

A facility operator shall ensure that account holders are made aware of the provisions of this subsection prior to opening a mobile gaming player account.

J. Responsible gaming.

1. In addition to the requirements for responsible casino gaming established in 11VAC5-90-100, a facility operator that offers on-premises casino gaming shall:

a. Cause the words "If you or someone you know has a gambling problem and wants help, call 1-800-GAMBLER," or other comparable language approved by the department, which shall include the words "gambling problem" and "call 1-800-GAMBLER," to be displayed prominently at log-on and log-off times to any person visiting or logged onto the on-premises mobile casino gaming; and

b. Prominently publish a responsible gambling logo in a manner approved by the director and shall direct a player to the facility operator’s responsible gambling page;

c. Provide a mechanism by which an account holder may establish the following controls on wagering activity through the individual's player account:

(1) A limit on the amount of money deposited within a specified period of time and the length of time the account holder will be unable to participate in gaming if the holder reaches the established deposit limit; and

(2) A temporary suspension of gaming through the account for any number of hours or days.

2. A facility operator shall institute and prominently publish procedures for players to implement the restrictions provided in this subsection, including:

a. Opportunities to self-exclude from or to set deposit limits, to set limits on the player's total gaming activity, or to limit participation to wagers below an established limit;

b. Options to set pop-up warnings concerning mobile casino gaming activity: and

c. Options to implement limits and timeouts (e.g., cooling off periods of at least 72 hours), where players have the option to adjust self-imposed limits to make the limits more restrictive as often as the players like but shall not have the option to make limits less restrictive until the prior restriction has expired.

3. A facility operator shall not send gaming-related electronic mail to an account holder when the player has suspended the account for at least 72 hours.

4. A facility operator shall provide a mechanism by which an account holder may change these controls, but when the player's account is suspended, the account holder may not change gaming controls until the suspension expires.

5. During a period of suspension, an account holder shall have access to the account and be permitted to withdraw funds from the account.

K. A facility operator's website or mobile application shall contain, at a minimum, the following:

1. A clear statement of the facility operator's commitment to responsible gaming and problem gambling prevention;

2. A mechanism for a player to take note of the passage of time;

3. The ability to initiate a "cooling off" period such as breaks in play and avoidance of excessive play;

4. Practices and procedures on the site that do not reinforce myths and misconceptions about gambling;

5. Information about the website's terms and conditions is readily accessible;

6. Promotional or free games do not mislead players;

7. Notification to players of age-verification procedures;

8. Access to credit is prohibited;

9. Fund transfers and automatic deposits are prohibited or restricted; and

10. Games display credits and spending as cash.

L. At least 60 days before on-premises mobile casino gaming operations are to commence, a facility operator shall submit its internal controls for those operations to the department for review and written approval. The internal controls shall be integrated into the internal controls required by 11VAC5-90-110 and shall address, at a minimum:

1. Administrative controls;

2. Recordkeeping and record retention;

3. Accounting controls;

4. Segregation of functions, duties, and responsibilities;

5. Security;

6. Surveillance;

7. Reports; and

8. Such other subject matters that the department may require.

M. Gross receipts from on-premises mobile casino gaming shall be included in a facility operator's adjusted gross receipts and subject to taxation pursuant to the provisions of §§ 58.1-4124 and 58.1-4125 of the Code of Virginia.

N. Prohibited conduct.

1. The provisions of this subsection are in addition to any criminal proceeding that may be brought against a person for a violation of the prohibited conduct described in this subsection.

2. A person may not offer on-premises mobile casino gaming in violation of the casino gaming law, this chapter, or any other law, regulation, or condition of the department related to casino gaming.

3. A person may not knowingly tamper with software, computers, or other equipment used to conduct on-premises mobile casino gaming to alter the odds or the payout of a game or disable the game from operating according to the rules of the game as approved by the department.

4. The permit of an employee of a facility operator who violates subdivision 3 of this subsection shall be revoked and the employee shall be subject to such further penalty as the department deems appropriate.

5. The license of a facility operator that violates subdivision 3 of this subsection shall be suspended for a period determined by the department and the facility operator shall be subject to such further penalty as the department deems appropriate.

6. A person may not knowingly offer or allow to be offered any on-premises mobile casino game that has been tampered with in a way that affects the odds or the payout of a game or disables the game from operating according to the rules of the game as approved by the department.

7. The permit of an employee of the facility operator who violates subdivision 6 of this subsection shall be suspended for a period of at least 30 days.

8 The license of a facility operator that violates subdivision 6 of this subsection shall be suspended for a period of at least 30 days.

11VAC5-90-140. Transportation and testing of casino gaming machines and equipment.

A. Compliance with federal law. A person who transports a slot machine, mechanical casino gaming machine, or table game equipment shall comply with applicable provisions of 15 USC §§ 1171-1178, commonly known as the Johnson Act.

B. Transportation.

1. Unless otherwise directed by the director, a person shall submit written notice to the department prior to transporting a slot machine, mechanical casino gaming machine, or table game equipment.

2. A person proposing to transport a slot machine, mechanical casino gaming machine, or table game equipment shall submit to the director a written notice containing:

a. Name and address of person initiating transportation;

b. Reason for transportation;

c. Method of transportation;

d. Name of and address of carrier;

e. Anticipated beginning and end dates of transportation;

f. Name and address of destination;

g. Name and address of manufacturer;

h. Manufacturer's serial number;

i. Model number;

j. Description; and

k. Any other information requested by the department.

3. The person proposing to transport or transporting a slot machine, mechanical casino gaming machine, or table game equipment shall promptly provide the department with written notice of any changes to the information already submitted as required under subdivision 2 of this subsection.

4. A person transporting a slot machine, mechanical casino gaming machine, or table game equipment shall plainly and clearly label the package so that the name and address of the shipper and recipient and the contents of the package may be readily ascertained during an inspection of the machine outside of the package.

5. After delivery of a slot machine, mechanical casino gaming machine, or table game equipment, the facility to which the terminal is delivered shall promptly provide the department with written notice that includes:

a. Date the slot machine, mechanical casino gaming machine, or table game equipment was received;

b. Date the slot machine, mechanical casino gaming machine, or table game equipment will be placed into operation; and

c. Any other information requested by the department.

C. Storage.

1. If a slot machine, mechanical casino gaming machine, or table game equipment will not be placed into operation upon delivery to a casino gaming facility, the facility shall provide the department with written notice that includes:

a. Identification of the slot machine, mechanical casino gaming machine, or table game equipment;

b. Reason for storage;

c. Storage facility location; and

d. Any other information requested by the department.

2. A facility operator shall store a slot machine, mechanical casino gaming machine, or table game equipment only in a manner that the department has approved.

D. Registration.

1. The department shall maintain a register of each slot machine, mechanical casino gaming machine, and specified table game equipment placed in operation in the Commonwealth.

2. The table game equipment for which the board shall maintain a register under subdivision 1 of this subsection is:

a. Table games that contain an approved table layout;

b. Automated table game shuffling devices;

c. Table game progressive controllers; and

d. Any other table game equipment specified by the department.

3. For each slot machine placed into operation, the department shall incorporate the slot machine into the department's central monitor and control system.

4. For each slot machine, mechanical casino gaming machine, or table gaming equipment specified in subdivision 2 of this subsection that is placed into operation, the department shall:

a. Assign a registration control number; and

b. Affix a department registration tag.

E. Out of state movement. A slot machine, mechanical casino gaming machine, or gaming equipment may not be transported out of the Commonwealth unless the director:

1. Approves the action; and

2. If the slot machine, mechanical casino gaming machine, or table gaming equipment is being permanently removed from Virginia, removes the registration tag.

F. Testing.

1. The department may test slot machines and associated equipment for:

a. Accuracy;

b. Compatibility with the central monitor and control system; and

c. Any other function that the director determines may be necessary to validate the proper functionality and performance of the slot machines and equipment.

2. The director may test mechanical casino gaming machines, table game rules, and table game equipment for:

a. Accuracy; and

b. Any other function the department determines is necessary to validate the proper functionality and performance of the mechanical casino gaming machine or table game equipment.

G. Request for authorization.

1. A facility operator shall obtain prior written authorization from the department before taking any of the following actions with respect to a slot machine, mechanical casino gaming machine, or table game equipment in its facility:

a. Placing the slot machine, mechanical casino gaming machine, or table game into operation;

b. Relocating the slot machine, mechanical casino gaming machine, or table game within the facility;

c. Converting a game theme or table layout;

d. Converting a play denomination on a slot machine or mechanical casino gaming device;

e. Changing percentage payout;

f. Changing an erasable programmable read only memory chip;

g. Changing a jackpot lockup amount;

h. Changing a configuration;

i. Performing a substantial replacement of parts;

j. Implementing any variation, composite, or new feature of a table game; or

k. Performing any other action that materially alters or interrupts the operation of a slot machine, mechanical casino gaming machine, or table game.

2. Before the director authorizes an action described in subdivision 1 of this subsection, a facility shall submit to the department written notice of the request that includes:

a. Description of proposed action;

b. Location of action;

c. Start and end dates and times;

d. Estimated "go live" date for the slot machine, mechanical casino gaming machine, or table game;

e. Approval of the manufacturer of the affected slot machine, mechanical casino gaming machine, or table game equipment;

f. Approval of the operator of the central monitor and control system; and

g. Any other information requested by the department.

3. A facility operator shall promptly provide the director with written notice of any changes to the information already submitted under subdivisions 1 and 2 of this subsection.

4. Response to request for authorization.

a. The director may impose additional requirements on the facility operator or the manufacturer before authorizing the action.

b. The director may deny approval of the action.

c. A facility operator shall notify the director if the action is not completed as approved.

11VAC5-90-150. Slot machines.

A. Definitions. In addition to the terms defined in 11VAC5-90-10, the following terms have the meanings indicated.

"Double-up" means an optional wager on a slot machine, the availability of which is triggered by a preceding winning event, in which the player has a mathematically equal probability of doubling the amount wagered or losing the entire amount placed at risk.

"Modification" means a change or alteration that:

1. Affects the conduct of play or operation of equipment, a system, or software including a change or alteration to a:

a. Control program;

b. Graphics program; or

c. Payout percentage; and

2. Does not include the replacement of one approved component with an identical component.

"Random number generator" means a computational or physical functionality within the operating system of an electronic device that ensures the observed unpredictability and absence of pattern in a set of elements or events that have definite probabilities of occurrence.

"RAM" means random access memory.

"RAM clear" means a process that results in the zeroing out of any:

1. Meter information;

2. Configuration information; or

3. Data stored in the random access memory of a slot machine.

"Skill" means the application of intelligence and specific knowledge to achieve the best result when a slot machine offers a choice of options during game play.

"Theme" means a concept, subject matter, and methodology of design of a slot machine.

"Version" means a sequence number or designation assigned to equipment, a system, or software to identify the initial release of the equipment, system, or software and to track changes or revisions to the initial release.

B. Testing, certification, and approval of equipment, a system, or software

1. A manufacturer may not offer the equipment, systems, or software enumerated in subdivision 5 of this subsection, or a modification to a department-approved version of that equipment, system or software, for sale, lease, distribution, or use in a facility without it having been:

a. Tested and certified by an independent certified testing laboratory; and

b. Approved in writing by the department.

2. A facility operator may not purchase, lease, or otherwise acquire the right to install, utilize, or make available for use the equipment, systems, or software enumerated in subdivision 5 c of this subsection, or a modification to a department-approved version of that equipment, system, or software, without it having been:

a. Tested and certified by an independent certified testing laboratory; and

b. Approved in writing by the department.

3. A facility operator may not modify, alter, or tamper with the central monitor and control system or a slot machine.

4. Modification, alteration, or tampering with the central monitor and control system or a slot machine may result in the immediate suspension of an operation license by the department.

5. The testing, certification, and approval requirements of this subsection shall, at a minimum, apply to:

a. The central monitor and control system;

b. A slot machine;

c. The interoperability between a slot machine and:

(1) A slot machine data system;

(2) A casino management system;

(3) A gaming ticket system;

(4) A promotional play system;

(5) A player tracking system;

(6) A ticket redemption unit;

(7) An automated jackpot payout machine;

(8) An external bonusing system;

(9) A cashless funds transfer system; and

(10) A progressive controller; and

d. Other equipment, systems, or software designated for testing and certification by the department.

6. A prototype of equipment, a system, or software required to be tested, certified, and approved under subdivision 5 of this subsection, or a modification to a department-approved version of that equipment, system, or software shall, at a minimum, be tested for:

a. Overall operational integrity;

b. Conformance with the casino gaming law, this chapter, and any other law, regulation, or condition of the department related to casino gaming; and

c. If applicable, compatibility and compliance with the central monitor and control system communication protocol designated by the department, including the ability to communicate with the central monitor and control system on a real-time basis for:

(1) Meter retrieval; and

(2) Slot machine status, activation, and deactivation.

7. Until such time as the department determines it has assembled a list of approved equipment, systems, and software sufficient to meet the needs of facility operators under the casino gaming law, notwithstanding the requirements of subsections C and D of this section, the department may permit an abbreviated testing and approval process in accordance with the requirements of subsection E of this section.

8. If a facility operator develops any equipment, system, or software that is functionally equivalent to that enumerated in subdivision 5 c of this subsection, or modifies a department-approved version of that equipment, system, or software, the facility operator shall be subject to the testing, certification, and approval requirements of this section to the same extent as if the equipment, system, or software were developed or modified by a manufacturer.

9. A manufacturer shall pay all costs of testing, certification, and approval under this section including all costs associated with:

a. Transportation;

b. Equipment and technical services required by an independent certified testing laboratory to conduct the testing and certification process; and

c. Implementation testing.

C. Submission of equipment, a system, or software for testing and certification.

1. A manufacturer seeking department approval for equipment, a system, or software other than a slot machine shall submit the equipment, system, or software to an independent certified testing laboratory.

2. The submission required by subdivision 1 of this subsection shall include the following:

a. A request for testing and certification under subdivision B 6 of this section;

b. A prototype of the equipment, system, or software identical in all mechanical, electrical, electronic, and other respects to that for which department approval is sought;

c. Technical and operator manuals;

d. A description of all security methodologies incorporated into the design of the equipment, system, or software including, if applicable:

(1) Password protection;

(2) Encryption methodology for all alterable media;

(3) Auto-authentication of software;

(4) Network redundancy; and

(5) Back-up and recovery procedures;

e. A schematic or network diagram of the major components of the equipment, system, or software with a:

(1) Description of each component's functionality; and

(2) Software object report;

f. A description of the data flow, in narrative and in schematic form, including:

(1) Data cabling; and

(2) If applicable, communications methodology for multi-site applications;

g. A list of:

(1) Computer operating systems;

(2) Third-party software; and

(3) Available system reports;

h. System software and hardware installation procedures;

i. A description of the method used to authenticate software;

j. All source code;

k. If applicable, a description of the features offered by the equipment, system, or software with regard to:

(1) Player and employee card functions; and

(2) Reconciliation procedures;

l. If applicable, a description of any interoperability testing conducted by the manufacturer, including test results identified by manufacturer, model, and software identification and version number, for the submitted equipment, system, or software's connection to any of the following:

(1) Slot machine;

(2) Slot machine data system;

(3) Casino management system;

(4) Gaming ticket system;

(5) Promotional play system;

(6) Player tracking system;

(7) Ticket redemption unit;

(8) Automated jackpot payout machine;

(9) External bonusing system;

(10) Cashless funds transfer system; and

(11) Progressive controller;

m. If applicable, a description, accompanied by diagrams, schematics, and specifications, of the creation of a:

(1) Gaming ticket and the redemption options available; and

(2) Promotional play instrument and the redemption options available; and

n. If requested by the department or an independent certified testing laboratory:

(1) Any specialized hardware, software, or other equipment, inclusive of technical support and maintenance, required to conduct the testing and certification process; and

(2) Additional documentation pertaining to the equipment, system, or software being tested.

3. A manufacturer seeking department approval for a modification to a department-approved version of equipment, a system, or software other than a slot machine shall submit the proposed modification to an independent certified testing laboratory.

4. An independent certified testing laboratory selected by a manufacturer or the department to test a modification may be, but need not be, the testing laboratory that performed the initial prototype testing.

5. The submission required by subdivision 3 of this subsection shall include the following:

a. A request for testing and certification under subdivision B 6 of this section;

b. The equipment, system, or software proposed for modification;

c. A description of the proposed modification, accompanied by applicable diagrams, schematics, and specifications;

d. A narrative disclosing the purpose for the modification;

e. If requested by the department or an independent certified testing laboratory:

(1) Any specialized hardware, software, or other equipment, inclusive of technical support and maintenance, required to conduct the testing and certification process; and

(2) Additional documentation pertaining to the testing of the proposed modification.

6. At the conclusion of testing of a prototype or modification of equipment, a system, or software other than a slot machine, an independent certified testing laboratory shall issue to the department a certification report in an:

a. Electronic form; and

b. Format acceptable to the department.

7. Upon receipt of a certification report from an independent certified testing laboratory, but prior to a decision to approve a prototype or modification of equipment, a system, or software other than a slot machine, the department may require a trial period, as follows:

a. A trial period shall be of a scope and duration the department deems appropriate to assess the operation of the prototype or modification in a live gaming environment;

b. A trial period shall be subject to compliance by the manufacturer and the facility operator with specific terms and conditions required by the department, that may include:

(1) Development and implementation of product specific accounting and internal controls; and

(2) Periodic data reporting to the department;

c. The department may authorize the receipt of compensation by a manufacturer during a trial period; and

d. The department may order termination of a trial period at any time upon a determination by the department that:

(1) A manufacturer or facility operator has not complied with the terms and conditions required by the department; or

(2) Equipment, a system, or software is not performing as expected.

8. Upon receipt of a certification report from an independent certified testing laboratory, the department may:

a. Approve the prototype or modification, with or without specific conditions;

b. Reject the prototype or modification;

c. Require additional testing; or

d. Require a trial period under subdivision 7 of this subsection.

9. Department approval of a prototype or modification does not constitute a guarantee of its safety or reliability.

D. Submission of a slot machine for testing and certification.

1. A manufacturer seeking department approval for a slot machine shall submit the slot machine to an independent certified testing laboratory.

2. The submission required by subdivision 1 of this subsection shall include the following:

a. A request for testing and certification under subdivision B 6 of this section;

b. A prototype of the slot machine identical in all mechanical, electrical, electronic, and other respects to that for which department approval is sought;

c. Technical and operator manuals;

d. A description of the slot machine including:

(1) Diagrams, schematics, and specifications; and

(2) Documentation with regard to the manner in which the slot machine was tested and emulated by the manufacturer prior to submission;

e. A copy on electronically readable media of all:

(1) Executable software, including data and graphics information;

(2) Source code for programs that have no commercial use other than as a component of a slot machine; and

(3) Graphical images displayed on a slot machine including, if applicable:

(a) Reel strips or card images;

(b) Rules and instructions; and

(c) Pay tables;

f. A mathematical explanation of the average and theoretical return to the player, listing all:

(1) Assumptions; and

(2) Steps in the formula including the treatment of bonus pays;

g. A description of:

(1) Security methodologies incorporated into the design of a slot machine including, if applicable:

(a) Encryption methodology for all alterable media;

(b) Auto-authentication of software; and

(c) Recovery capability of a slot machine on power interruption;

(2) Tower light functions indicating the corresponding condition;

(3) Error conditions and the corresponding action required; and

(4) Use and function of available:

(a) Dip switch settings; and

(b) Configurable options;

h. A description, accompanied by supporting test results, of the random number generator or generators used to determine the results of a wager, including a detailed explanation of:

(1) Operational methodology; and

(2) The manner by which the random number generator, including the random number selection process is impervious to:

(a) Outside influences;

(b) Interference from electro-magnetic, electrostatic, and radio frequencies; and

(c) Influence from ancillary equipment by means of data communications;

i. If a slot machine requires or permits player skill in the theoretical derivations of the payout return, the source of strategy;

j. If required, a cross-reference between the meters denoted on the slot machine and the meters required by subsection P of this section;

k. Program storage media including:

(1) Erasable programmable read-only memory (EPROMs);

(2) Electrically erasable programmable read-only memory (EEPROMs); and

(3) Any type of alterable media for slot machine software;

l. Proof that a slot machine has been inspected and approved for customer safety by a reputable testing laboratory;

m. If applicable, a description of any interoperability testing conducted by the manufacturer, including test results identified by manufacturer, model and software identification and version number, for the submitted slot machine's connection to any of the following:

(1) Slot machine data system;

(2) Casino management system;

(3) Gaming ticket system;

(4) Promotional play system;

(5) Player tracking system;

(6) Ticket redemption unit;

(7) Automated jackpot payout machine;

(8) External bonusing system;

(9) Cashless funds transfer system; and

(10) Progressive controller;

n. A description of the manner in which the slot machine was or will be tested for compatibility and compliance with the central monitor and control system communication protocol designated by the department including the ability to communicate with the central monitor and control system on a real time basis for:

(1) Meter retrieval; and

(2) Slot machine status, activation, and deactivation;

o. Specialized hardware, software, or testing equipment, inclusive of technical support and maintenance, requested by an independent certified testing laboratory including:

(1) An emulator for a specified microprocessor;

(2) Personal computers;

(3) Extender cables for CPU departments;

(4) Target reel strips; and

(5) Door defeats; and

p. If requested by the department or an independent certified testing laboratory, additional documentation pertaining to the slot machine being tested including:

(1) Hardware block diagrams of the major subsystems;

(2) A complete set of schematics for all subsystems;

(3) A wiring harness connection diagram; and

(4) Technical specifications for any microprocessor or microcontroller.

3. A manufacturer seeking department approval for a modification to a department-approved version of a slot machine, including a change in theme, shall submit the modification to an independent certified testing laboratory.

4. An independent certified testing laboratory selected by a manufacturer or the department to test a modification may, but need not be, the testing laboratory that performed the initial prototype testing.

5. The submission required by subdivision 3 of this subsection shall include the following:

a. A request for testing and certification under subdivision B 6 of this section;

b. The slot machine proposed for modification;

c. A description of the proposed modification to the slot machine, accompanied by applicable diagrams, schematics, and specifications;

d. If a change in theme is involved, a copy of the graphical images displayed on the slot machine including, if applicable:

(1) Reel strips and card images;

(2) Rules and instructions; and

(3) Pay tables;

e. If a change in the manner in which the average payout percentage is achieved or a change in the theoretical return to the player is otherwise involved, a mathematical explanation of the return to the player, listing all:

(1) Assumptions; and

(2) Steps in the formula including the treatment of bonus pays;

f. If the proposed modification requires or permits player skill in the theoretical derivations of the payout return, the source of strategy;

g. A description of the manner in which the slot machine was or will be tested for compatibility and compliance with the central monitor and control system communication protocol designated by the department including the ability to communicate with the central monitor and control system on a real time basis for:

(1) Meter retrieval; and

(2) Slot machine status, activation and deactivation; and

h. If requested by the department or an independent certified testing laboratory:

(1) Any specialized hardware, software, or other equipment, inclusive of technical support and maintenance, required to conduct the testing and certification process; and

(2) Additional documentation pertaining to the testing of the proposed modification.

6. At the conclusion of testing of a prototype or modification to a slot machine, an independent certified testing laboratory shall issue to the department a certification report in an:

a. Electronic form; and

b. Format acceptable to the department.

7. Upon receipt of a certification report from an independent certified testing laboratory, but prior to a decision to approve a prototype or modification to a slot machine, the department may require a trial period, as follows:

a. A trial period shall be of a scope and duration the department deems appropriate to assess the operation of the slot machine in a live gaming environment;

b. A trial period shall be subject to compliance by the manufacturer and the facility operator with specific terms and conditions required by the department, which may include:

(1) Development and implementation of product specific accounting and internal controls; and

(2) Periodic data reporting to the department;

c. The department may authorize the receipt of compensation by a manufacturer during a trial period; and

d. The department may order termination of the trial period at any time upon a determination by the department that:

(1) A manufacturer or facility operator has not complied with the terms and conditions required by the department; or

(2) The slot machine is not performing as expected.

8. Upon receipt of a certification report from an independent certified testing laboratory, the department may:

a. Approve the prototype or modification, with or without specific conditions;

b. Reject the prototype or modification;

c. Require additional testing; or

d. Require a trial period under subdivision 7 of this subsection.

9. Department approval of a prototype or modification of a slot machine does not constitute a guarantee of its safety or reliability.

E. Abbreviated testing and certification.

1. Except with regard to the department's central monitor and control system, a manufacturer may, during the period specified in subdivision B 7 of this section, seek department approval of a prototype or proposed modification under an abbreviated testing and certification process for any equipment, system, or software required to be tested and certified under subdivision B 5 of this section.

2. A manufacturer shall submit the equipment, system, or software to an independent certified testing laboratory.

3. The submission required by subdivision 2 of this subsection shall include the following:

a. A request for abbreviated testing and certification under this subsection naming the state within the United States

on whose regulations and technical standards the manufacturer proposes the department rely;

b. A prototype of the equipment, system, or software identical in all mechanical, electrical, electronic, and other respects to that for which department approval is sought;

c. A certification signed by the chief engineer of the manufacturer, or the engineer in charge of the division of the manufacturer responsible for producing the equipment or system submitted, representing that:

(1) The prototype or proposed modification is identical in all mechanical, electrical, electronic and other respects to one that has been tested and certified by:

(a) A testing laboratory operated by the named state; or

(b) An independent certified testing laboratory on behalf of the named state;

(2) The manufacturer is licensed in good standing in the named state;

(3) The submitted equipment, system, or software has all regulatory approvals prerequisite to sale, lease, or distribution in the named state;

(4) The testing standards of the named state are comprehensive, thorough and involve substantially similar technical requirements and safeguards as those required by the casino gaming law, this chapter, or any other law, regulation, or condition of the department related to casino gaming; and

(5) The manufacturer has fully disclosed any conditions or limitations placed by the named state on the operation or placement of the equipment, system, or software:

(a) At the time of approval; or

(b) Subsequent to approval;

d. Copies of the submission package, and any amendments thereto, filed in the named state, including any:

(1) Checklists;

(2) Correspondence, review letters, or certification letters issued by:

(a) The testing laboratory operated by the named state; or

(b) An independent certified testing laboratory on behalf of the named state; and

(3) Final approval letter issued by the named state;

e. If applicable, a description of any interoperability testing conducted by the manufacturer, including test results identified by manufacturer, model and software identification and version number, for the submitted equipment or system's connection to a:

(1) Slot machine;

(2) Slot machine data system;

(3) Casino management system;

(4) Gaming ticket system;

(5) Promotional play system;

(6) Player tracking system;

(7) Ticket redemption unit;

(8) Automated jackpot payout machine;

(9) External bonusing system;

(10) Cashless funds transfer system; and

(11) Progressive controller;

f. If the submission involves a slot machine, a description of the manner in which the slot machine was or will be tested for compatibility and compliance with the central monitor and control system communication protocol designated by the department, including the ability to communicate with the central monitor and control system on a real time basis for:

(1) Meter retrieval; and

(2) Slot machine status, activation, and deactivation; and

g. If requested by the department or an independent certified testing laboratory:

(1) Any specialized hardware, software, or other equipment, inclusive of technical support and maintenance, required to conduct the testing and certification process; and

(2) Additional documentation pertaining to the equipment, system, or software being tested.

4. At the conclusion of testing of a prototype or modification, an independent certified testing laboratory conducting abbreviated testing and certification shall issue to the department a certification report in an:

a. Electronic form; and

b. Format acceptable to the department.

5. The certification report issued under subdivision 4 of this subsection shall state:

a. Whether the independent certified testing laboratory concurs with the manufacturer that the testing standards of the named state are comprehensive, thorough and involve substantially similar technical requirements and safeguards as those required by the casino gaming law, this chapter, and any other law, regulation, or condition of the department related to casino gaming;

b. Whether the documentation required by subdivision 3 c of this subsection is complete;

c. With respect to any deficiency noted relating to subdivision 5 a or 5 b of this subsection, the nature of the noncompliance; and

d. The results of any supplemental testing performed, including interoperability testing with the central monitor and control system.

6. Upon receipt of a certification report from an independent certified testing laboratory, the department may act with regard to:

a. Acceptance of the testing standards of the named state; and

b. The specific equipment, system, or software by:

(1) Approving the prototype or modification, with or without specific conditions;

(2) Rejecting the prototype or modification;

(3) Requiring additional testing; or

(4) Requiring a trial period under this chapter.

7. Department approval of a prototype or proposed modification does not constitute a guarantee of its safety or reliability.

F. Concatenated binary files and related documentation. A manufacturer shall deliver each slot machine to the department with:

1. The concatenated binary file signature corresponding to the department-approved version of the slot machine in a form satisfactory to the:

a. Department; and

b. Central monitor and control system operator; and

2. A file, in a form satisfactory to the department, describing the slot machine including:

a. The manufacturer's:

(1) Serial number;

(2) Model number;

(3) Software identification number; and

(4) Version number;

b. Denomination or a designation as multi-denomination;

c. Cabinet style;

d. An indication as to whether the slot machine is a:

(1) Progressive; or

(2) Wide area progressive;

e. Configured for use with a:

(1) Gaming ticket system;

(2) External bonusing system; and

(3) Cashless funds transfer system; and

f. Other information required by the department.

G. Emergency modification of equipment, a system, or software.

1. Notwithstanding the requirements of subsections C and D of this section, the department may, on submission of a written request by a manufacturer, authorize installation of a modification to equipment, a system, or software required to be tested, certified, and approved by the department under subdivision B 5 of this section, on an emergency basis.

2. A written request submitted by a manufacturer to the department shall document the:

a. Equipment, system, or software proposed for emergency modification, including:

(1) Software identification number; and

(2) Version number;

b. Facility;

c. Reason for the emergency modification; and

d. Proposed date and time of installation.

3. A manufacturer may not install an emergency modification without the written approval of the department.

4. No more than 15 days following receipt of department authorization on an emergency modification, a manufacturer shall submit a modification identical to that receiving emergency authorization for testing, certification and approval under this chapter.

H. Notice of known or suspected defect.

1. A manufacturer shall immediately notify the department of any known or suspected defect or malfunction in equipment, system, or software required to be tested, certified, and approved by the department under subdivision B 5 of this section.

2. A manufacturer shall:

a. Confirm in writing any notice given to the department verbally pursuant to subdivision 1 of this subsection; and

b. If required by the department, notify a facility operator of any known or suspected defect or malfunction in equipment, a system, or software installed in its facility.

3. A facility operator shall immediately notify the department of any known or suspected defect or malfunction in equipment, system, or software required to be tested, certified, and approved by the department under subdivision B 5 of this section.

4. A facility operator shall confirm in writing any notice given to the department verbally pursuant to subdivision 3 of this subsection.

I. Revocation.

1. The department may, at any time, revoke an approval granted to equipment, a system, or software under subsection C, D, or E of this section on a determination by the department that the equipment, system, or software does not comply with:

a. The casino gaming law, this chapter, or any other law, regulation, or condition of the department related to casino gaming; or

b. The central monitor and control system communication protocol designated by the department including the ability to communicate with the central monitor and control system on a real time basis for:

(1) Meter retrieval; and

(2) Slot machine status, activation, and deactivation; or

c. Any other requirement established by the department.

2. The department may, at any time, impose additional conditions on the operation or placement of department-approved equipment, systems, or software.

3. A revocation by the department of an approval under subdivision 1 of this subsection does not give rise to an appeal right.

J. Communication requirements. A manufacturer shall enable a slot machine to communicate with the department's central monitor and control system through a gaming industry communication protocol approved by the department.

K. Average payout percentage.

1. In this subsection, the following terms have the meanings indicated.

"Game cycle" means the finite set of all possible combinations of symbols on a slot machine, including spinning reels or card images or other forms of video display or both.

"Theoretical payout percentage" means the total value of jackpots expected to be paid by a slot machine divided by the total value of slot machine wagers expected to be made on that slot machine during the game cycle.

2. A slot machine shall have a theoretical payout percentage that is between 84% and 100%.

3. Once a facility is operational, the department shall:

a. Conduct periodic reviews to ensure that average payout percentages, on an average annual basis, comply with the requirements of this subsection; and

b. If necessary, require the modification or replacement of a slot machine to ensure compliance with the average payout percentage requirements of this subsection.

4. A payout percentage that may be affected by reason of skill shall meet the payout percentage requirements of this subsection factoring in a method of play that provides the greatest return to a player.

5. A slot machine:

a. May not:

(1) Offer the top advertised winning combination where the odds exceed 50 million to one; and

(2) Alter any function based on an internal computation of payout percentage; and

b. Shall be designed to ensure that all possible combinations in the game cycle are independent of each other, unless disclosed to the player.

L. Minimum and maximum bet.

1. A slot machine may accept a minimum bet on a single game event as low as one cent.

2. A slot machine may not accept a maximum bet on a single game event in excess of $500 without the written approval of the department.

3. The $500 maximum bet in subdivision 2 of this subsection does not apply to a double-up option on a winning wager.

4. For an electronic table game, each wager on a separate outcome is a single game event.

M. Slot machine lock-up.

1. A slot machine shall be configured to lock-up and preclude further play following a single jackpot that requires the filing of IRS Form W-2G, Certain Gambling Winnings.

2. A single jackpot event shall include the exhaustion of all available double-up and bonus wager options on a winning wager.

3. A slot machine may be configured to permit the transfer, upon lock-up, of a jackpot amount to the credit meter.

N. Random number generator.

1. In this subsection, the following terms have the meanings indicated.

"Chi-squared analysis" means a statistical test for goodness of fit that measures the difference between a theoretical result and an observed result.

"Correlation test" means a statistical test that determines whether each card, number, symbol, or stop position is independently chosen without regard to another card, number, symbol, or stop within that game play.

"Runs test" means a statistical test that determines the existence of recurring patterns within a set of data.

"Series correlation test" means a statistical test that determines whether each card, number, symbol, or stop position is independently chosen without regard to another card, number, symbol, or stop in the previous game.

2. A slot machine shall determine the occurrence of a specific card, number, symbol, or stop by utilizing:

a. One random number generator; or

b. Two or more random number generators working collectively.

3. A slot machine's selection process shall be considered random if it meets the following statistical requirements:

a. A chi-squared analysis meeting a 99% confidence level;

b. A runs test meeting a 99% confidence level;

c. A correlation test meeting a 99% confidence level;

d. A series correlation test meeting a 99% confidence level; and

e. Any other test of randomness determined appropriate by the department.

4. A random number generator, including its random number selection process shall be designed in a manner that ensures it is impervious to:

a. Outside influences;

b. Interference from electro-magnetic, electrostatic, and radio frequencies; and

c. Influence from ancillary equipment by means of data communication.

5. Once a random selection process has occurred, a slot machine:

a. Shall display an accurate representation of the randomly selected outcome; and

b. May not make a secondary decision that affects the result shown to the player at the slot machine.

O. Rules of play.

1. In this subsection the following term has the meaning indicated.

"Strategy choice" means a particular play option on a slot machine that requires the use of skill to consistently achieve the best result.

2. A slot machine shall be equipped to display to a player while idle the:

a. Schedule of credits awarded with each winning combination;

b. Applicable rules of play; and

c. Any maximum bet limit imposed under this chapter.

3. The department may prohibit the display of any rules of play it determines to be:

a. Incomplete;

b. Confusing;

c. Misleading; or

d. Inconsistent with the rules of play required by the department.

4. For rules of play, the schedule of credits awarded with each winning combination may not include possible aggregate awards achievable from free plays.

5. A slot machine that includes a strategy choice shall include in its rules of play mathematically sufficient information for a player to use optimal skill unless the player:

a. Is not required to make an additional wager; and

b. Cannot lose any credits earned prior to the strategy choice.

6. A manufacturer or facility operator may not attach a sticker or other removable device that concerns rules of play to the face, glass, or screen of a slot machine without the prior written approval of the department.

P. Slot machine meters.

1. A slot machine shall be equipped with:

a. The meter functions required by this subsection;

b. Cumulative meters that are accessible and legible without access to the interior of the slot machine, including:

(1) Count meters that are at least eight digits in length; and

(2) Value meters that are at least 10 digits in length and maintained in:

(a) Credit units equal to the denomination of the slot machine; or

(b) Dollars and cents; and

c. A device, mechanism, or method for retaining electronically accounting data for all meters required under this subsection for a period of not less than 10 days after a power loss.

2. A slot machine may not be equipped with any device, mechanism, or method that allows or causes the cumulative meters required under this subsection to automatically clear or zero out.

3. A slot machine shall be equipped with the following cumulative meters, that continuously and automatically increment as follows:

a. A coin-in meter that:

(1) Accumulates the total number of credits wagered whether the wager involves:

(a) A gaming ticket;

(b) A promotional play instrument;

(c) Downloaded credits; or

(d) Credits won; and

(2) Does not accumulate subsequent double-up wagers or other wagers of intermediate winnings accumulated during a game event;

b. A series of meters that collectively account for the number of credits won, including:

(1) A coin-out meter that does not record amounts awarded as the result of an external bonusing system or a progressive payout but accumulates the total number of credits paid out automatically by the slot machine as a result of winning wagers including a payout:

(a) By gaming ticket; and

(b) Directly to a credit meter; or

(c) Any other means.

(2) A progressive payout meter does not record amounts awarded as the result of an external bonusing system but accumulates the total number of credits paid out

automatically by the slot machine as a result of a progressive jackpot;

(3) An external bonus payout meter that does not record amounts awarded as the result of a progressive payout but that accumulates the total number of credits paid out automatically by the slot machine as a result of an external bonusing system award;

(4) An attendant paid jackpot meter that does not record amounts awarded as the result of an external bonusing system or a progressive payout but accumulates the total number of credits hand paid by a facility operator as the result of a single winning combination that exceeds the physical or configured capability of the slot machine;

(5) An attendant paid progressive jackpot meter that does not record amounts awarded as the result of an external bonusing system but accumulates the total number of credits hand paid by a facility operator as a result of a progressive jackpot that exceeds the physical or configured capability of the slot machine; and

(6) An attendant paid external bonus payout meter that does not record amounts awarded as the result of a progressive payout but accumulates the total number of credits hand paid by a facility operator as a result of an external bonusing system award that exceeds the physical or configured capability of the slot machine;

c. An attendant paid canceled credit meter that accumulates the total number of credits hand paid by a facility operator as the result of a player initiated cash-out that exceeds the physical or configured capability of the slot machine;

d. A gaming ticket in count meter that accumulates the number of gaming tickets accepted by a slot machine;

e. A gaming ticket in value meter that accumulates the total value of credits on gaming tickets accepted by a slot machine;

f. A gaming ticket out count meter that accumulates the number of gaming tickets issued by a slot machine;

g. A gaming ticket out value meter that accumulates the total value of credits on gaming tickets issued by a slot machine;

h. A promotional play instrument in count meter that accumulates the number of promotional play instruments accepted by a slot machine;

i. A promotional play instrument in value meter that accumulates the total value of credits on promotional play instruments accepted by a slot machine;

j. A cashable downloadable in value meter that accumulates the total value of cashable credits accepted by a slot machine through a cashless funds transfer system;

k. A cashable downloadable out value meter that accumulates the total value of cashable credits issued by a slot machine to player accounts through a cashless funds transfer system;

l. A noncashable downloadable in value meter that accumulates the total value of noncashable credits accepted by a slot machine through a cashless funds transfer system;

m. A noncashable downloadable out value meter that accumulates the total value of noncashable credits issued by a slot machine to player accounts through a cashless funds transfer system; and

n. Other meters as required by the department.

4. A slot machine shall be equipped with the following noncumulative meters:

a. A credit meter that advises a player of the total number of credits, cashable and noncashable, available for wagering on the slot machine, which shall be wagered in the following order:

(1) Noncashable credits; and

(2) Cashable credits;

b. A credits wagered meter that advises a player of the total number of credits wagered in a particular game or round of slot machine play;

c. A win meter that advises a player of the total number of credits won in the immediately concluded game or round of slot machine play; and

d. A credits paid meter that advises a player of the total value of the last:

(1) Cash out initiated by a player;

(2) Hand paid jackpot; and

(3) Hand paid canceled credit.

5. The noncumulative meters required by subdivision 4 of this subsection shall be:

a. Visible from the exterior of the slot machine; and

b. At least eight digits in length.

6. A slot machine shall be equipped with a meter at least eight digits in length that stores, in a manner and for a duration acceptable to the department, the number of games played after the following events:

a. Power reset;

b, Door close; and

c. RAM clear.

7. The department may approve a slot machine that combines one of more of the meters enumerated in subdivision 3 of this subsection if the department determines that the combined meters do not preclude the capture of all critical transactions occurring on a slot machine.

8. A manufacturer may enable a slot machine that has been tested, certified, and approved under this chapter for

tournament play with the prior written approval of the department, and if a slot machine has been enabled for tournament play, the results of tournament play may not increment the cumulative meters required under subdivision 3 of this subsection.

Q. RAM clear. A manufacturer may not perform a RAM clear on a slot machine without:

1. Prior notice to the central monitor and control system operator; and

2. Recordation and transmission to the central monitor and control system operator of accounting meter data immediately prior to the RAM clear.

R. Slot machine tower lights and error conditions

1. In this subsection, the following terms have the meanings indicated.

"Administrative mode" means a slot machine has been deliberately placed by a manufacturer in an unplayable state to access the set up or recall functions of the slot machine;

"Disabled mode" means a slot machine has been deliberately placed, by a manufacturer or the central monitor and control system, in an unplayable state for any reason other than access to the set up or recall functions of the slot machine; and

"Tilt mode" means a slot machine has placed itself in an unplayable state due to malfunction or error condition and may not be returned to a playable state without the intervention of a manufacturer.

2. A slot machine shall be equipped with a tower light located at the top of its cabinet used to identify the operational status of the slot machine including:

a. A jackpot payout;

b. A credit meter payout that exceeds the physical or configured capability of the slot machine to pay;

c. Main door open;

d. Player requesting attendant services;

e. Administrative mode;

f. Disabled mode; and

g. Tilt mode.

3. A tower light shall be visible to:

a. A player; and

b. The facility operator's surveillance department.

4. When illuminated, the tower light shall indicate the default denomination of the slot machine, which for multi-denomination slot machines, shall be the lowest configured denomination.

5. Each denomination shall be indicated by a unique color and be consistent across the facility operator's gaming floor.

6. The department may, on submission of a written request by a manufacturer, approve an alternative means for identifying the operation status enumerated in this subsection.

7. A manufacturer shall deliver a slot machine with documentation that identifies each light or light combination on its tower light and the operational status corresponding to that light or light combination.

8. Nothing in this subsection shall preclude a manufacturer from equipping a slot machine with a light or light combinations not required by this subsection for use by a facility operator for gaming floor communication provided the manufacturer notifies the department in writing of any internal communication protocols involving tower lights developed by a manufacturer for a facility prior to implementation.

9. A slot machine shall be equipped, while idle and in play mode, to do the following with regard to an error condition identified in subdivision 10, 11, 12, or 13 of this subsection:

a. Detect the error condition;

b. Identify the specific error condition by:

(1) Tower light; or

(2) Other department-approved means; and

c. Communicate the specific error condition to the:

(1) Central monitor and control system; and

(2) Casino management system.

10. The following error conditions may be cleared automatically by the slot machine upon completion of a new play sequence:

a. Power reset;

b. Door open; and

c. Door just closed.

11. The following error conditions shall result in placement of the slot machine in disabled mode, shall prevent play and shall only be cleared by a manufacturer:

a. Low RAM battery;

b. Program error or defective program storage media;

c. Reel spin error;

d. Removal of the control storage media; and

e. RAM defective or corrupted.

12. The following error conditions need not result in placement of the slot machine in disabled mode, may not preclude play if the error condition is determined not to prohibit completion of the transaction and shall be cleared by a manufacturer or facility operator:

a. Printer mechanism paper level is low;

b. Printer mechanism is out of paper;

c. Printer failure; and

d. Presentation error.

13. A manufacturer of a slot machine shall affix a description of the error code corresponding to each error condition inside a slot machine.

S. Last game recall.

1. A slot machine shall be capable of recalling and displaying a complete play history for the most recent game event and at least three games immediately preceding the most recent game event.

2. The play history required by subdivision 1 of this subsection shall:

a. Be retrievable using an external key switch or other secure method that is not available to a player;

b. Be available when the slot machine is in:

(1) Idle mode;

(2) Administrative mode;

(3) Disabled mode; and

(4) Unless a true fatal tilt has occurred, tilt mode; and

c. Include:

(1) Game outcome in graphics or text;

(2) The base game and all intermediate play decisions;

(3) Details sufficient to determine the credits available at the start and end of each game event;

(4) Wagers placed;

(5) Results of any player choices involved in the game outcome;

(6) Credits won;

(7) Unless discernable from other screens or attendant menus, credits cashed out;

(8) An indication of any progressive jackpot awarded; and

(9) All double-up, bonus, and extended play activity.

3. Notwithstanding the requirements of subdivision 2 c of this subsection, a slot machine offering a variable number of intermediate play steps in a game event shall satisfy the requirements of this subsection if it is capable of recalling and displaying the last 50 intermediate steps in each of the four base game events retained.

4. A slot machine shall be capable of recalling and displaying a complete transaction history for the last 35 transactions with a cashless funds transfer system.

T. Slot machine entry logs.

1. Unless a request for an alternate procedure is submitted in writing and approved by the department, a manufacturer shall equip a slot machine with a maintenance log for use in documenting each time a:

a. Slot machine is entered; or

b. Device connected to a slot machine that may affect the operation of the slot machine is accessed.

2. A maintenance log shall be:

a. Signed by each individual accessing an area enumerated in subdivision 1 of this subsection, including representatives of a manufacturer, a contractor, a facility operator, or the department;

b. Maintained in a book with bound numbered pages that cannot be readily removed, or in a functional equivalent that has been reviewed and approved by the department:

(1) In the main cabinet of the slot machine; and

(2) On the cover of which are fields to record:

(a) The slot machine's manufacturer's serial number;

(b) Department asset number; and

(c) A log book sequence number;

c. Utilized to document the following:

(1) Date and time of entry;

(2) Entering individual's signature;

(3) Reason for entering the slot machine, including the identification of areas inspected or repaired; and

d. Retained by a facility operator for a minimum of three years from the date of the last entry unless a request for destruction is submitted in writing and approved in writing by the department.

3. A manufacturer shall equip a progressive controller not housed within the cabinet of a slot machine with a maintenance log that documents each time the department-approved compartment in which the progressive controller resides is accessed that is:

a. Signed by each individual accessing the compartment housing the progressive controller including representatives of a manufacturer, a contractor, a facility operator, or the department;

b. Maintained in a book with bound numbered pages that cannot be readily removed:

(1) In the department-approved compartment in which the progressive controller resides; and

(2) On the cover of which are fields to record:

(a) The progressive controller's manufacturer's serial number;

(b) Department asset number; and

(c) A log book sequence number;

c. Utilized to document the following:

(1) Date and time of entry to the compartment housing the progressive controller;

(2) Entering individual's signature;

(3) Reason for entering the compartment housing the progressive controller including the identification of areas inspected or repaired; and

d. Retained by a facility operator for a minimum of three years from the date of the last entry unless a request for destruction is submitted in writing and approved in writing by the department.

U. Slot machine security.

1. If a manufacturer ships a slot machine with software already installed, prior to transporting it the manufacturer shall seal the slot machine with a prenumbered seal.

2. Access to the main door securing the interior of a slot machine shall be controlled by at least one lock:

a. The key to which is:

(1) Different from any other key securing access to a slot machine component including a belly door; and

(2) Limited to access by a manufacturer and facility operator; and

b. Provided and installed by a facility operator except a facility operator may supply a manufacturer with a lock for installation during the manufacturing process.

3. Access to the logic door securing the slot machine's main processing unit shall be controlled by at least one lock:

a. The key to which is:

(1) Different from any other key securing access to a slot machine component including a belly door; and

(2) Limited to access by a manufacturer and facility operator; and

b. Provided and installed by a facility operator, except a facility operator may supply a manufacturer with a lock for installation during the manufacturing process.

4. A slot machine shall be designed with access to hardware switches controlling functions critical to the operation of a slot machine limited to access by a manufacturer and the department including switches, jumpers, and other mechanisms utilized to alter:

a. Pay tables;

b. Payout percentages; and

c. Meters.

5. A slot machine shall have:

a. Printed or affixed to the top and front of the slot machine, in a size suitable for effective surveillance coverage:

(1) The facility operator's gaming floor location number; and

(2) Department asset number; and

b. An identification plate on its exterior displaying the:

(1) Manufacturer; and

(2) Manufacturer's:

(a) Serial number; and

(b) Model number.

V. Minimum design standards applicable to equipment, a system, or software.

1. Equipment, a system, or software required to be tested, certified, and approved under this subsection shall:

a. Conform to the minimum design standards of this subsection; and

b. If applicable, conform to any specific additional design standards enumerated in this se.

2. Equipment, a system, or software required to be tested, certified, and approved under this subsection shall, at a minimum, control logical access through:

a. Generation of daily monitoring logs documenting:

(1) User access; and

(2) Security incidents;

b. Assignment of rights and privileges to an individual user including specific protocols addressing:

(1) Creation, modification, and termination of a unique system account for each user;

(2) Password parameters that:

(a) Require a minimum length;

(b) Incorporate an expiration interval; and

(c) Result in lockout; and

(3) Administrator and override capabilities;

c. Use of access permissions to restrict an unauthorized user from performing any the following with regard to critical files and directories:

(1) Reading;

(2) Altering; or

(3) Deleting; and

d. Restricted access to critical files and directories through:

(1) Encryption; or

(2) If approved by the department, internal controls provided the internal controls include:

(a) The effective segregation of duties and responsibilities with regard to the system; and

(b) The automatic monitoring and recording by the system of access by an individual to its files and directories.

3. Equipment, a system, or software required to be tested, certified, and approved under this chapter shall, at a minimum, control system operations through:

a. Generation of daily monitoring logs and alert messages documenting:

(1) System performance;

(2) Hardware problems; and

(3) Software errors;

b. Authentication of the source of a data transmission;

c. Transmission completeness and accuracy checks;

d. Detection of corrupt or lost data packets;

e. Rejection of a transmission;

f. Use of cryptographic controls for critical transmissions of data; and

g. Daily synchronization of its real time clock with that of equipment, systems, or software to which it is linked.

4. Equipment, a system, or software required to be tested, certified, and approved under this subsection shall, at a minimum, control the integrity of data through:

(a) Validation of inputs to critical fields, including data:

(1) Type; and

(2) Format;

(b) Rejection of corrupt data;

(c) Automatic and independent recordation of critical data;

(d) Independent verification of the accuracy of data; and

(e) Segregation of all security critical system programs, files, and directories from other programs, files, and directories.

5. Equipment, a system, or software required to be tested, certified, and approved under this subsection shall, at a minimum, ensure continuity through:

a. Data redundancy to permit a complete and prompt recovery of all information in the event of malfunction or power interruption; and

b. Environmental protections, including an uninterruptible power supply to protect critical hardware.

6. Equipment, a system, or software required to be tested, certified, and approved under this subsection must comply with the gaming law, this chapter, any other law, regulation, or condition of the department related to casino gaming and any applicable technical standard issued by the director.

W. Gaming ticket system - additional requirements.

1. A facility operator may issue gaming tickets and shall utilize only a gaming ticket system that has been tested, certified, and approved under this chapter.

2. In addition to complying with the minimum design standards of subsection V of this section, a gaming ticket system shall:

a. Authenticate the source of a data transmission by identifying whether a transmission originated with a:

(1) Casino gaming machine;

(2) Ticket redemption unit; or

(3) Cashiers' cage redemption location;

b. Use cryptographic controls for transmissions that include:

(1) A gaming ticket series number;

(2) Meter information; and

(3) Other information used in the calculation or verification of proceeds;

c. Be configured to:

(1) Prevent issuance of a gaming ticket exceeding $10,000;

(2) Require gaming tickets of $5,000 or more to be redeemed only at the cashiers' cage;

(3) Issue a gaming ticket that does not expire for 180 days after the date of issuance; and

(4) Permit access to the complete series number of an unredeemed gaming ticket only to gaming ticket system administrative employees and accounting department employees not assigned to the cashier's cage;

d. Require a generated gaming ticket to include:

(1) Name or trade name of the facility operator;

(2) Date and time of issuance;

(3) Amount of the gaming ticket;

(4) A unique series number printed in at least two locations on the gaming ticket:

(a) Comprised of at least 18 numbers, symbols, or characters; and

(b) Containing at least three numbers, symbols, or characters that are:

(i) Randomly generated in a manner approved by the department;

(ii) Designed to prevent an individual from being able to predict the series number of any other gaming ticket; and

(iii) Containing at least one number, symbol, or character unique to a gaming ticket that visually differentiates between a gaming ticket and a promotional play instrument;

(5) Asset number of the casino gaming machine dispensing the gaming ticket;

(6) Locations where the gaming ticket may be redeemed and any restrictions applicable to redemption;

(7) A barcode or magnetic strip that enables ticket system to identify the numeric information required by this subdivision; and

(8) Notice to the player of the terms of expiration; and

e. Automatically and independently record the critical data required to be printed on a gaming ticket under the facility operator's approved minimum control standards at the time of gaming ticket:

(1) Generation; and

(2) Redemption;

f. Perform the following before payment:

(1). Independently verify, in a manner satisfactory to the department, the accuracy of a gaming ticket series number and amount prior to redemption; and

(2) Electronically cancel the gaming ticket: and

g. Be able to generate, at the conclusion of each gaming day, reports detailing:

(1) Gaming tickets issued;

(2) Gaming tickets redeemed and canceled by redemption location;

(3) Unredeemed liability for gaming tickets;

(4) Readings on gaming ticket related casino gaming machine meters;

(5) Meter readings compared to number and amount of issued and redeemed gaming tickets; and

(6) Any exceptions.

X. Ticket redemption unit - additional requirements.

1. A facility operator may utilize a ticket redemption unit or ancillary system or application that has been tested, certified, and approved under this chapter.

2. In addition to complying with the minimum design standards of subsection V of this section, a ticket redemption unit or ancillary system or application shall, in a manner satisfactory to the department:

a. Be configured to redeem a gaming ticket of less than $5,000;

b. Establish the validity of a gaming ticket or promotional play instrument by comparing the unique series number on the ticket or instrument with electronic records in a gaming ticket system or promotional play system;

c. Cancel upon acceptance a gaming ticket or promotional play instrument to prevent:

(1) Subsequent redemption at:

(a) A cashiers' cage; or

(b) Another ticket redemption unit; or

(2) Acceptance by a slot machine; and

d. Evaluate whether sufficient funds are available before accepting the gaming ticket or promotional play instrument and completing the transaction.

3. The following error conditions may be cleared automatically by a ticket redemption unit upon completion of a new transaction.

a. Power reset;

b. Door open;

c. Door closed; and

d. System communication loss.

4. The following error conditions shall result in placement of the ticket redemption unit in disabled mode, shall prevent new transactions, and shall only be cleared by a facility operator:

a. Failure to make payment, meaning that a gaming ticket or promotional play instrument was returned and no receipt for an unpaid amount was issued;

b. Failure to make complete payment, meaning no receipt for an unpaid amount was issued;

c. Bill validator failure; and

d. Printer failure due to printer jam or lack of paper.

5. A ticket redemption unit or ancillary system or application shall be equipped with:

a. The meters functions required by this subsection;

b. Cumulative meters that are accessible and legible without access to the interior of the ticket redemption unit, including:

(1) Count meters that are at least eight digits in length; and

(2) Value meters that are at least 10 digits in length maintained in dollars and cents; continuously and automatically increment in credits equal to cents; and

c. A device, mechanism, or method for retaining electronic accounting data for all meters for a period of not less than 10 days subsequent to a power loss.

6. A ticket redemption unit or ancillary system or application shall be equipped with meters that continuously and automatically increment as follows:

a. A gaming ticket in count meter that accumulates the number of gaming tickets accepted by a ticket redemption unit;

b. A gaming ticket in value meter that accumulates the total number of credits on gaming tickets accepted by a ticket redemption unit;

c. A promotional play instrument in count meter that accumulates the number of promotional play instruments accepted by a ticket redemption unit;

d. A promotional play instrument in value meter that accumulates the total value of credits on promotional play instruments accepted by a ticket redemption unit;

e. Bill denomination in count meters that accumulate, by denomination, the total number of bills accepted by a ticket redemption unit;

f. Bill denomination in value meters that accumulate, by denomination, the total dollar amount of currency accepted by a ticket redemption unit;

g. Bill denomination out count meters that accumulate, by denomination, the total number of bills dispensed by a ticket redemption unit;

h. Bill denomination out value meters that accumulate, by denomination, the total dollar amount of currency dispensed by a ticket redemption unit; and

i. Other meters required by the department.

7. A facility operator shall be able to generate the following reports by a ticket redemption unit or ancillary system or application for the reconciliation period, which may be by gaming day, shift, or drop cycle:

a. A gaming ticket transaction report that details:

(1) Disposition, as paid, partially paid, or unpaid, of gaming tickets accepted by a ticket redemption unit;

(2) Gaming ticket validation number;

(3) Date and time of redemption;

(4) Amount requested; and

(5) Amount dispensed;

b. A reconciliation report that details:

(1) Date and time;

(2) Unique asset identification number of the ticket redemption unit;

(3) Total amount of cash in the currency and coin cassettes;

(4) Total number of bills accepted by denomination; and

(5) Total amount of gaming tickets accepted;

c. A gaming ticket and currency storage box report that details the following data whenever a storage box is removed from the ticket redemption unit:

(1) Date and time;

(2) Unique asset identification number of the ticket redemption unit;

(3) Unique identification number for each storage box in the ticket redemption unit;

(4) Total amount of currency dispensed;

(5) Total number of bills dispensed by denomination;

(6) Total amount of gaming tickets accepted;

(7) Total count of gaming tickets accepted; and

(8) Details required to be included in any gaming ticket transaction report; and

d. A transaction history report that details all critical player transaction history including any required automated transaction log, which shall include for each transaction, whether complete or incomplete:

(1) Date and time;

(2) Amount;

(3) Disposition as complete or incomplete;

(4) Error conditions including failed access attempts;

(5) User access data; and

(6) If equipped to redeem multiple cashable gaming tickets and cashable promotional play instruments in a single transaction, a breakdown of the transaction by individual cashable gaming ticket and cashable promotional play instrument.

Y. External bonusing system - additional requirements.

1. A facility operator may utilize an external bonusing system that has been tested, certified, and approved under this section.

2. In addition to complying with the minimum design standards of subdivision V of this section, a casino gaming machine connected to an external bonusing system may not equal or exceed an average payout percentage of 100% when the contribution of any bonus awards available on a casino gaming machine is added to the casino gaming machine's average payout percentage.

Z. Cashless funds transfer system - additional requirements.

1. A facility operator may utilize a cashless funds transfer system that has been tested, certified, and approved under this chapter.

2. A facility operator shall, in a form and in a timeframe specified by the department, submit a report to the department detailing any adjustment made to the amount of a credit transferred to or from a casino game or a player account by means of a cashless funds transfer system.

3. A facility operator utilizing a cashless funds transfer system shall develop and include in the internal controls submitted to and approved by the department procedures addressing the integrity, security, and control of a cashless funds transfer system.

4. A facility operator's internal controls shall address the intended scope of use of a cashless funds transfer system, including whether it will be used to:

a. Transfer credits to a casino gaming machine; or

b. Transfer credits from a casino gaming machine to a player account.

5. Transfer of credits to a casino gaming machine under this section shall be initiated by a player using an access control that requires the use of a unique access code for each player that is selected by and only available to that player.

6. A record of every transfer of credits to a casino game under this section shall be maintained by the cashless funds transfer system, and each transaction shall be identified, at a minimum, by:

a. Date and time;

b. Casino gaming machine manufacturer serial number; and

c. The player's account identification number.

AA. Progressive slot machines.

1. A slot machine offering a progressive jackpot may:

a. Stand alone; or

b. Be linked to:

(1) Other slot machines in a facility; or

(2) Slot machines in two or more facilities in or outside the Commonwealth of Virginia through a wide area progressive system under subsection BB of this section.

2. A manufacturer may not install in a facility, and a facility operator may not make available for play, a slot machine offering a progressive jackpot without department approval in writing of:

a. A progressive proposal under subsection CC of this section; and

b. Internal controls submitted to and approved by the department addressing the payment of a progressive jackpot.

3. A manufacturer may not modify the terms of a progressive jackpot, and a facility operator may not make available for play, a slot machine that offers a progressive jackpot that differs from its approved progressive proposal without the approval in writing of the department under subsection CC of this section.

4. A slot machine may offer multiple progressive jackpots.

5. A progressive jackpot amount may be calculated and transmitted to a slot machine by:

a. The operating system of a slot machine; or

b. A separate progressive controller interfaced to a slot machine.

6. A progressive controller shall be:

a. Located in a restricted area;

b. Secured:

(1) In a dual key controlled compartment with:

(a) One key controlled by the operations department; and

(b) One key controlled by the security department; or

(2) By alternative means approved by the department; and

c. Capable of:

(1) Displaying an available progressive jackpot amount on a slot machine's:

(a) Progressive meter; or

(b) Common progressive meter;

(2) Transmitting to a slot machine for metering purposes the amount of a progressive jackpot;

(3) If linked to a common progressive meter in accordance with subdivision 8 of this subsection, displaying the department asset number of the slot machine on which a progressive jackpot is won;

(4) If a progressive controller is servicing multiple slot machines, automatically resetting all slot machines connected to it to a preestablished reset amount; and

(5) If the progressive offers multiple jackpot levels, maintaining and displaying for each progressive level the:

(a) Number of progressive jackpots won;

(b) Cumulative amount paid;

(c) Maximum progressive payout;

(d) Minimum amount or reset amount; and

(e) Rate of progression.

7. A slot machine offering a progressive jackpot shall be equipped, for each progressive jackpot offered, with the following mechanical, electrical, or electronic meters:

a. A progressive meter that:

(1) May increase in value based upon wagers;

(2) Advises the player of the amount that may be won if the slot machine characters that result in the award of a progressive jackpot appear as a result of activation of play; and

(3) Is visible from the front of the slot machine through:

(a) A meter display housed in the slot machine; or

(b) A common progressive meter display unit;

b. A progressive payout meter under subsection P of this section;

c. An attendant paid progressive jackpot meter under subsection P of this section; and

d. A cumulative progressive payout meter that continuously and automatically records the total value of progressive jackpots paid whether paid:

(1) Directly by the slot machine; or

(2) Hand paid by a facility operator as a result of a progressive jackpot that exceeds the physical or configured capability of a slot machine.

8. A slot machine linked to a common progressive meter for the purpose of offering the same progressive jackpot on two or more slot machines shall:

a. Have the same probability of hitting the combination of characters that will award the progressive jackpot as every other slot machine linked to that common progressive meter; and

b. Require each:

(1) Player to wager the same amount to receive a chance at winning the progressive jackpot; and

(2) Wager to increment the progressive meter by the same rate of progression on every slot machine connected to the common progressive meter.

9. Notwithstanding the requirements of subsection 8 of this subsection, slot machines linked to a common progressive

meter for the purpose of offering the same progressive jackpot on two or more slot machines may be of different denominations or require different wagers, or both, if:

a. The probability of winning the progressive jackpot is directly proportional to the wager required to win a jackpot; and

b. A notice indicating the proportional probability of hitting the progressive jackpot on the common progressive meter is conspicuously displayed in a manner specified by the department on each linked slot machine.

10. A manufacturer may not:

a. Set a limit for a progressive jackpot that exceeds the display capability of the progressive meter; or

b. Adjust a progressive meter without the prior approval of the department unless the adjustment is:

(1) Required as a direct result of slot machine or meter malfunction; and

(2) Reported by the manufacturer in a form and in a time frame specified by the department to the department and the facility operator.

BB. Wide area progressive system.

1. A manufacturer may not install, and a facility operator may not make available for play, a wide area progressive system without department approval in writing of:

a. A wide area progressive agreement under subdivision 3 of this subsection;

b. A progressive proposal under subsection CC of this section; and

c. Internal controls submitted to and approved by the department addressing the payment of a progressive jackpot on a slot machine participating in a wide area progressive system.

2. A manufacturer may not modify the terms of a progressive jackpot offered through a wide area progressive system, and a facility operator may not make available for play, a slot machine that offers a progressive jackpot that differs from its approved progressive proposal without the approval in writing of the department under subsection CC of this section.

3. A wide area progressive system shall operate under the terms and conditions of a wide area progressive agreement between:

a. The department;

b. A manufacturer; and

c. Participating facility operators in or outside the Commonwealth of Virginia.

4. A wide area progressive agreement shall assign responsibility for the operation and administration of a wide area progressive system to a designated system operator who may be:

a. Participating facility operators in or outside the Commonwealth of Virginia; or

b. A manufacturer.

5. A wide area progressive agreement shall address:

a. The duties and responsibilities of the:

(1) Participating:

(a) Manufacturer; and

(b) Facility operators in or outside the Commonwealth of Virginia; and

(2) System operator;

b. The terms of compensation for a system operator including to what extent the system operator is to receive compensation based, directly or indirectly, on an interest, percentage, or share of the proceeds of a wide area progressive system;

c. Responsibility for progressive jackpots, proceeds, and expenses associated with the operation of a wide area progressive system;

d. Control and operation of a system monitor room under subdivision 6 of this subsection;

e. Service and maintenance of a wide area progressive system;

f. Responsibility for generating, filing and maintaining the records and reports required under this chapter;

g. If applicable, terms with regard to establishing and servicing any trust agreement associated with an annuity jackpot offered by a wide area progressive system in accordance with the internal controls submitted to and approved by the department; and

h. If requested by the department, additional documentation with regard to a wide area progressive agreement.

6. A wide area progressive system shall be controlled and operated from a system monitor room:

a. Under the sole possession of, and maintained and operated by, the system operator designated in a wide area progressive agreement;

b. In a location approved by the department;

c. If required by the department, staffed by individuals licensed as gaming employees; and

d. Subject to:

(1) Surveillance coverage satisfactory to the department; and

(2) Access controls satisfactory to the department including a monitor room access log in accordance with subdivision 7 of this subsection.

7. A system operator shall maintain a monitor room access log:

a. Signed by each individual entering the system monitor room except an employee of a system operator assigned to the system monitor room on the individual's assigned shift;

b. Maintained in a book with bound numbered pages that cannot be readily removed;

c. Utilized to document the following:

(1) Date and time of entry;

(2) Entering individual's signature; and

(3) Reason for entering the system monitor room including the identification of areas inspected or repaired; and

d. Retained by a system operator for a minimum of three years from the date of the last entry unless a request for destruction is submitted in writing and approved in writing by the department.

CC. Progressive proposal.

1. A progressive proposal:

a. Shall be jointly prepared, executed, and submitted to the department by a facility operator and a manufacturer;

b. Shall include the following:

(1) Manufacturer's:

(a) Serial number;

(b) Model number;

(c) Software identification number; and

(d) Version number;

(2) Denomination or a designation as multi-denomination;

(3) Cabinet style;

(4) An indication as to whether the slot machine is to be:

(a) Stand alone;

(b) Linked to other slot machines in a facility; or

(c) Linked to a wide area progressive system;

(5) The initial and reset amounts at which the progressive meter or meters will be set;

(6) For each progressive jackpot the:

(a) Rate of progression;

(b) Limit; and

(c) Probability of winning; and

(7) If requested by the department, additional documentation; and

c. May be approved in writing by the department.

2. A manufacturer may not modify the terms of a progressive jackpot, and a facility operator may not make available for play, a slot machine that offers a progressive jackpot that differs from its approved progressive proposal without:

a. Submission to the department, in a timeframe specified by the department, of a request for modification of an approved progressive proposal identifying any proposed change to the terms and conditions of the progressive proposal to be modified; and

b. The approval in writing of the department.

3. The department may consider the following modifications to an approved progressive proposal:

a. A revision to the payout limit on an available progressive jackpot, provided the revised payout limit is greater than the then current payout amount on the progressive jackpot meter;

b. Transfer of an available progressive jackpot amount in accordance with subdivision 4 of this subsection;

c. Removal from the gaming floor of a slot machine offering a progressive jackpot in accordance with subdivision 5 of this subsection; and

d. Other modifications deemed consistent with this subsection by the department.

4. A transfer of an available deemed progressive jackpot amount shall involve:

a. The entire amount;

b. Transfer to the:

(1) Progressive meter of a slot machine with the same:

(a) Or greater probability of winning the progressive jackpot;

(b) Or lower wager requirement to be eligible to win the progressive jackpot; and

(c) Type of progressive jackpot award; or

(2) Progressive meters of two separate slot machines provided each terminal to which a jackpot amount is transferred individually satisfies the requirements of this subdivision; and

c. Disclosure of the intent to transfer an available progressive jackpot amount on the front of a slot machine in a manner specified by the department for at least 10 days prior to the intended date of transfer.

5. Removal from the gaming floor of a slot machine offering a progressive jackpot shall require:

a. If the removal involves one or more linked slot machines offered in:

(1) A single facility, that at least two linked slot machines offering the same progressive jackpot remain on the gaming floor; and

(2) More than one facility, that the facility operator retain at least one linked slot machine offering the same progressive jackpot on its gaming floor; and

b. In every case, disclosure of the intent to transfer an available progressive jackpot on the front of a slot

machine in a manner specified by the department for at least 14 days prior to the intended date of transfer.

6. Nothing in this subsection shall preclude the department from imposing additional terms and conditions on a modification of a progressive proposal.

DD. Remote access.

1. A manufacturer may not perform from a remote location analysis of, or technical support with regard to, a casino gaming machine without:

a. Submission of a written request to the department; and

b. The written approval of the department.

2. A manufacturer may perform from a remote location analysis of, or technical support with regard to, a casino management system including:

a. A gaming ticket system;

b. A promotional play system;

c. A player tracking system;

d. An external bonusing system;

e. A cashless funds transfer system; and

f. A wide area progressive system.

3. A facility operator intending to authorize remote access to a casino gaming machine management system under this subsection shall include in its internal controls submitted to and approved by the department a written system of access protocols that require:

a. A unique system account for each employee of a manufacturer identified by the manufacturer as potentially required to perform technical support from a remote location;

b. Use of a dedicated and secure communication facility;

c. The facility operator to provide the department with notice of access within four hours after a person remotely accesses a system;

d. The facility operator to take affirmative steps, on a per access basis, to activate a manufacturer's access privileges;

e. Imposition of limits on the ability of any individual authorized under this subsection to deliberately or inadvertently interfere with:

(1) The normal operation of the system; and

(2) The system's data; and

f. An access log:

(1) Maintained by both the:

(a) Manufacturer; and

(b) Facility operator's information technology department;

(2) Maintained in:

(a) A book with bound numbered pages that cannot be readily removed; or

(b) An electronic format equipped with software that prevents modification of an entry after it has been initially entered into the system; and

(3) Documenting the:

(a) Manufacturer version number of the system accessed;

(b) Type of connection as leased line, dial in modem, or private WAN;

(c) Name of the manufacturer employee remotely accessing the system;

(d) Name of the information technology department employee activating the manufacturer's access to the system;

(e) Date and time of the connection;

(f) Duration of the connection;

(g) Reason for the remote access including a description of the symptoms or malfunction prompting the need for remote access to the system; and

(h) Any action taken or further action required.

4. A facility operator may not authorize a manufacturer to remotely access a slot machine management system until its system access protocols are approved in writing by the department.

5. Any modification to a system required to be tested, certified, and approved by the department under this subdivision shall be processed as:

a. An emergency modification under subsection G of this section; or

b. A standard modification under subsection C or D of this section.

6. If an employee of a manufacturer is no longer employed or authorized by a manufacturer to remotely access a system pursuant to this subsection, the manufacturer shall:

a. Immediately notify in writing:

(1) Any facility operator that has established a unique system account for that employee of the change in authorization; and

(2) The department; and

b. Verify with each facility operator notified of the change in authorization that the access privileges of the individual have been revoked.

EE. Manufacturer storage of equipment, systems, and software outside a facility.

1. A manufacturer may not utilize a location outside of a facility to store or repair equipment, systems, software, or related parts and inventory for use in a facility without the storage facility being:

a. Inspected by the department; and

b. Approved in writing by the department.

2. A manufacturer shall locate a storage facility in Virginia in locations that reasonably permit the delivery of the support and technical services to which the manufacturer is obligated.

3. A manufacturer shall submit to the department a written request to utilize a storage facility under this subsection that includes, at a minimum:

a. The address;

b. A physical description of the storage facility;

c. Specifications for the surveillance system that has been or will be installed at the proposed storage facility including:

(1) If digital:

(a) Recording frames per second; and

(b) Common image rate; and

(2) Proposed recording retention schedule; and

d. Security procedures for the storage facility.

11VAC5-90-160. Mechanical casino games.

A. A facility operator may offer a mechanical casino game pursuant to this subsection.

B. Testing, certification, and approval of a mechanical casino game and equipment.

1. A manufacturer may not offer a mechanical casino game for sale, lease, distribution, or use in a facility, or a modification to a department-approved version of such a game, without it having been:

a. Tested and certified by an independent certified testing laboratory; and

b. Approved in writing by the department.

2. A facility operator may not purchase, lease, develop, or otherwise acquire the right to install, utilize, or make available for use a mechanical casino game, or a modification to a department-approved version of such a game or equipment, without it having been:

a. Tested and certified by an independent certified testing laboratory; and

b. Approved in writing by the department.

3. A facility operator may not modify, alter, or tamper with a mechanical casino game.

4. Modification, alteration, or tampering with a mechanical casino game may result in the immediate suspension of an operation license by the department.

5. A prototype of a mechanical casino game or equipment required to be tested, certified, and approved under this subsection, or a modification to a department-approved version of such a game, shall at a minimum be tested for:

a. Overall operational integrity; and

b. Conformance with the casino gaming law, this chapter, and any other law, regulation, or condition of the department related to casino gaming.

6. Procedures for submission, testing, certification, and approval of mechanical casino games and equipment shall:

a. Vary depending on the type of game; and

b. Be determined by the director.

7. Until such time as the department determines it has assembled a list of approved mechanical casino games and equipment sufficient to meet the needs of facility operators under the casino gaming law, notwithstanding the requirements of subsection C of this section, the department may permit an abbreviated testing and approval process in accordance with the requirements of subsection D of this section.

8. A manufacturer shall pay all costs of testing, certification, and approval under this section including all costs associated with:

a. Transportation;

b. Equipment and technical services required by an independent certified testing laboratory to conduct the testing and certification process; and

c. Implementation testing.

C. Submission of a mechanical casino game and equipment for testing and certification.

1. A manufacturer seeking department approval for a mechanical casino game shall submit the machine to an independent certified testing laboratory.

2. The submission required by subdivision 1 of this subsection shall include the following:

a. A request for testing and certification under subdivision B 6 of this section;

b. A prototype of the mechanical casino game identical in all respects to that for which department approval is sought;

c. Technical and operator manuals;

d. A description of the mechanical casino game, including:

(1) Diagrams, schematics, and specifications; and

(2) Documentation with regard to the manner in which the mechanical casino game and equipment was tested and emulated by the manufacturer prior to submission;

e. Where applicable, a copy, on electronically readable media, of all:

(1) Executable software, including data and graphics information;

(2) Source code for programs that have no commercial use other than as a component of a mechanical casino game; and

(3) Graphical images displayed on a mechanical casino game, including if applicable:

(a) Reel strips or card images;

(b) Rules and instructions; and

(c) Pay tables;

f. A mathematical explanation of the average and theoretical return to the player, listing all:

(1) Assumptions; and

(2) Steps in the formula including the treatment of bonus pays;

g. A description of the security methodologies incorporated into the design of a mechanical casino game;

h. A description accompanied by supporting test results of the random number generator or generators used to determine the results of a wager, including a detailed explanation of:

(1) Operational methodology; and

(2) Where applicable, the manner by which the random number generator, including the random number selection process, is impervious to:

(a) Outside influences;

(b) Interference from electro-magnetic, electrostatic, and radio frequencies; and

(c) Influence from ancillary equipment by means of data communications;

i. If a mechanical casino game requires or permits player skill in the theoretical derivations of the payout return, the source of strategy;

j. Proof that a mechanical casino game has been inspected and approved for customer safety by a reputable testing laboratory;

k. If applicable, a description of any interoperability testing conducted by the manufacturer, including test results identified by manufacturer, model and software identification, and version number, for the submitted mechanical casino game's connection to any of the following:

(1) Mechanical casino game data system;

(2) Casino management system;

(3) Gaming ticket system;

(4) Promotional play system;

(5) Player tracking system;

(6) Ticket redemption unit;

(7) Automated jackpot payout machine;

(8) External bonusing system;

(9) Cashless funds transfer system; and

(10) Progressive controller;

l. Specialized hardware, software, or testing equipment, inclusive of technical support and maintenance, requested by an independent certified testing laboratory including:

(1) An emulator for a specified microprocessor;

(2) Personal computers;

(3) Extender cables for CPU departments;

(4) Target reel strips; and

(5) Door defeats; and

m. If requested by the department or an independent certified testing laboratory, additional documentation pertaining to the mechanical casino game or equipment being tested.

3. A manufacturer seeking department approval for a modification to a department-approved version of a mechanical casino game, including a change in theme, shall submit the modification to an independent certified testing laboratory.

4. An independent certified testing laboratory selected by a manufacturer or the department to test a modification may, but need not be, the testing laboratory that performed the initial prototype testing.

5. The submission required by subdivision 3 of this subsection shall include the following:

a. A request for testing and certification under subdivision B 6 of this section;

b. The mechanical casino game proposed for modification;

c. A description of the proposed modification to the mechanical casino game, accompanied by applicable diagrams, schematics, and specifications;

d. If a change in theme is involved, a copy of the graphical images displayed on the mechanical casino game, including if applicable:

(1) Reel strips and card images;

(2) Rules and instructions; and

(3) Pay tables;

e. If a change in the manner in which the average payout percentage is achieved or a change in the theoretical return to the player is otherwise involved, a mathematical explanation of the return to the player listing all:

(1) Assumptions; and

(2) Steps in the formula including the treatment of bonus pays;

f. If the proposed modification requires or permits player skill in the theoretical derivations of the payout return, the source of strategy; and

g. If requested by the department or an independent certified testing laboratory:

(1) Any specialized hardware, software, or other equipment, inclusive of technical support and maintenance, required to conduct the testing and certification process; and

(2) Additional documentation pertaining to the testing of the proposed modification.

6. At the conclusion of testing of a prototype or modification to a mechanical casino game, an independent certified testing laboratory shall issue to the department a certification report in an:

a. Electronic form; and

b. Format acceptable to the department.

7. Upon receipt of a certification report from an independent certified testing laboratory, but prior to a decision to approve a prototype or modification to a mechanical casino game, the department may require a trial period, as follows:

a. A trial period shall be of a scope and duration the department deems appropriate to assess the operation of the mechanical casino game in a live gaming environment;

b. A trial period shall be subject to compliance by the manufacturer and the facility operator with specific terms and conditions required by the department, which may include:

(1) Development and implementation of product specific accounting and internal controls; and

(2) Periodic data reporting to the department;

c. The department may authorize the receipt of compensation by a manufacturer during a trial period; and

d. The department may order termination of the trial period at any time upon a determination by the department that:

(1) A manufacturer or facility operator has not complied with the terms and conditions required by the department; or

(2) The mechanical casino game is not performing as expected.

8. Upon receipt of a certification report from an independent certified testing laboratory, the department may:

a. Approve the prototype or modification, with or without specific conditions;

b. Reject the prototype or modification;

c. Require additional testing; or

d. Require a trial period under subdivision C 7.

9. Department approval of a prototype or modification of a mechanical casino game does not constitute a guarantee of its safety or reliability.

D. Abbreviated testing and certification.

1. A manufacturer may, during the period specified in subdivision B 7 of this section, seek department approval of a prototype or proposed modification under an abbreviated testing and certification process for a mechanical casino game required to be tested and certified under subdivision B 5 of this section.

2. A manufacturer shall submit the mechanical casino game to an independent certified testing laboratory.

3. The submission required by subdivision 2 of this subsection shall include the following:

a. A request for abbreviated testing and certification under this subsection naming the state within the United States on whose regulations and technical standards the manufacturer proposes the department rely;

b. A prototype of the mechanical casino game identical in all respects to that for which department approval is sought;

c. A certification signed by the chief engineer of the manufacturer, or the engineer in charge of the division of the manufacturer responsible for producing the equipment or system submitted, representing that:

(1) The prototype or proposed modification is identical in all respects to one that has been tested and certified by:

(a) A testing laboratory operated by the named state; or

(b) An independent certified testing laboratory on behalf of the named state;

(2) The manufacturer is licensed in good standing in the named state;

(3) The submitted mechanical casino game has all regulatory approvals prerequisite to sale, lease, or distribution in the named state;

(4) The testing standards of the named state are comprehensive and thorough and involve substantially similar technical requirements and safeguards as those required by the casino gaming law, this chapter, and any other law, regulation, or condition of the department related to casino gaming; and

(5) The manufacturer has fully disclosed any conditions or limitations placed by the named state on the operation or placement of the mechanical casino game:

(a) At the time of approval; or

(b) Subsequent to approval;

d. Copies of the submission package, and any amendments thereto, filed in the named state, including any:

(1) Checklists;

(2) Correspondence, review letters, or certification letters issued by:

(a) The testing laboratory operated by the named state; or

(b) An independent certified testing laboratory on behalf of the named state; and

(3) Final approval letter issued by the named state;

e. If applicable, a description of any interoperability testing conducted by the manufacturer, including test results identified by manufacturer, model and software identification, and version number, for the submitted mechanical casino game's connection to a:

(1) Separate mechanical casino game;

(2) Mechanical casino game or mechanical casino game data system;

(3) Casino management system;

(4) Gaming ticket system;

(5) Promotional play system;

(6) Player tracking system;

(7) Ticket redemption unit;

(8) Automated jackpot payout machine;

(9) External bonusing system;

(10) Cashless funds transfer system; and

(11) Progressive controller;

4. At the conclusion of testing of a prototype or modification, an independent certified testing laboratory conducting abbreviated testing and certification shall issue to the department a certification report in an:

a. Electronic form; and

b. Format acceptable to the department.

5. The certification report issued under subdivision 4 of this subsection shall state:

a. Whether the independent certified testing laboratory concurs with the manufacturer that the testing standards of the named state are comprehensive, thorough and involve substantially similar technical requirements and safeguards as those required by the casino gaming law, this chapter, and any other law, regulation, or condition of the department related to casino gaming;

b. Whether the documentation required by subdivision 3 c of this subsection is complete;

c. With respect to any deficiency noted relating to subdivision 5 a or 5 b of this subsection, the nature of the noncompliance; and

d. The results of any supplemental testing performed.

6. Upon receipt of a certification report from an independent certified testing laboratory, the department may act with regard to:

a. Acceptance of the testing standards of the named state; and

b. The specific mechanical casino game by:

(1) Approving the prototype or modification, with or without specific conditions;

(2) Rejecting the prototype or modification;

(3) Requiring additional testing; or

(4) Requiring a trial period under this chapter.

7. Department approval of a prototype or proposed modification does not constitute a guarantee of its safety or reliability.

E. Emergency modification of mechanical casino game.

1. Notwithstanding the requirements of subsections C and D of this section, the department may, on submission of a written request by a manufacturer, authorize installation of a modification to equipment, a system, or software required to be tested, certified, and approved by the department under subdivision B 5 of this section, on an emergency basis.

2. A written request submitted by a manufacturer to the department shall document the:

a. Equipment proposed for emergency modification, including:

(1) Software identification number; and

(2) Version number;

b. Facility;

c. Reason for the emergency modification; and

d. Proposed date and time of installation.

3. A manufacturer may not install an emergency modification without the written approval of the department.

4. No more than 15 days following receipt of department authorization on an emergency modification, a manufacturer shall submit a modification identical to that receiving emergency authorization for testing, certification, and approval under this chapter.

F. Notice of known or suspected defect.

1. A manufacturer shall immediately notify the department of any known or suspected defect or malfunction in a mechanical casino game required to be tested, certified, and approved by the department under subdivision B 5 of this section.

2. A manufacturer shall:

a. Confirm in writing any notice given to the department verbally pursuant to subdivision 1 of this subsection; and

b. If required by the department, notify a facility operator of any known or suspected defect or malfunction in the mechanical casino game installed in its facility.

3. A facility operator shall immediately notify the department of any known or suspected defect or malfunction in a mechanical casino game required to be tested, certified, and approved by the department under subdivision B 5 of this section.

4. A facility operator shall confirm in writing any notice given to the department verbally pursuant to subdivision 3 of this subsection.

G. Revocation.

1. The department may, at any time, revoke an approval granted to a mechanical casino game or equipment under this subsection on a determination by the department that the mechanical casino game or equipment does not comply with:

a. The casino gaming law, this chapter, or any other law, regulation, or condition of the department related to casino gaming; or

b. Any other requirement established by the department.

2. The department may at any time impose additional conditions on the operation or placement of department-approved equipment, systems, or software.

3. A revocation by the department of an approval under subdivision 1 of this subsection does not give rise to an appeal right.

H. Minimum and maximum bet.

1. A mechanical casino game may accept a minimum bet on a single game event as low as one cent.

2. A mechanical casino game may not accept a maximum bet on a single game event in excess of $50 without the written approval of the department.

I. Rules of play.

1. In this subsection the following term has the meaning indicated.

"Strategy choice" means a particular play option on a mechanical casino game that requires the use of skill to consistently achieve the best result.

2. A mechanical casino game shall be equipped to display to a player while idle the:

a. Schedule of credits awarded with each winning combination;

b. Applicable rules of play; and

c. Any maximum bet limit imposed under this chapter.

3. The department may prohibit the display of any rules of play it determines to be:

a. Incomplete;

b. Confusing;

c. Misleading; or

d. Inconsistent with the rules of play required by the department.

4. For rules of play, the schedule of credits awarded with each winning combination may not include possible aggregate awards achievable from free plays.

5. A mechanical casino game that includes a strategy choice shall include in its rules of play mathematically sufficient information for a player to use optimal skill unless the player:

a. Is not required to make an additional wager; and

b. Cannot lose any credits earned prior to the strategy choice.

6. A manufacturer or facility operator may not attach a sticker or other removable device that concerns rules of play to the face, glass, or screen of a mechanical casino game without the prior written approval of the department.

J. Manufacturer storage of mechanical casino games and equipment outside a facility.

1. A manufacturer may not utilize a location outside of a facility to store or repair a mechanical casino game or equipment, or related parts and inventory for use in a facility without the storage facility being:

a. Inspected by the department; and

b. Approved in writing by the department.

2. A manufacturer shall locate a storage facility in Virginia in locations that reasonably permit the delivery of the support and technical services to which the manufacturer is obligated.

3. A manufacturer shall submit to the department a written request to utilize a storage facility under this subsection that includes, at a minimum:

a. The address;

b. A physical description of the storage facility;

c. Specifications for the surveillance system that has been or will be installed at the proposed storage facility including:

(1) If digital:

(a) Recording frames per second; and

(b) Common image rate; and

(2) Proposed recording retention schedule; and

d. Security procedures for the storage facility.

11VAC5-90-170. Table games definitions and equipment.

A. Definitions. In addition to the terms defined in the casino gaming law and 11VAC5-90-10, the following terms have the meanings indicated unless the context clearly requires otherwise.

"Ante" means the wager that a player may be required to make prior to any cards being dealt to participate in the round of play.

"Assistant table games shift manager" means an employee of a facility operator whose primary function is to supervise all of the table games in a licensed facility and who may be authorized to act as the table games shift manager in his absence.

"Automated card shuffling device" means a software compatible mechanical or electronic contrivance that automatically randomizes playing cards, either continuously or on command, to be utilized for table gaming activity.

"Bad Beat" means one or more predesignated high value poker hands that, when held by a player as a losing hand in a round of play, results in a bad beat payout.

"Bad Beat payout" means one or more payouts made to a player upon the occurrence of a Bad Beat.

"Banking table game" means a table game in which a player competes against a facility operator rather than against another player.

"Boxperson" means an employee of a facility operator whose primary function is to participate in and supervise the conduct of gaming at a single craps table.

"Chip runner" means an employee of a facility operator whose job duties include transporting cash to the poker room cage or the poker cashier window at the main cage for dealers or players of the poker room to be exchanged for value chips.

"Cover card" means an opaque card that is a solid color readily distinguishable from the color of the backs and edges of the playing cards.

"Dealer controlled electronic table game" means

1. A table game or table game equipment that:

a. Requires a live dealer to operate it;

b. Utilizes electronics as part of the games operation to collect and store game outcome, accounting and other significant event data; and

c. Permits wagering to be conducted electronically at a table game that is operated by a dealer.

2. A table game that may not randomly determine the game of chance.

"Dealing shoe" means a device that holds multiple decks of playing cards that the dealer deals during the operation of a table game.

"Direct bet coupon" means an approved wagering instrument with a stated denomination that, when presented at a banking game, the player may use for wagering.

"Edge" means the surface of a gaming chip across which its thickness can be measured in a perpendicular line from one face to the other.

"Edge spot" means an identifying characteristic used on the edge of each value chip issued by a facility operator.

"Face" means each of the two surfaces of a gaming chip across which the diameter of the gaming chip can be measured.

"Fill" means the distribution of gaming chips, coins, and plaques to a gaming table to replenish the table inventory.

"Game account" means the funds that are available to a player for use at a dealer controlled electronic table game.

"Impress" means the roulette chips, which are used for gaming, that remain at each roulette table.

"Impressment" means an inventory conducted on each impress.

"Match play coupon" means an approved wagering instrument with a stated denomination that when presented with gaming chips at a banking game is included in the amount of the player's wager.

"Nonbanking table game" means a table game in which a player competes against another player and in which the facility operator collects a rake.

"Pit clerk" means an employee of a facility operator whose primary function is to prepare documentation required for the operation of table games, including requests for fills, requests for credits, counter checks or other documents that evidence the exchange of gaming chips.

"Pit manager" means an employee of a facility operator whose primary function is to supervise all of the table games in one or more gaming pits.

"Poker rake chip" means a chip used by dealers to facilitate the collection of the rake in the poker room.

"Poker shift manager" means an employee of a facility operator whose primary function is to supervise all of the poker tables in a poker room.

"Primary color" means the predominant color used on a gaming chip.

"Rake" means a set fee or percentage assessed by a facility operator for providing the services of a dealer, gaming table, or location to allow the play or operation of any nonbanking game.

"RFID card" means a card that contains a radio-frequency identification tag which can be used to determine the value on the face of the card.

"RFID chip" means a value or roulette chip that contains a radio-frequency identification tag which can be used to determine the authenticity of the chip.

"Roulette chip" means a nonvalue chip that does not contain a denomination on either face that is used for wagering at the game of roulette.

"Round of play" means one complete cycle of play during which all wagers have been placed, all cards have been dealt and all wagers have been settled in accordance with the rules of the game.

"Secondary color" means any color on the face or edge of the gaming chip that is used as a contrast to the gaming chip's primary color.

"Standard rules" means the basic requirements that govern the play of a table game approved by the department.

"Stickperson" means an employee of a facility operator whose primary function is to control the selection and use of the dice at a craps table.

"Stub" means the remaining portion of a deck or decks after all cards in a round of play have been dealt.

"Suit" means one of the four categories of cards:

1. Clubs;

2. Diamonds;

3. Hearts; or

4. Spades.

"Table games shift manager" means an employee of a facility operator whose primary function is to supervise all of the table game operations in a licensed facility during a shift.

"Table inventory" means the chips, coins, or plaques used for the operation of a table game.

"Table inventory container" means the area of a gaming table where a boxperson or dealer keeps gaming chips, coins, or plaques used for the operation of a table game.

"Tournament chip" means a chip used for wagering in a table game tournament or poker tournament.

"Washing" means mixing of a deck or decks of cards or tiles by placing the cards or tiles face down on a table and mixing them around with both hands so that they are in no particular order.

"Vigorish" means a percentage commission that is taken by a facility operator from a wager placed by a player or the winnings of a player.

B. Gaming chips and promotional chips.

1. A gaming chip issued by a facility operator shall be in the form of a disk.

2. A gaming chip may not be issued by a facility operator or utilized in a facility until:

a. The facility operator submits to the department for approval the design specifications of the proposed gaming chip, including a detailed schematic depicting the actual size and location of:

(1) Each face, including any indentations or impressions;

(2) The edge; and

(3) Any colors, words, designs, graphics, or security measures contained on the gaming chip;

b. The facility operator submits to the department, a sample of each gaming chip, manufactured in accordance with its approved design specifications; and

c. The department approves the gaming chip design.

3. To prevent the counterfeiting of the gaming chip, a gaming chip issued by a facility operator shall be designed and manufactured with graphics and security measures required to appear on the face or edge of a value chip under this subsection.

4. Prohibitions.

a. A facility operator may not issue, use, or allow a player to use in its facility, a gaming chip that it knows, or reasonably should know, is materially different from the sample of a gaming chip approved in accordance with subdivision 2 of this subsection.

b. A facility operator or other person licensed by the department may not manufacture, sell or distribute to, or use in, a licensed facility outside of Virginia a gaming chip that has the same edge spot or design specifications as a chip approved for use in a facility in Virginia.

5. Promotional nongaming chips.

a. A facility operator may issue a promotional nongaming chip that:

(1) Is unique from an approved gaming chip and promotional chip in size or color;

(2) Has no edge designs; and

(3) On both faces, bears:

(a) The name of the facility issuing the promotional nongaming chip; and

(b) Language that the promotional nongaming chip has no redeemable value.

b. A promotional nongaming chip may not be used for table game play in a facility.

c. To prevent confusion with approved gaming chips in use in Virginia facilities, the physical characteristics of promotional nongaming chips must be sufficiently distinguishable from approved gaming chips.

d. A facility operator shall submit to the department for approval a detailed schematic depicting the actual size, face, and any colors, words, designs, or graphics on the promotional nongaming chip.

6. A facility operator may issue a promotional chip with value that is permitted to be used for gaming purposes in a licensed facility, provided:

a. The physical characteristics of promotional chips with value must be sufficiently distinguishable from approved gaming chips issued by any facility operator in Virginia to

reasonably ensure that the promotional chips with value will not to be confused with approved gaming chips and promotional nongaming chips;

b. A facility operator shall submit to the department for approval a detailed schematic depicting the actual size, face and any colors, words, designs or graphics on the promotional gaming chip;

c. At a minimum, a promotional gaming chip shall:

(1) Be unique in terms of size or color;

(2) Have no edge designs;

(3) Bear the name of the facility operator issuing the promotional gaming chip; and

(4) Contain language on both faces stating value of the promotional chip.

d. A promotional chip with value may be redeemed only at a gaming table in which a player wagers against the house;

e. The dealer shall deposit the promotional chip with value into the drop box attached to the gaming table at the time the winning wager is paid or the losing wager is collected; and

f. If the wager wins, it shall be paid in accordance with the terms and conditions of the promotional chip.

C. Value chips.

1. A facility operator may issue and use value chips in denominations of $1, $2, $2.50, $5, $20, $25, $100, $500, $1,000, $5,000, $10,000, $25,000, and other denominations approved in advance by the department.

2. A primary color may not be used as a secondary color on a value chip of another denomination if its use on the edge is reasonably likely to cause confusion as to the chip's denomination when the edge alone is visible.

3. A manufacturer shall submit sample color disks to the department that identify all primary and secondary colors to be used for the manufacture of value chips for facility operators in Virginia.

4. The department may not approve a primary color for use in a value chip unless it visually appears, when viewed in daylight or incandescent light, as the following colors for these denominations:

a. $1, white;

b. $2, blue;

c. $2.50, pink;

d. $5, red;

e. $20, yellow;

f. $25, green;

g. $100, black;

h. $500, purple;

i. $1,000, fire orange;

j. $5,000, brown;

k. $10,000, silver; and

l. $25,000, gold.

5. After the department has approved a manufacturer's primary or secondary color for a gaming chip, the color shall be consistently manufactured in accordance with the approved sample color disk.

6. At least once on any location of each face of a value chip, a value chip issued by a facility operator must contain identifying characteristics that are applied in a manner ensuring that each identifying characteristic is clearly visible and remains a permanent part of the value chip.

7. The identifying characteristics required under subsection F of this section shall be visible to surveillance employees using the licensed facility's surveillance system, and include:

a. The denomination of the value chip, expressed in numbers;

b. The name, logo, or other department-approved identification of the facility operator issuing the value chip; and

c. The letters "VA" and the name of the city in which the licensed facility is located.

8. In addition to the characteristics specified in subdivision 7 of this subsection, a value chip in a denomination of $100 or more must contain a design or other identifying characteristic that is unique to the gaming chip manufacturer.

9. After the department approves a manufacturer's value chip design or characteristic:

a. The manufacturer has the exclusive right to use that design or characteristic on any denomination of value chip;

b. The approved unique design or characteristic:

(1) May be used on all value chips manufactured for use in Virginia; and

(2) May be changed only after receiving the department's written approval of a new unique design or other identifying characteristic.

10. Each value chip issued by a facility operator must contain an edge spot that:

a. Is applied in a manner that ensures the edge spot:

(1) Is clearly visible on the edge and on each face of the value chip; and

(2) Remains a permanent part of the value chip; and

b. Is created using both:

(1) The primary color of the chip; and

(2) One or more secondary colors; and

c. Includes a design, pattern, or other feature that an individual may use to identify, through the facility's surveillance system, the denomination of a particular value chip that is in:

(1) A stack of gaming chips;

(2) The table inventory; or

(3) Any other location when only the edge of the value chip is visible.

11. A facility operator shall use as a secondary color to make an edge spot on a particular denomination of value chip only a secondary color that is reasonably likely to differentiate the facility operator's value chip from the same denomination of value chip issued by any other facility operator in the Commonwealth of Virginia.

12. If an approved value chip uses a single secondary color, no other facility operator may use a similar secondary color as the sole secondary color on the same denomination of value chip unless it is used in a different pattern or design approved by the department.

13. A facility operator may not use the identical combination of secondary colors on the same denomination of value chip unless it is used in a different pattern or design approved by the department.

14. A value chip issued by a facility operator is limited to a specific size for each denomination:

a. Less than $500 must have a uniform diameter of 1-9/16 inch;

b. $500 and $1,000 must have a uniform diameter of 1-9/16 inch or 1-11/16 inch; and

c. $5,000 or more must have a uniform diameter of 1-11/16 inch.

15. In addition to the features that are required under this subsection to appear on the face and edge of a value chip:

a. Each value chip with a denomination less than $100 must contain at least one anti-counterfeiting measure; and

b. Each value chip with a denomination of $100 or more must contain at least two anti-counterfeiting measures.

D. Roulette chips.

1. A facility operator shall issue a roulette chip solely for the purpose of gaming at roulette.

2. At least once on any location of each face of a roulette chip, a roulette chip issued by a facility operator must contain identifying characteristics that are applied in a manner ensuring that each identify characteristic is clearly visible and remains a permanent part of the roulette chip.

3. The identifying characteristics required under subdivision 2 of this subsection shall be visible to surveillance employees using the facility's surveillance system and include:

a. The name, logo, or other department-approved identification of the facility operator issuing the roulette chip;

b. A unique design, insert, or symbol that will permit a set of roulette chips being used at a particular roulette table to be distinguished from the roulette chips being used at another roulette table in the facility;

c. The word "Roulette";

d. Color and design combinations distinguish the roulette chips of a player at a particular roulette table from:

(1) The roulette chips of another player at the same roulette table; and

(2) The value chips issued by a facility operator; and

e. An edge spot that:

(1) Is applied in a manner which ensures that the edge spot;

(a) Is clearly visible on the edge and on each face of the roulette chip; and

(b) Remains a permanent part of the roulette chip; and

(2) Is created by using the colors approved for the face of the particular roulette chip in combination with one or more other colors that provides a contrast with the color on the face of the roulette chip and that enables the roulette chip to be distinguished from the roulette chips issued by any other facility operator; and

(3) Includes a design, pattern, or other feature that an individual may use to identify, through the facility's surveillance system, the player to whom the roulette chip has been assigned when the roulette chip is placed in a stack of gaming chips or in any other location where only the edge of the roulette chip is visible.

E. Roulette chips - permitted uses, inventory, and impressment.

1. A roulette chip shall be issued to a particular roulette table and be used for gaming at that table only, and:

a. A roulette chip used at a particular roulette table must have the same design, insert or symbol as required under subdivision D 3 b of this section; and

b. A facility operator or an employee may not knowingly allow a player to remove a roulette chip from the roulette table to which it was issued.

2. A player at a roulette table may not purchase or be permitted to game with roulette chips that are identical in color and design to any roulette chip purchased by another player at the same table. When a player purchases a roulette chip, the dealer shall place a:

a. Roulette chip of the same color and design in a slot or receptacle attached to the outer rim of the roulette wheel, or in another device or location approved by the department; and

b. Marker button denoting the value of a stack of 20 roulette chips of the same color and design in the slot, receptacle or other device.

3. At least once every three months, a floorperson or higher-ranking individual specified in the facility operator's internal controls shall complete an impressment of the roulette chips assigned to a roulette table, and:

a. The facility operator shall record the results of the impressment in the chip inventory ledger required under subsection K of this section;

b. If additional roulette chips are required to restore the impress, the floorperson, or higher-ranking individual specified in the facility operator's internal controls shall complete a Roulette Chip Impressment Form.

4. The completed Roulette Chip Impressment Form required under subdivision 3 of this subsection shall be maintained by the accounting department and contain at least the following:

a. The date and time of preparation;

b. The design schematic of the chip, including its primary color and the applicable table number;

c. The number of roulette chips needed to restore the impress;

d. The signature of the individual who completes the Roulette Chip Impressment Form and the impressment for the table; and

e. The signature of the main bank cashier or chip bank cashier who issued the roulette chips to restore the impress.

5. The accounting department shall immediately report a discrepancy in the impressment to department staff on a written report that includes at least the following for each roulette chip color and design:

a. The balance on hand at the beginning of the three-month period;

b. The number of roulette chips distributed to the roulette table during the three-month period;

c. The number of roulette chips returned to inventory during the three-month period; and

d. The balance on hand at the end of the three-month period.

F. Tournament chip.

1. If a facility operator conducts a table game tournament, the tournament shall be conducted using tournament chips.

2. The identifying characteristics of a tournament chip must include at least:

a. The name, logo, or other approved identification of the facility operator issuing the tournament chip;

b. The word "Tournament";

c. The denomination of the chip;

d. The phrase "No Cash Value";

e. Color or design combinations that distinguish the tournament chips from:

(1) Roulette chips used for the play of roulette at the facility;

(2) Value chips issued by a facility operator in the Commonwealth of Virginia; and

(3) Poker rake chips.

3. A facility operator shall store tournament chips in a secure area approved in advance by the department.

4. A facility operator shall conduct an inventory of all tournament chips prior to the start and after the completion of each tournament.

5. A facility operator shall send a weekly report to department staffs of a discrepancy in the inventory on a report that shall include the balance for each denomination of tournament chip on hand at the beginning of the tournament and the balance on hand at the end of each tournament.

G. Poker rake chips.

1. To facilitate the collection of the rake, a facility operator may use poker rake chips in the poker room.

2. Poker rake chips:

a. Shall only be used by dealers; and

b. May only be substituted for value chips that have been collected as part of the rake prior to the rake being placed in a drop box.

3. A dealer shall keep unused poker rake chips in the table inventory container.

4. The denominations that may be used for poker rake chips are $2, $3, or $4.

5. The identifying characteristics of a poker rake chip must include:

a. The name, logo, or other approved identification of the facility operator;

b. The words "Poker Rake Chip";

c. One of the following denominations:

(1) "$2,"

(2) "$3," or

(3) "$4," and

d. Color or design combinations to distinguish the poker rake chips from:

(1) Roulette chips used for the play of roulette at the facility;

(2) Tournament chips used for tournament play at the facility; and

(3) Value chips issued by any facility operator in the Commonwealth of Virginia.

H. Removing chips from use.

1. Value chips.

a. Within 120 days of the commencement of table games at a facility, the facility operator shall have at least one department-approved set of value chips that may be used as a back-up for $100 and $500 value chips in active use.

b. A back-up set of value chips maintained for use by a facility operator shall have secondary colors that are different from the secondary colors of the value chips in active use and may use a different shade of the primary color.

c. A back-up set of value chips shall conform to the color and design requirements in this section.

2. Roulette chips.

a. A facility operator shall have at least one reserve set of roulette chips for each color roulette chip used in the facility with a design insert or symbol different from the roulette chips comprising the primary sets.

b. A back-up set of roulette chips must conform to the color and design requirements in this chapter.

3. RFID chips. If a facility operator uses RFID chips for its value or roulette chips, the facility operator may submit a request to the department for waiver of the requirements in subdivisions 1 and 2 of this subsection that shall include at least:

a. A detailed description of the RFID technology and devices that will be used at the facility;

b. A detailed description of how the RFID chips and related equipment will be used in the facility;

c. A detailed explanation of how the use of the RFID chips and related equipment will reduce or eliminate the potential use of counterfeit value or roulette chips; and

d. The approximate length of time it will take the facility operator to install the necessary devices and related equipment for the RFID technology to be operational in the facility.

4. The facility operator shall remove a set of gaming chips in use from active play when:

a. A facility operator reasonably believes that the facility is taking on multiple counterfeit chips valued at $100 or more so as to call into question the security and integrity of the gaming chip set;

b. A facility operator determines there is an impropriety or defect in the use of a set of chips makes removal of the chips in active use necessary; or

c. The department directs a facility operator to remove a set of chips from active use.

5. A facility operator shall place into active play a department-approved back-up set of value chips or a reserve set of roulette chips required under subdivisions 1 and 2 of this subsection when an active set is removed.

6. Before a set of chips in active use is removed from play, the facility operator shall notify the department of the impending removal and the reasons for the removal.

7. A facility operator shall immediately notify department staff of the discovery of counterfeit value chips.

I. Plaques.

1. A plaque issued by a facility operator shall be a solid, one-piece object constructed entirely of plastic or other substance, and a plaque shall:

a. Be square, rectangular, or elliptical in shape;

b. Have at least two, but not more than six, smooth, plane surfaces;

c. Have at least two faces opposite and parallel to each other and identical in shape.

2. A facility operator shall not issue a plaque or allow its use in a facility unless:

a. The facility operator submitted design specifications of the proposed plaque to the department that included a detailed schematic depicting the actual size and location of:

(1) Each face;

(2) The edge; and

(3) Any colors, words, designs, graphics, or security measures on the plaque including the minimum identifying characteristics listed in subdivision 6 of this subsection;

b. The facility operator made available for the department's inspection a sample plaque of each denomination to be manufactured and used in accordance with its approved design specifications;

c. The department approved the facility operator's submissions; and

d. The facility operator submitted to the department a system of internal procedures and administrative and accounting controls governing the distribution, redemption, receipt and inventory of plaques, by serial number that the department approved as part of the facility operator's internal controls.

3. Dimensions of a plaque.

a. The face of a square plaque shall have a surface area of not less than nine square inches.

b. The face of a rectangular or elliptical plaque may not be less than three inches in length by two inches in width.

c. The length and width of an elliptical plaque shall be measured by its axes.

4. A plaque issued by a facility operator shall be designed and manufactured with sufficient graphics or other security measures to prevent, to the extent possible, the counterfeiting of the plaque.

5. Denominations.

a. A facility operator may issue and use plaques in denominations of $5,000 or $10,000, and in other denominations approved by the department in advance.

b. A plaque of a specific denomination used by a facility operator shall be in a shape and of a size that is identical to the shape and size of all other plaques of that denomination issued by the facility operator.

c. The size and shape of each denomination of plaque issued by a facility operator must be readily distinguishable from the size and shape of every other denomination of plaque issued by the facility operator.

6. A plaque issued by a facility operator must contain identifying characteristics that appear at least once on each face of the plaque and are applied in a manner that ensures each identifying characteristic is clearly visible and remains a permanent part of the plaque.

7. The characteristics required under subdivision 6 of this subsection must be visible to surveillance employees using the licensed facility's surveillance system, and shall include at least:

a. The denomination of the plaque, expressed in numbers of at least 3/8-inch in height;

b. The name, logo, or other approved identification of the facility operator issuing the plaque; and

c. A unique serial number.

8. A facility operator may not issue, use, or allow a player to use in its facility, any plaque that it knows, or reasonably should know, is materially different from the sample of that plaque approved in accordance with subdivision 2 of this subsection.

J. Permissible wagers; exchange and redemption of chips and plaques.

1. Wagering at table games in a facility shall be conducted with gaming chips, plaques, electronic wagering credits, and other wagering instruments approved in advance by the department.

2. A value chip previously issued by a facility operator that is not in active use by that facility operator may not be used for any gaming purpose in a facility, and may be redeemed only at the cage.

3. A facility operator shall issue a gaming chip or plaque to a player only at the request of the player, and may not be given as change in any transaction other than a gaming transaction.

4. A gaming chip or plaque shall be issued to player by:

a. A dealer at a banking or nonbanking table game;

b. The poker room cage, poker room impressed bank or the poker window cashier at the main cage; or

c. A chip runner to a player seated at a poker table at which a game is in progress.

5. A player may redeem a plaque or value chip only at the cage.

6. Except as provided in subdivisions 12 and 13 of this subsection, or as otherwise approved in advance by the department, a facility operator shall redeem a gaming chip or plaque that it issued only from players.

7. Roulette chips.

a. A player may present a roulette chip for redemption only at the roulette table from which it was issued.

b. When a player presents a roulette chip for redemption, a dealer shall accept it in exchange for an equivalent amount of value chips.

8. Value chips at roulette.

a. A facility operator may permit, limit, or prohibit the use of a value chip in gaming at roulette in accordance with its rules as submitted to and approved by the department.

b. If a value chip is use at roulette, the facility operator and its employees shall keep accurate account of the wagers being made with value chips so that wager made by one player are not confused with the wagers made by another player at the table.

9. A gaming chip or plaque is solely evidence of a debt that the issuing facility operator owes to an individual legally in possession of the gaming chip or plaque, and it remains the property of the issuing facility operator.

10. Redemption at the facility.

a. A facility operator shall have the right at any time to demand that an individual possessing a gaming chip or plaque surrender the gaming chip or plaque for redemption in accordance with this subdivision.

b. Unless a gaming chip or plaque was obtained or is being used unlawfully, a facility operator shall promptly redeem its gaming chip or plaque presented by a player.

c. A facility operator shall redeem its value chip or plaque by:

(1) Exchanging the value chip or plaque for an equivalent amount of cash; or

(2) Exchanging the value chip or plaque for a check issued by the facility operator in the amount of the value chip or plaque surrendered and dated the day of the redemption.

11. Redemption by mail

a. Notwithstanding the requirements of subdivision 10 of this subsection, if a player requests by mail to redeem value chips, in any amount, by mail, a facility operator may effectuate the redemption in accordance with its approved internal controls.

b. A facility operator's internal controls for redemption of a value chip by mail shall, at a minimum, include procedures for the:

(1) Facility operator's issuance of a check to the player; and

(2) Transfer of a surrendered value chip to the chip bank in a documented transaction.

12. A facility operator shall accept, exchange, use, or redeem only a gaming chip or plaque that the facility operator has issued and may not knowingly accept, exchange, use, or redeem a gaming chip or plaque, or an object that appears to be a gaming chip or plaque, that has been issued by any other facility operator.

13. Notwithstanding subdivision 12 of this subsection, a facility operator may accept and redeem a value chip issued by another facility operator in the Commonwealth from a player.

14. Employee receiving a value chip as gratuity.

a. An employee of a facility operator may receive a value chip as a gratuity.

b. An employee of a facility operator may receive a value chip in exchange for food or beverage that a player purchases from the employee.

c. An employee of a facility operator who receives a value chip as a gratuity, or in exchange for food or beverage, shall redeem the value chip prior to leaving the facility at the end of the work shift during which the employee received the value chip.

d. A value chip received by a facility employee shall be redeemed at the cage or at another secure location approved in advance by the department.

e. A value chip received by a facility that is redeemed at a noncage employee redemption site shall be exchanged on a daily basis with the cage.

f. A facility operator shall include in its internal controls a means of ensuring the proper exchange and accounting of a value chip received as a gratuity or for the purchase of food and beverage.

15. Redemption of facility chips from another operator.

a. A facility operator shall promptly redeem its own value chip that is presented to it by another facility operator in the Commonwealth.

b. A facility operator shall include in its internal controls a system for the exchange with other legally operated facility operators of a value chip that:

(1) Is in the facility operator's possession that has been issued by another facility operator in the Commonwealth; and

(2) The facility operator has issued that is presented to it for redemption by another facility operator in the Commonwealth.

16. A facility operator shall post in a prominent place on the front of the main cage, any satellite cage, and the poker room cage, a sign that reads as follows: "Gaming chips or plaques issued by another facility may not be used, exchanged, or redeemed in this facility."

K. Receipt, inventory, security, storage, and destruction of chips and plaques.

1. Receipt.

a. A shipment of gaming chips or plaques that is received from a manufacturer or supplier shall be unloaded and transported to a secure area, which is covered by the facility operator's surveillance system, by at least two employees of the facility operator.

b. The chips or plaques shall then be opened and checked by at least two employees, who shall promptly report to department staff any deviation between the invoice accompanying the shipment of gaming chips or plaques and the actual chips or plaques received or any defects found in the chips or plaques.

c. The functions required under subdivisions 1 a and 1 b of this subsection shall be performed by at least the following employees of the facility operator:

(1) A supervisor from the accounting department; and

(2) An employee from the security department.

2. Inventory.

a. After a shipment of gaming chips or plaques is checked as required under subdivision 1 of this subsection, the employees identified in subdivision 1 c of this subsection shall record in a chip inventory ledger the:

(1) Denomination of the value chips and plaques received;

(2) Number of each denomination;

(3) Serial numbers of the value chips and plaques received;

(4) For any roulette chips received, the number and description of the roulette chips received;

(5) Date of the receipt;

(6) Signatures and license numbers of the employees who checked the chips and plaques.

b. If the value chips or roulette chips are not to be immediately put into active use, the chip inventory ledger must also identify the storage location of the chips.

3. Storage.

a. A gaming chip or plaque not in active use shall be stored in:

(1) A vault located in the main bank;

(2) Locked cabinets in the main cage; or

(3) Another restricted storage area approved in advance by the department.

b. A gaming chip or plaque may not be stored in the same storage area as dice, cards, pai gow tiles, or any other table game equipment.

c. When a gaming chip or plaque is removed from or returned to an approved storage area, at least the two employees identified in subdivision 1 c of this subsection shall be present and ensure that the chip inventory ledger contains the following information:

(1) Date;

(2) Signatures and license numbers of the employees supervising the transaction;

(3) Quantity;

(4) If applicable, the serial numbers and dollar amounts for each denomination of value chip or plaque;

(5) Number and description of the roulette chip;

(6) Specific storage area being entered; and

(7) Reason for the entry into the storage area.

4. At the end of each gaming day, a facility operator shall compute and record the unredeemed liability for each denomination of value chip and plaque according to procedures specified in the facility operator's internal controls.

5. Ongoing inventory.

a. A facility operator shall inventory all sets of value chips, roulette chips, and plaques in its possession and record the result of the inventory in the chip inventory ledger.

b. The inventory required under subdivision 5 a of this subsection shall be conducted at least once every month for value chips and plaques and at least once every three months for roulette chips.

c. If a facility operator's inventory procedures incorporate the sealing of a locked compartment containing the facility's value chips, roulette chips, and plaques not in active use, a physical inventory of value chips, roulette chips, and plaques not in active use is required to be conducted annually.

d. A facility operator shall include in its internal controls the procedures to be utilized to inventory value chips, roulette chips, and plaques.

6. Destruction.

a. At least five days prior to the destruction of a gaming chip or plaque, a facility operator shall notify department staff of the:

(1) Date and the location at which the destruction will be performed;

(2) Denomination, number, and when applicable, the serial number and amount of value chips or plaques to be destroyed;

(3) Description and number of roulette chips to be destroyed; and

(4) Detailed explanation of the method of destruction.

b. The destruction of a gaming chip or plaque shall be carried out in the presence of at least the two employees identified in subdivision 1 c of this subsection.

c. The facility operator shall record in the chip inventory ledger the names and license numbers of all employees and nonemployees involved in each destruction, and:

(1) The denomination, quantity, total value, and serial number, if applicable, of all value chips or plaques destroyed;

(2) The description and number of roulette chips destroyed;

(3) The signatures and license numbers of the individuals who carried out the destruction; and

d. The date and location where the destruction took place.

7. A facility operator shall ensure that at all times there is adequate security for all gaming chips and plaques in the facility operator's possession.

L. Dice.

1. Except as otherwise provided in subdivisions 2 and 3 of this subsection, each die used in the play of table games shall:

a. Be formed in the shape of a perfect cube and of a size not smaller than 0.750 inch on each side nor any larger than 0.775 inch on each side, with a tolerance of plus or minus 0.005;

b. Be transparent and made exclusively of cellulose except for the spots, name, or logo of the facility operator, and serial number or letters on the die;

c. Be perfectly flat on the surface of each of its sides, with the spots contained in each side flush with the area surrounding them;

d. Have all edges and corners perfectly square and forming 90 degree angles.

e. Have the texture and finish of each side identical to the texture and finish of all other sides;

f. Have its weight equally distributed throughout the cube with no side of the cube heavier or lighter than any other side of the cube;

g Have the six sides bearing white circular spots from one to six respectively with the diameter of each spot equal to the diameter of every other spot on the die;

h. Have spots arranged so that:

(1) The side containing one spot is directly opposite the side containing six spots;

(2) The side containing two spots is directly opposite the side containing five spots; and

(3) The side containing three spots is directly opposite the side containing four spots;

i. Have each spot placed on the die by drilling into the surface of the cube and filling the drilled out portion with a compound that is equal in weight to the weight of the cellulose drilled out and that forms a permanent bond with the cellulose cube and extends into the cube exactly the same distance as every other spot extends into the cube to an accuracy tolerance of 0.0004 inch;

j. Have imprinted or impressed on the die a serial number or letters and the name or logo of the facility operator using the die.

2. Dice used in the table games of pai gow and pai gow poker must comply with the requirements of subdivision 1 of this subsection, except as follows:

a. Each die must be formed in the shape of a perfect cube and of a size not smaller than 0.637 inch on each side nor any larger than 0.643 inch on each side;

b. With the department's approval, a facility operator may have an identifying mark imprinted or impressed on each die instead of the name or logo of the facility operator; and

c. The spots on each die do not have to be equal in diameter.

3. Dice used in the table game of sic bo must comply with subdivision 1 of this subsection, except each die may be formed in the shape of a cube 0.625 inch on each side with ball edge corners.

4. Dice may not be used in a facility unless a detailed schematic depicting the actual size and color of the dice and the location of serial numbers, letters, or logos on the dice has been submitted to and approved by the department.

M. Receipt, storage, inspection, and removal of dice.

1. Receipt.

a. A shipment of dice that is received from a manufacturer or supplier shall be immediately unloaded and transported to a secure area that is covered by the facility operator's surveillance system under the supervision of at least two employees of the facility operator.

b. The boxes of dice shall then be inspected by at least two employees of the facility operator to ensure that the seals on each box are intact, unbroken, and free from tampering.

(1) Boxes that do not appear to be intact, unbroken, and free from tampering shall be immediately inspected to ensure that the dice in those boxes conform to the requirements of this subsection, and there is no evidence of tampering with them.

(2) If dice inspected as required under subdivision 1 b (1) of this subsection show no evidence of tampering, they shall be placed along with boxes of dice that are intact, unbroken, and free from tampering for storage.

c. Dice shall be stored in a storage area approved by the department.

d. The functions required under subdivisions 1 a, 1 b, and 1 c of this subsection shall be performed by at least the following employees of the facility operator:

(1) A floor supervisor or above; and

(2) An employee from the security department.

2. Storage. The department-approved storage area must have two separate locks, to which access shall be controlled as follows:

a. The security department shall maintain one key and the gaming operations department shall maintain the other key; and

b. An employee of the gaming operations department below a floorperson in the organizational hierarchy may not have access to the gaming operations department key.

3. Dice that are to be distributed to gaming pits or tables for use in gaming shall be distributed from the approved storage area.

4. Once each gaming day and at other times as may be necessary, a floorperson or above in the presence of a security department employee shall remove the appropriate number of dice for that gaming day from the approved storage area.

5. Envelopes and containers used to hold or transport dice must be:

(a) Transparent;

(b) Designed or constructed with seals so that any tampering is evident; and

(c) Submitted to and approved by the department.

6. Inspection and distribution. Dice shall be inspected and distributed to the gaming tables in accordance with one of the following alternatives:

a. Alternative number 1.

(1) The floorperson or above and the security department employee who removed the dice from the approved storage area shall distribute sufficient dice directly to the pit manager or above in each pit or place them in a locked compartment in the pit stand, the keys to which shall be in the possession of the pit manager or above.

(2) Immediately upon opening a table for gaming, the floorperson or above shall distribute a set of dice to the table.

(a) To ensure that the dice are in a condition to ensure fair play and otherwise conform to the requirements of this section, at the time of receipt of a set of dice, a floorperson

at each craps, pai gow, pai gow poker, sic bo, or mini-craps table shall, in the presence of the dealer, inspect the dice with a micrometer or any other instrument approved by the department to perform the function of a micrometer, a balancing caliper, a steel set square, and a magnet.

(b) The instruments described in subdivision 6 a (2) (a) of this subsection shall be kept in a compartment at each craps table or pit stand and shall be at all times readily available for use by department staff.

(c) The inspection required under subdivision 6 a (2) (a) of this subsection shall be performed on a flat surface that allows the dice inspection to be observed through the facility operator's surveillance system and by any persons in the immediate vicinity of the table.

(3). Following the inspection required under subdivision 6 a (2) (a) of this subsection:

(a) For craps, the floorperson shall, in the presence of a dealer, place the dice in a cup on the table for use in gaming;

(b) For mini-craps, the floorperson shall, in the presence of a dealer, place the dice in a cup on the table for use in gaming;

(c) For sic bo, the floorperson shall, in the presence of the dealer, place the required number of dice into the shaker and seal or lock the shaker, and the floorperson shall secure the sic bo shaker to the table in the presence of the dealer who observed the inspection; or

(d) For pai gow and pai gow poker, the floorperson shall, in the presence of the dealer, place the dice in the pai gow shaker.

(4) The floorperson or above shall place extra dice for the dice reserve in the pit stand, where:

(a) Dice in the pit stand shall be placed in a locked compartment, the keys to which shall be in the possession of the floorperson or above; and

(b) No dice taken from the pit stand reserve may be used for actual gaming until the dice have been inspected in accordance with subdivision 6 a (2) (a) of this subsection.

b. Alternative number 2.

(1) The pit manager or above and the security department employee who removed the dice from the approved storage area shall distribute the dice directly to the following facility operator's employees who shall perform an inspection in each pit:

(a) For craps and mini-craps, a floorperson in the presence of another floorperson, both of whom are assigned the responsibility of supervising the operation and conduct of a craps or mini-craps game;

(b) For sic bo, pai gow, and pai gow poker, a floorperson in the presence of another floorperson, both of whom are assigned the responsibility of supervising the operation and conduct of sic bo, pai gow, or pai gow poker games;

(c) For storage of the dice for the dice reserve in the pit stand, to the pit manager or above.

(2) To ensure that the dice are in a condition to ensure fair play and otherwise conform to the requirements of this chapter, at the time of receipt of a set of dice, the dice shall be inspected by one of the individuals listed in subdivision 6 a (2) (a) of this subsection with a micrometer or other instrument approved by the department that performs the same function as a micrometer, a balancing caliper, a steel set square, and a magnet.

(3) The instruments described in subdivision 6 b (2) of this subsection shall be kept at the pit stand and shall be at all times readily available for use by department staff.

(4) The inspection required under subdivision 6 b (2) of this subsection shall be performed on a flat surface that allows the dice inspection to be observed through the facility operator's surveillance system and by any persons in the immediate vicinity of the pit stand.

(5) After completion of the inspection, the dice shall be distributed as follows:

(a) For craps and mini-craps, the floorperson who inspected the dice shall, in the presence of the other floorperson who observed the inspection, distribute the dice to the floorperson assigned at each craps table or to the floorperson assigned at each mini-craps table, and the craps floorperson or the mini-craps floorperson shall, in the presence of the dealer, place the dice in a cup on the table for use in gaming.

(b) For sic bo, the floorperson who inspected the dice shall, in the presence of the other floorperson who observed the inspection, place the required number of dice into the shaker and seal or lock the shaker, and the floorperson shall then secure the sic bo shaker to the table in the presence of the other floorperson who observed the inspection.

(c) For pai gow and pai gow poker, the floorperson who inspected the dice shall, in the presence of the other floorperson who observed the inspection, distribute the dice directly to the dealer at each pai gow table, and the dealer shall immediately place the dice in the pai gow shaker.

(6) The pit manager or above shall place extra sets of dice for the dice reserve in the pit stand, as follows:

(a) Dice in the pit stand shall be placed in a locked compartment, the keys to which shall be in the possession of the pit manager or above.

(b) Except as otherwise provided in subdivision 6 b (5) of this subsection, dice taken from the reserve in the pit stand shall be reinspected by a floorperson or above in the presence of another floorperson or above in accordance with the inspection procedures set forth in subdivision 6 b (2) of this subsection prior to their use for actual gaming.

(7) Previously inspected reserve dice may be used for gaming without being reinspected if the dice are maintained in a locked compartment in the pit stand in accordance with the following procedures:

(a) For craps and mini-craps, a set of five dice, after being inspected, shall be placed in a sealed envelope or container, to which shall be attached a label that identifies the date of inspection and contains the signatures of those responsible for the inspection shall be attached to the envelope or container.

(b) For sic bo, three dice, after being inspected, shall be placed in a sealed envelope or container or sealed or locked in a sic bo shaker, to which shall be attached a label or seal that identifies the date of inspection and contains the signatures of those responsible for the inspection shall, respectively, be attached to each envelope or container or placed over the area that allows access to open the sic bo shaker.

(c) For pai gow and pai gow poker, a set of three dice, after being inspected, shall be placed in a sealed envelope or container, to which shall be attached a label that identifies the date of inspection and contains the signatures of those responsible for the inspection shall be attached to each envelope or container.

7. Removal. A facility operator shall remove dice at any time of the gaming day and submit a Dice Discrepancy Report as required under subdivision 8 of this subsection:

a. If there is any indication of tampering, flaws, or other defects that might affect the integrity or fairness of the game; or

b. At the request of department staff.

8. Inspection.

a. At the end of each gaming day or at other times as may be necessary, a floorperson or above, other than the individual who originally inspected the dice, shall visually inspect each die that was used for play for evidence of tampering, and immediately report evidence of tampering to the department by:

(1) Completing a two-part Dice Discrepancy Report; and

(2) Submitting the completed Dice Discrepancy Report and the dice to department staff.

b. Dice showing evidence of tampering shall be placed in a sealed envelope or container with a label attached that:

(1) Identifies the table number, date, and time the dice were removed;

(2) Contains the signatures of the person assigned to directly operate and conduct the game at that table and the floorperson assigned the responsibility for supervising the operation and conduct of the game;

(3) Contains the signatures of a floorperson or above or a security department employee responsible for delivering the dice to department staff; and

(4) The original and duplicate copy of which is signed by the department staff receiving the dice, who shall retain the original copy and return the duplicate copy to the pit, where the duplicate copy shall be maintained in a secure place within the pit until it is collected by a security department employee.

c. Other dice that were used for play shall be put into envelopes or containers when removed from active use at the table in an envelope or container with a label attached that:

(1) Identifies the table number, date and time the dice were removed;

(2) Contains the signatures of the person assigned to directly operate and conduct the game at that table and the floorperson assigned the responsibility for supervising the operation and conduct of the game; and

(3) Is sealed and maintained within the pit until it is collected by a security department employee.

9. Reserve dice in the locked compartment in a pit stand at the end of the gaming day may be:

a. Collected and transported to the security department for cancellation or destruction;

b. Returned to the approved storage area; or

c. Retained in the locked compartment in the pit stand for future use.

10. Reserve dice in the locked compartment in a pit stand at the end of the gaming day that are to be destroyed or canceled shall be placed in a sealed envelope or container, with a label attached to each envelope or container that:

a. Identifies the pit stand where the reserve dice were being stored;

b. Identifies the date and time the dice where placed in the envelope or container; and

c. Contains the signature of the pit manager or above.

11. At the end of each gaming day or at least once each gaming day, as designated by the facility operator and approved in advance by the department, and at other times as may be necessary:

a. Except as provided in subdivision 11 b of this subsection, a security department employee shall collect and sign all envelopes or containers of used dice and reserve dice that are to be destroyed or canceled and transport the dice to the security department for cancellation or destruction; and

b. If an alternative procedure for collecting, destroying, or canceling dice described in subdivision 11 b of this subsection has been submitted to and approved by the department, a security department employee:

(1) Shall collect all envelopes or containers and return them to the security department; and

(2) May sign the envelopes or containers; and

c. The security department employee shall also collect any duplicate copies of Dice Discrepancy Reports.

12. An assistant table games shift manager or above may collect all reserve dice in a locked compartment in a pit stand, and if collected:

a. Reserve dice shall be returned to the approved storage area;

b. Reserve dice shall be collected at the end of each gaming day or at least once each gaming day, as designated by the facility operator and approved by the department; and

c. Except for dice maintained in a locked compartment in accordance with subdivision 6 of this subsection, if the reserve dice are not collected, all dice in the dice reserve shall be reinspected in accordance with one of the alternatives listed in subdivision 6 of this subsection prior to their use for gaming.

13. Facility operators shall submit to the department for approval internal control procedures for:

a. A dice inventory system, which includes, at a minimum, records of the:

(1) Number of three and five dice sticks and the corresponding number of single die received from a manufacturer or supplier;

(2) Balance of three and five dice sticks and the corresponding number of single die on hand;

(3) Number of three and five dice sticks removed from storage;

(4) Number of three and five dice sticks returned to storage;

(5) Number of single die destroyed or canceled;

(6) Date of each transaction; and

(7) Signatures of the individuals involved.

b. A daily reconciliation of the:

(1) Number of three or five dice sticks distributed;

(2) Number of single die destroyed or canceled;

(3) Number of three or five dice sticks returned to the approved storage area; and,

(4) Reserve three or five dice sticks in a locked compartment in a pit stand, if any; and

c. A physical inventory of all dice at least once every three months:

(1) That shall be performed by an individual with no incompatible functions and shall be verified to the balance of dice on hand required under subdivision 13 a of this subsection; and

(2) For which discrepancies shall immediately be reported to department staff.

14. Destruction or cancellation of dice.

a. Other than those retained for department or facility operator inspection, destruction or cancellation of dice shall be completed within seven days of collection.

b. Cancellation shall be accomplished by drilling a circular hole of at least 1/4-inch in diameter through the center of the die.

c. Destruction shall be accomplished by shredding or crushing the die.

d. The destruction or cancellation of dice must take place in a secure location in the facility that is covered by the facility operator's surveillance system.

15. Rotation and replacement of dice.

a. A set of five dice used at a craps or mini-craps table shall be changed at least once every 24 hours.

b. A new set of dice shall be used:

(1) When a craps or mini-craps table is reopened for gaming;

(2) If a die goes off the table during play and is lost;

(3) If a die shows signs of tampering or alteration; or

(4) A die is otherwise marked, chipped, scratched, or no longer suitable for play.

c. Dice that have been placed in a shaker for use in gaming may not remain on a table for more than 24 hours in the games of:

(1) Pai gow tiles; and

(2) Pai gow poker.

N. Sic bo shaker security procedures.

1. Storage.

a. Manual and automated sic bo shakers that have not been filled with dice may be stored in a locked compartment in a pit stand.

b. An automated sic bo dice shaker that has been filled with dice shall be secured to the sic bo table at all times.

2. Inspection.

a. At the end of each gaming day, a pit manager or above shall inspect all sic bo shakers that have been placed in use for gaming for evidence of tampering.

b. Evidence of tampering shall be immediately reported to department staff on a written report that includes at least:

(1) The date and time when the tampering was discovered;

(2) The name and signature of the individual discovering the tampering;

(3) The table number where the sic bo shaker was used; and

(4) The name and signature of the employee who is:

(a) Assigned to directly operate and conduct the game at the sic bo table; and

(b) The supervisor assigned the responsibility for supervising the operation and conduct of the game at the sic bo table.

O. Cards.

1. Except as otherwise approved by the department, cards used to play table games shall be in decks of 52 cards with each card identical in size and shape to every other card in the deck.

a. Nothing in this regulation shall be construed to prohibit a manufacturer from manufacturing decks of cards with one or more jokers in each deck.

b. Jokers may not be used by the facility operator in the play of any game unless authorized by the rules of the game.

2. Except as otherwise approved by the department, each deck shall be composed of cards in four suits: diamonds, spades, clubs and hearts, and:

a. Each suit shall be composed of 13 cards:

(1) Ace;

(2) King;

(3) Queen;

(4) Jack;

(5) 10;

(6) 9;

(7) 8;

(8) 7;

(9) 6;

(10) 5;

(11) 4;

(12) 3; and

(13) 2; and

b. If approved in advance by the department, the face of the ace, king, queen, jack, and 10 may contain an additional marking that will permit a dealer, prior to exposing the dealer's hole card at the game of blackjack, to determine if the value of the hole card gives the dealer a blackjack.

3. The backs of each card in a deck shall:

a. Be identical and may not contain any marking, symbol, or design that may enable an individual to know the identity of any element printed on the face of the card or that will in any way differentiate the back of the card from any other card in the deck;

b. Be designed to diminish the ability of any individual to place concealed markings thereon; and

c. Contain the name or logo of the facility operator using the cards, unless otherwise approved by the department.

4. Each deck of cards shall be packaged separately or in a batch containing the number of decks selected by a facility operator for use in a particular table game, and:

a. Each package of cards shall be sealed in a manner approved by the department to reveal evidence of any tampering with the package; and

b. If multiple decks of cards are packaged and sealed in a batch, the package must have a label that indicates or contains a window that reveals an adequate description of the contents of the package, including the:

(1) Name of the facility operator for which the cards were manufactured;

(2) Colors of the backs of the cards;

(3) Date that the cards were manufactured;

(4) Total number of cards in the batch; and

(5) Total number of decks in the batch.

5. Individual decks of cards that are packaged and sealed in a multideck batch may not be separated from the batch for independent use at a table game.

6. The cards used by a facility operator for poker shall be:

a. Visually distinguishable from the cards used by that facility operator for other banked table game play; and

b. Made of plastic.

7. Each facility operator that offers the game of poker shall have and use on a daily basis at least four decks of cards with visually distinguishable card backings, and:

a. Card backings may be distinguished by different logos, different colors, or different design patterns;

b. The facility operator shall submit, as part of its internal controls, the procedure for distributing and rotating the four visually distinguishable decks of cards required for use in the game of poker.

8. At a minimum, all poker cards that have been in play for four months shall be replaced.

9. Cards may not be utilized in a facility unless a schematic depicting the face and backs of the cards, the colors, words, designs, and graphics has been submitted to and approved by the department.

10. A facility operator may use RFID cards in table games if the department has reviewed and approved the facility operator's plan for use of RFID cards.

11. A facility operator's request for department approval of the use of RFID cards shall include:

a. A detailed description of the RFID technology and devices that will be used at the facility;

b A detailed description of the RFID technology security features that will ensure the integrity of the table games where RFID cards are in use;

c A detailed description of how the RFID cards and related equipment will be used in the facility; and

d. Any other information required by the department.

P. Receipt, storage, inspection, and removal of cards.

1. Receipt.

a. A shipment of decks of cards that is received from a manufacturer or supplier shall be unloaded immediately and transported to a secure area that is covered by the facility operator's surveillance system under the supervision of at least two employees of the facility operator.

b. The boxes of decks of cards shall be opened and inspected to ensure that the seals on each box are intact, unbroken, and free from tampering.

c. Boxes that do not appear to be intact, unbroken, and free from tampering shall be immediately inspected to ensure that the decks of cards in those boxes conform to the requirements of this section and there is no evidence of tampering with them.

d. If the decks of cards inspected show no evidence of tampering, they shall be placed, along with boxes of cards that are intact, unbroken, and free from tampering, for storage in an area approved by the department.

e. The functions required under subdivision 1 a through 1 d of this subsection shall be performed by at least the following employees of the facility operator:

(1) A floor supervisor or above; and

(2) An employee from the security department.

2. Storage. The department-approved storage area shall have two separate locks, to which access shall be controlled as follows:

a. The security department shall maintain one key and the gaming operations department shall maintain the other key.

b. An employee of the gaming operations department below a floorperson in the organizational hierarchy may not have access to the gaming operations department key.

c. If the facility operator has a separate poker storage area, an employee below a poker supervisor in the organizational hierarchy may not have access to the gaming operations department key to the poker storage area.

3. Distribution.

a. Except as provided under subdivision 5 of this subsection, as may be necessary, a floorperson or above, in the presence of a security department employee, shall remove the appropriate number of decks of cards from the approved storage area.

b. The floorperson or above and the security department employee who removed the decks shall distribute sufficient decks to the pit managers or above and, if applicable, to the poker supervisor.

c. The number of decks distributed shall include extra decks that shall be placed in the pit stand for the card reserve.

d. Decks of cards in the pit stand shall be placed in a locked compartment, the keys to which shall be in the possession of the pit managers or above or the poker supervisor or above.

4. Inspection.

a. If the decks are to be inspected at open gaming tables under subdivision 6 of this subsection, the pit manager or above shall distribute the decks to the dealer at each table or the poker supervisor shall transport the decks to the poker pit stand for subsequent distribution to the dealer at each poker table either directly by the poker supervisor or through the floorperson assigned to supervise the dealer.

b. If the decks are to be preinspected and preshuffled at a closed gaming table as permitted under subdivision 18 of this subsection, the pit manager or above or poker supervisor shall deliver the decks to the dealer and the floorperson or above at the closed gaming table where the preinspection and preshuffling shall be performed.

c. If the decks have already been preinspected, preshuffled, sealed in containers, and placed in the card storage area as permitted under subdivision 18 of this subsection, the pit manager or above and a security department employee shall transport the number of sealed containers of cards needed for that gaming day to the gaming pits where the cards will be utilized and shall ensure that the containers are locked in the pit stand.

d. Consistent with the facility operator's internal controls, the security department shall maintain a record of the removal of the sealed containers of cards from the approved storage area and the distribution of sealed containers to the gaming pits.

5. Removal.

a. If the decks of cards to be used for poker are removed from the poker storage area, the poker supervisor or above and a security department employee shall, at times as may be necessary, remove the appropriate number of decks from the poker storage area and distribute the decks in accordance with subdivision 3 of this subsection.

b. The number of decks distributed shall include extra decks that shall be placed in the pit stand for the card reserve.

c. Decks of cards in the pit stand shall be placed in a locked compartment, the keys to which shall be in the possession of the poker supervisor or above.

6. Verification.

a. Except for decks of cards that are preinspected and preshuffled under subdivision 18 of this subsection, the dealer shall sort the cards in each deck according to suit and in sequence to verify that all cards are present and visually inspect the backs of the cards for any defects that might compromise the integrity or fairness of the game.

b. The floorperson or above shall verify the inspection.

7. Unsuitable or missing card. If, while inspecting the cards in accordance with subdivision 4 of this subsection, the dealer finds that a card is unsuitable for use, a card is missing from the deck, or an extra card is found, the following procedures shall be observed:

a. A supervisor or above or a poker supervisor shall bring a replacement deck of cards or card from the card reserve in the pit stand.

b The unsuitable deck or card shall be placed in a sealed envelope or container; identified by table number, date, and time; and signed by the dealer and floorperson or above assigned to that table.

c. The pit manager or above or a poker supervisor shall maintain the envelope or container in a secure place within the pit until collection by a security department employee.

8. Envelopes and containers used to hold or transport cards shall be:

a. Transparent;

b. Designed or constructed with seals so that any tampering is evident; and

c. Submitted to and approved by the department.

9. Damaged cards.

a. If any card in a deck appears to be damaged during the course of play, the dealer shall immediately notify a floorperson or above.

b. If after inspection, the floorperson or above determines that the card is damaged and needs to be replaced, the floorperson shall notify the pit manager or above or the poker supervisor.

c. The pit manager or above or the poker supervisor shall:

(1) Notify surveillance of a card change;

(2) Bring a replacement deck of cards or card from the pit stand to replace the damaged card;

(3) Place the damaged card face up on the table and remove the matching card from the replacement deck and place it face up on the table;

(4) Turn over both the damaged card and the replacement card to verify that the backs of the cards match;

(5) Place the replacement card in the discard rack;

(6) Tear the damaged card down the center, or cancel the card, and place it face up in the replacement deck; and

(7) Return the replacement deck to the pit stand.

d. At least once each gaming day, the personnel operating table games shall:

(1) Collect the replacement cards and place the replacement cards in an envelope or container;

(2) Seal the envelope or container;

(3) Attach a label to each envelope or container that identifies the deck as a replacement deck; and

(4) Obtain the signature of the pit manager or above on the label.

e. On an as-needed basis, the personnel operating poker table games shall:

(1) Collect the replacement decks of poker cards and place the replacement poker cards in an envelope or container;

(2) Seal the envelope or container;

(3) Attach a label to each envelope or container that identifies the deck as a replacement deck; and

(4) Obtain the signature of the poker manager or above, or the poker supervisor, on the label.

f. The pit manager or above or the poker supervisor shall maintain the sealed envelopes or containers in a secure place within the pit until collection by a security department employee in accordance with subdivision 13 of this subsection.

g. This subdivision P 9 does not apply to cards showing indications of tampering, flaws, or other defects that might affect the integrity or fairness of the game.

10. Removing cards from active use.

a. Personnel operating table games shall put decks of cards that were used for play into envelopes or containers when the decks of cards are removed from active use at the table.

b. Personnel operating table games shall attach a label to each envelope or container that identifies the table number, date, and time the decks of cards where collected and shall be signed by the dealer and floorperson assigned to the table.

c. The poker supervisor or pit manager or above shall maintain the sealed envelopes or containers in a secure place within the pit until collection by a security department employee.

11. A facility operator shall remove a deck of cards at any time if there is an indication of tampering, flaws, or other defects that might affect the integrity or fairness of the game, or at the request of department staff.

12. Personnel operating table games shall place extra decks or packaged sets of multiple decks in the card reserve with

broken seals in a sealed envelope or container with a label attached to each envelope or container that:

a. Contains the number of decks or packaged sets of multiple decks that are included;

b. The date and time the decks were placed in the envelope or container; and

c. The signature of the floorperson or above for decks used for poker and the pit manager or above for decks used for all other games.

13. At the end of each gaming day or at least once each gaming day, as designated by the facility operator and approved in advance by the department, and at other times as may be necessary:

a. Except as provided in subdivision 13 b of this subsection, a security department employee shall collect and sign all envelopes or containers with damaged decks of cards, decks of cards required to be removed that gaming day, and all extra decks in the card reserve with broken seals and return the envelopes or containers to the security department;

b. If an alternative procedure for collecting, destroying, or canceling a deck of cards described in subdivision 13 a of this subsection has been submitted to and approved by the department, a security department employee:

(1) Shall collect all envelopes or containers and return them to the security department; and

(2) May sign the envelopes or containers; and

c. A table game department supervisor or above may collect all extra decks with intact seals in the card reserve.

14. Inspection of cards.

a. When the envelopes or containers of used cards and reserve cards with broken seals are returned to the security department, the cards shall be inspected for tampering, marks, alterations, missing or additional cards, or anything that might indicate unfair play.

b. For cards used in blackjack, Spanish 21, baccarat, midibaccarat, or minibaccarat, the facility operator shall inspect:

(1) All decks used during the day; or

(2) If department has approved, as part of the facility's internal controls, the procedures for selecting the sample size and for ensuring a proper selection of the sample, a sample of decks selected at random or in accordance with an approved stratification plan.

c. The facility operator shall also inspect:

(1) A deck of cards that the department requested the facility operator to remove for the purpose of inspection;

(2) A deck of cards the facility operator removed for indication of tampering;

(3) All cards used for all banked table games other than the games listed in subdivision 14 b of this subsection; and

(4) All cards used for poker.

d. The procedures for inspecting all decks required to be inspected under this subsection shall include the:

(1) Sorting of cards sequentially by suit or utilizing a machine approved by the department capable of reading the cards to determine whether any deck contains missing or additional cards;

(2) Inspection of the backs with an ultraviolet light;

(3) Inspection of the sides of the cards for crimps, bends, cuts, or shaving; and

(4) Inspection of the front and back of all plastic cards for consistent shading and coloring.

e. If, during the inspection procedures required for cards used in poker, one or more of the cards in a deck are determined to be unsuitable for continued use, those cards shall be placed in a sealed envelope or container and a two-part Card Discrepancy Report shall be completed in accordance with subdivision 14 j of this subsection.

f. Upon completion of the inspection procedures required under subdivision 14 c of this subsection, each deck of cards used in poker that is determined suitable for continued use shall be placed in sequential order, repackaged, and returned to the approved or poker storage area for subsequent use.

g. The facility operator shall develop internal control procedures for returning the repackaged cards to the poker card inventory in accordance with subdivision 18 of this subsection.

h. An individual performing an inspection shall complete a work order form that details the procedures performed and lists the tables from which the cards were removed and the results of the inspection and shall sign the form upon completion of the inspection procedures.

i. The facility operator shall submit to the department the training procedures for the employees performing the inspections required under this subsection in its internal controls.

j. (1) Evidence of tampering, marks, alterations, missing, or additional cards or anything that might indicate unfair play discovered during an inspection, or at any other time shall be immediately reported to department staff by the completion and delivery of a two-part Card Discrepancy Report.

(2) The two-part report shall include the cards or decks of cards that are the subject of the report, and the cards or decks of cards shall be retained by department staff for further inspection.

(3) The department staff receiving the cards shall sign the original and duplicate copy of the Card Discrepancy

Report and retain the original, and the facility operator shall retain the duplicate copy.

15. A facility operator shall submit to the department for approval internal control procedures for:

a. A card inventory system that includes, at a minimum, records of the:

(1) Balance of decks of cards on hand;

(2) Decks of cards removed from storage;

(3) Decks of cards returned to storage or received from a manufacturer or supplier;

(4) Date of each transaction; and

(5) Signatures of the employees involved;

b. A daily reconciliation of the decks of cards distributed, destroyed, or canceled; returned to the storage area; and any decks of cards in the card reserve; and

c. A physical inventory of all decks of cards at least once every three months that:

(1) Is performed by an individual with no incompatible functions and verified to the balance of decks of cards on hand;

(2) Results in all discrepancies being immediately reported to department staff.

16. Destruction or cancellation.

a. Except for plastic cards used at poker that are of sufficient quality for reuse, decks of cards in an envelope or container that are inspected as required under subdivision 14 of this subsection and found to be without any indication of tampering, marks, alterations, missing or additional cards or any indication of unfair play shall be destroyed or canceled within seven days of collection.

b. Cards submitted to the department shall be destroyed or canceled within five days of release from the department.

c. Destruction of cards must be by shredding.

d. Cancellation of cards must be by drilling a circular hole of at least 1/4-inch in diameter through the center of each card in the deck.

e. The destruction or cancellation of cards shall take place:

(1) In a secure location in the licensed facility covered by the facility operator's surveillance system, the physical characteristics of which shall be approved by the department; or

(2) If conducted by a vendor that holds a service permit under this chapter and performed in accordance with an internal control of the licensed facility that has been approved by the department, at a location other than the facility.

17. Reused deck.

a. If a deck of plastic cards has been determined to not be suitable for reuse by the individual performing the inspection procedures required under subdivision 14 of this subsection:

(1) The personnel operating table games shall place the deck in a sealed envelope or container with a label attached that identifies the date and time the deck was placed in the envelope or container; and

(2) The poker supervisor or floorperson shall sign the label.

b. At the end of the gaming day or at other times as may be necessary, the envelope or container shall be collected by a security department employee and returned to the security department for destruction or cancellation in accordance with this subsection.

18. Preinspection and preshuffling.

a. If a facility operator elects to preinspect and preshuffle cards at a closed gaming table prior to the delivery of the cards to an open gaming table, a dealer and supervised by a floorperson or above with no concurrent supervisory responsibility for open gaming tables shall perform the procedures required under this subdivision.

b. The facility operator shall provide department staff with a schedule of the proposed time and location for the preinspection and preshuffling at least 24 hours prior to commencement of the process.

c. The procedures required under this subdivision shall be recorded by the surveillance department and the facility operator shall retain a recording for at least seven days.

d. Upon receipt of the decks of cards, the dealer shall perform the procedures in this subdivision independently for each batch of cards that will be sealed in a container with the number of decks of cards in each batch being equal to the number of decks of cards required for the table game in which the decks are intended to be used.

e. The dealer shall visually inspect the back of each card to assure that it is not flawed, scratched, or marked in a way that might compromise the integrity or fairness of the game.

f. By hand or by using a machine approved by the department, the dealer shall inspect the front of each card to ensure that all cards are present and that there are no extra cards in the deck.

g. If after inspection a card is determined to be unsuitable for use, or the deck is missing a card or an extra card is found, the following procedures shall occur:

(1) The personnel operating table games shall place the deck containing the unsuitable, missing, or extra card in an envelope or container that shall be identified by table number, date, and time the deck of cards was placed in the envelope or container and signed by the dealer and floorperson or above performing the preinspection and preshuffle; and

(2) The floorperson or above shall maintain the sealed envelope or container containing the deck containing the unsuitable, missing, or extra card until collection by a security department employee at the conclusion of the preinspection and preshuffling procedure.

h. The dealer shall then shuffle the cards by hand or by using an automated card shuffling device.

i. Upon completion of the preinspection and preshuffling process of the cards in the batch, the dealer and floorperson or above shall complete a two-part Preshuffled/Preinspected Form or other documentation that includes the:

(1) Time and date the Preshuffled/Preinspected Form was prepared;

(2) Number of decks in the batch;

(3) Table games at which the batch will be utilized if the batch contains more or less than 52 cards per deck;

(4) Signature of the dealer who preinspected and preshuffled the cards, certifying that the cards were preinspected and preshuffled in accordance with this subsection;

(5) Signature of the floorperson or above who witnessed and verified the preinspection and preshuffling;

(6) Time, date, and gaming table to which the sealed container of cards is subsequently delivered; and

(7) Signature of the floorperson or above who delivered the sealed container of cards to the gaming table.

j. The dealer shall place the preinspected and preshuffled batch of cards, together with the Preshuffled/Preinspected Form or other documentation, in a clear container that conforms to the requirements of this subsection and seal the container with a prenumbered label unique to the container.

k. The facility operator shall include in its internal controls procedures for the maintenance and security of unused seals, and the distribution, return, and reconciliation of seals used on containers holding preinspected and preshuffled cards.

l. The sealed containers of cards shall be transported by:

(1) A pit manager or above or poker supervisor to the gaming pit of the gaming tables where the cards will be utilized and locked in the pit stand; or

(2) An assistant table games shift manager or above and a security department employee to the approved storage area or poker storage area where the cards shall be placed back into the card inventory and segregated from cards that have not been preinspected and preshuffled.

m. A record of the transport of the sealed containers of cards to the approved storage area shall be maintained by the security department in a manner consistent with the facility operator's approved internal controls.

n. When the preinspected and preshuffled cards are needed for play, each container of cards shall be delivered by a floorperson or above to an open gaming table.

o. Upon delivery, the floorperson or above shall unseal the container, place the decks of cards on the gaming table in front of the dealer, complete and sign the Preshuffled/Preinspected Form, drop the original Preshuffled/Preinspected Form in a locked box in the gaming pit, and forward the copy of the Preshuffled/Preinspected Form to the security department.

p. The dealer at the gaming table shall then cut the cards in the manner prescribed by the rules governing the particular table game.

19. If the department has approved a manufacturer or contractor to provide preinspected and preshuffled decks or batches of decks, a facility operator may use preinspected and preshuffled decks or batches of decks obtained from that manufacturer or contractor in the same manner as decks or batches of decks that are preinspected and preshuffled pursuant to subdivision 18 of this subsection.

20. Card rotation. The facility operator shall change:

a. The decks of cards used for all banked table games except the games set forth in subdivisions b through e of this subdivision P 20 at least every:

(1) Four hours if the cards are dealt by hand; and

(2) Eight hours if the cards are dealt from a manual or automated dealing shoe;

b. The decks of cards used in blackjack at least every:

(1) Four hours if the cards are dealt by hand; and

(2) 24 hours if the cards are dealt from a manual or automated dealing shoe;

c. The decks of cards used in mini baccarat at least every 24 hours if the cards are dealt from a manual or automated dealing shoe;

d. The decks of cards used in midibaccarat after the play of each dealing shoe; and

e. The two decks of cards used in poker at least every 24 hours.

Q. Dealing shoes and automated card shuffling devices.

1. In this subsection, the following terms have the meanings indicated.

"Base plate" means an interior shelf of a dealing shoe on which a card rests.

"Face plate" means the front wall of the dealing shoe against which the next card to be dealt rests and which typically contains a cutout.

2. A manual dealing shoe must be designed and constructed to maintain the integrity of the game at which the shoe is used and shall include these features:

a. At least the first four inches of the base plate shall be white;

b. The sides of the shoe below the base plate shall:

(1) Be transparent, have a transparent sealed cutout, or be otherwise constructed to prevent any object from being placed into or removed from the portion of the dealing shoe below the base plate; and

(2) Permit the inspection of this portion of the shoe; and

c. A stop underneath the top of the face plate that precludes the next card to be dealt from being moved upwards more than 1/8-inch.

3. In addition to the requirements of subdivision 2 of this subsection, a manual dealing shoe used in minibaccarat, midibaccarat, or baccarat must also meet these specifications:

a. Have a removable lid that is opaque from the point where it meets the face plate to a point at least four inches from the face plate;

b. The sides and back above the base plate must be opaque; and

c. Have a device within the shoe that, when engaged, prevents the cards from moving backward in the shoe.

4. An automated card shuffling device that has been submitted and approved by the department may be used in addition to a manual or automated dealing shoe.

5. An automated shuffling device must meet the testing requirements for a random number generator.

6. An automated card shuffling device may not provide any information that can be used to aid a player in:

a. Projecting the outcome of a game;

b. Tracking the cards played and cards remaining to be played;

c. Analyzing the probability of the occurrence of an event relating to a game; or

d. Analyzing the strategy for playing or betting to be used in a game.

7. Tampering.

a. At the beginning of each gaming day and before a card is placed in them, the floorperson assigned to the table shall inspect the dealing shoes and automated card shuffling devices to be used for gaming to ensure that they have not been tampered with.

b. Evidence of tampering shall be immediately reported to department staff in a written report that shall include:

(1) The date and time when the tampering was discovered;

(2) The name and signature of the individual who discovered the tampering;

(3) A description of the evidence of tampering;

(4) The table number where the dealing shoe or shuffler was used; and

(5) The name and signature of the person assigned to directly operate and conduct the game and the supervisor assigned the responsibility for supervising the operation and conduct of the game.

R. Pai gow tiles.

1. Pai gow shall be played with a set of 32 rectangular tiles.

2. Each tile in a set must be identical in size and shading to every other tile in the set and shall:

a. Be made of a nontransparent black material, formed in the shape of a rectangle, and be not smaller than 2-1/2 inches in length, 1-inch in width, and 3/8-inch in thickness;

b. Have the surface of each of its sides perfectly flat, except that the front side of each tile must contain spots that extend into the tile exactly the same distance as every other spot;

c. Have on the back or front of each tile an identifying feature unique to each facility operator;

d. Except for the front side containing spots, have an identical texture and finish on each side;

e. Have no tile within a set contain any markings, symbols, or designs that would enable a player to know the identity of any element on the front side of the tile or that would distinguish any tile from any other tile within a set; and

f. Have identifying spots on the front side of the tiles that are red, white, or both.

3. Pai gow tiles may not be used in a facility until the facility has submitted to the department a detailed schematic depicting the actual size and identifying features on pai gow tiles, and the department has approved the submission,

4. Each set of tiles shall be packaged separately and sealed under subsection S of this section.

S. Receipt, storage, inspection, and removal of pai gow tiles.

1. Receipt.

a. A shipment of tiles that a facility operator receives from a manufacturer or contractor shall be unloaded immediately and transported to a secure area that is covered by the facility operator's surveillance system under the supervision of at least two employees of the facility operator.

b. The boxes of tiles shall then be inspected by at least two employees of the facility operator to ensure that the seals on each box are intact, unbroken, and free from tampering.

c. Boxes that do not appear to be intact, unbroken, and free from tampering shall be inspected immediately to ensure that the tiles in those boxes conform to the requirements

of this chapter and there is no evidence of tampering with them.

d. If the inspected tiles show no evidence of tampering, they shall be placed, along with boxes of tiles that are intact, unbroken, and free from tampering for storage in a storage area, the location and physical characteristics of which shall be approved by the department.

e. The functions required under this subdivision 1 shall be performed by at least the following employees of a facility operator:

(1) A floorperson or above; and

(2) An employee from the security department.

2. Sets of tiles that are to be distributed to gaming pits or tables for use in gaming shall be distributed from the approved storage area.

3. The approved storage area shall have two separate locks, to which access shall be controlled as follows:

a. The security department shall maintain one key and the gaming operations department shall maintain the other key; and

b. An employee of the gaming operations department below a floorperson in the facility's organizational hierarchy may not have access to the gaming operations department key.

4. Once each gaming day and at other times as may be necessary, a floorperson or above, in the presence of a security department employee, shall remove the appropriate number of sets of tiles from the approved storage area.

5. Envelopes and containers used to hold or transport tiles shall be:

a. Transparent;

b. Designed or constructed with seals so that any tampering is evident; and

c. Submitted to and approved by the department in advance.

6. Distribution of tiles.

a. The floorperson or above shall distribute sufficient sets of tiles to the pit manager or above in each pai gow pit.

b. The pit manager or above shall then distribute the sets of tiles to the dealer at each pai gow table and place extra sets of tiles in the reserve in the pit stand.

c. Sets of tiles in the reserve shall be placed in a locked compartment in the pit stand, keys to which shall be in the possession of the pit manager or above.

7. Damaged tiles.

a. If during the course of play a damaged tile is detected, the dealer or a floorperson shall immediately notify the pit manager or above, who shall bring a substitute set of tiles to the table from the reserve in the pit stand to replace the entire set of tiles.

b. A set containing a damaged tile shall be placed in an envelope or container, identified by table number, date, and time the tiles were placed in the envelope or container and sealed and signed by the dealer and the floorperson responsible for supervising the table or the pit manager or above.

c. The pit manager or above shall maintain the sealed envelope or container in a secure place within the pit until collection by a security department employee.

8. Collection.

a. The floorperson responsible for supervising the table or the pit manager or above shall collect used tiles, which shall be placed in an envelope or container when removed from active use.

b. A label shall be attached to each envelope or container that identifies the table number, date, and time the tiles were placed in the envelope or container and sealed and signed by the dealer and the floorperson responsible for supervising the table or the pit manager or above.

c. The pit manager or above shall maintain the sealed envelopes or containers in a secure place within the pit until collection by a security department employee.

9. Removal.

a. A facility operator shall remove a tile from play if there is any indication of tampering, flaws, or other defects that might affect the integrity or fairness of the game, or at the request of department staff.

b. A label shall be attached to each envelope or container that identifies the table number, date, and time the tiles were placed in the envelope or container and sealed and signed by the dealer and the floorperson responsible for supervising the table or the pit manager or above.

c. The pit manager or above shall maintain the sealed envelopes or containers in a secure place within the pit until collection by a security department employee.

10. Extra sets of tiles in the reserve that have been opened shall be placed in an envelope or container with a label attached to each envelope or container that identifies the date and time the tiles were placed in the envelope or container and sealed and is signed by the pit manager or above.

11. At the end of each gaming day or in the alternative, at least once each gaming day, as designated by the facility operator and approved by the department, and at other times as may be necessary:

a. A security department employee shall collect and sign all envelopes or containers with damaged tiles, tiles used during the gaming day, and all extra tiles in the reserve that have been opened, and return the envelopes or containers to the security department; and

b. A floorperson or above may collect all extra sets of tiles in the reserve that have not been opened, and, if collected, all unopened sets of tiles shall be canceled, destroyed, or returned to the approved storage area.

12. Inspection.

a. When envelopes or containers of used tiles and reserve sets of tiles that have been opened are returned to the security department, the security department shall inspect the tiles for tampering, marks, alterations, missing, or additional tiles or anything that might indicate unfair play.

b. The procedures for inspecting sets of tiles shall include:

(1) Sorting of tiles by pairs;

(2) Visually inspecting the sides and back of each tile for tampering, markings, or alterations; and

(3) Inspecting the sides and back of each tile with an ultraviolet light.

c. The individual performing the inspection shall complete a work order form that details the procedures performed, lists the tables from which the tiles were removed, and the results of the inspection and shall sign the form upon completion of the inspection procedures.

d. The facility operator shall submit to the department for approval the training procedures for the employees performing the inspections required under this subsection in its internal controls.

e. Evidence of tampering, marks, alterations, missing, or additional tiles or anything that might indicate unfair play discovered during the inspection, or at any other time, shall be immediately reported to department staff by the completion and delivery of a two-part Tile Discrepancy Report.

f. Tile Discrepancy Report.

(1) The two-part Tile Discrepancy Report shall include the tiles that are the subject of the report.

(2) Department staff shall retain the tiles for further inspection.

(3) The department staff receiving the tiles shall sign the original and duplicate copy of the Tile Discrepancy Report and retain the original.

(4) The facility operator shall retain the duplicate copy.

13. If, after completing the inspection procedures required under subdivision 12 of this subsection, it is determined that a complete set of 32 tiles removed from a gaming table is free from tampering, markings, or alterations, the set shall be packaged separately and sealed before being returned to the pai gow storage area for subsequent use.

14. A facility operator shall develop internal control procedures for returning the repackaged tiles to the tile inventory.

15. Except as provided in subdivision 16 of this subsection, individual tiles from different sets may not be used to make a complete set for subsequent gaming.

16. A facility operator may create replacement and reconstructed sets in accordance with the following requirements:

a. If after completing the inspection procedures required under subdivision 12 of this subsection, it is determined that a tile has scratches or other markings on the back, sides, or edges that make the tiles unsuitable for continued use, the tile shall be removed from the set and destroyed in accordance with subdivision 18 of this subsection.

b. The remaining usable tiles from the set shall be designated as a replacement set.

c. The employee who removes the tiles from a set shall complete a two-part form that shall:

(1) Include the date and time the tiles were removed from the set;

(2) Identify the specific tile or tiles removed from the set and sent for destruction; and

(3) Contain the name and signature of the individuals involved.

d. The duplicate copy of the form shall be retained with the replacement set and the security department shall retain the original.

e. The assistant table games shift manager or above shall return the replacement set, accompanied by the duplicate copy of the form, to the tile inventory, where replacement sets shall be inventoried and stored separately from any stored and new, used, or complete reconstructed sets.

f. Tiles in one or more replacement sets may be used to create a complete reconstructed set of tiles in accordance with the following procedures:

(1) The assistant table games shift manager or above shall conduct an inspection of each reconstructed set in the storage area, in the presence of a security department employee, and ensure that any replacement tile possesses the same color, texture, and finish as all other tiles in the reconstructed set.

(2) The assistant table games shift manager or above shall sort the tiles by pairs and verify the needed replacement tiles and visually inspect the sides, backs, and edges of each tile in the reconstructed set for tampering, markings, and alterations and for comparison as to shading, texture and finish.

(3) After a complete set of tiles has been assembled from replacement sets, the assistant table games shift manager or above shall attach a label to the envelope or container for the reconstructed set, which shall:

(a) Include the date and time of reconstruction;

(b) Contain the signature of the assistant table games shift manager or above and the security department employee who witnessed the inspection; and

(c) Identify the inspection steps that were followed to determine that the reconstructed set of tiles is suitable for use in gaming.

(4) A facility operator shall submit to the department for approval internal control procedures for returning the reconstructed sets into inventory, identifying all reconstructed sets and maintaining an accurate inventory balance of remaining replacement sets.

17. A facility operator shall submit internal control procedures for:

a. An inventory system that includes records of at least the following:

(1) The balance of sets of tiles on hand;

(2) The sets of tiles removed from storage;

(3) The sets of tiles returned to storage or received from a manufacturer or contractor;

(4) The date of each transaction; and

(5) The signatures of the individuals involved;

b. A daily reconciliation of the:

(1) Sets of tiles distributed;

(2) Sets of tiles destroyed or canceled;

(3) Sets of tiles returned to the approved storage area; and

(4) Sets of tiles in the tile reserve in a pit stand; and

c. A physical inventory of the sets of tiles at least once every three months.

(1) An inventory shall be performed by an individual with no incompatible functions and shall be verified to the balance of the sets of tiles on hand.

(2) Discrepancies shall immediately be reported to department staff.

18. Destruction or cancellation.

a. Destruction or cancellation of tiles other than those retained for department inspection shall be completed within seven days of collection.

b. The method of destruction or cancellation shall be included in the facility operator's internal controls.

c. The destruction or cancellation of tiles shall take place in a secure location in the licensed facility covered by the facility operator's surveillance system.

19. A facility operator shall change the tiles at least every 12 hours.

T. Electronic table games requirements.

1. A facility operator may conduct electronic wagering at a table game in accordance with this subsection.

a. Electronic wagering at a table game shall be conducted through the use of an electronic table game system.

b. If a dealer controlled electronic table game system is in use at a table game, a player may make only those wagers that are approved by the department.

2. The computer controlling the electronic table game system shall be under dual key control, with one key controlled by the accounting department and the other key controlled by the table games department or the slot operations department.

3. All aspects of an electronic table game system, including the computer and any related hardware, software, or related devices, shall be tested by an independent certified testing laboratory and approved by the department prior to use by a facility operator.

4. In addition to the other requirements for table games of this chapter, a facility operator using an electronic table game system shall include in its internal controls, at a minimum:

a. Procedures to ensure the physical security of the computer and related hardware, software, and other devices;

b. Procedures to ensure the integrity and security of all sensitive data and software;

c. Procedures to ensure that access to sensitive data and software is limited to only appropriate personnel; and

d. Procedures to ensure the logging of the events and the availability of records to enable an effective audit of the conduct of the system and the reporting of revenue.

5. An electronic table game system shall have the ability to authenticate the transmission of data between its various components.

6. An electronic table game system shall:

a. Credit funds to the game account of a player when a player buys in to a game at a particular table game and debit any remaining funds from the game account when a player cashes out of the game;

b. Permit a player to:

(1) Wager from a game account;

(2) Collect a losing wager from a game account; and

(3) Pay a winning wager by crediting the amount of the winnings and corresponding wager to the game account;

c. In the game of poker:

(1) Debit a game account and increment pot for a wager;

(2) Distribute a winning pot by crediting the game account of a winning player in the appropriate amounts;

(3) Extract the rake from a player or pot according to the rake procedures established under the standard rules for

poker and debit the game account of a player in the correct amounts; and

(4) Make a player's balance or table stakes visible to all players in the game;

d. Depict the transactions described in this subdivision 6 of this subsection through one or more electronic fund displays that are visible to each player and to the dealer or boxperson;

e. Disclose to a player at all times the current balance in the player's game account;

f. Accurately report and audit the table game's win or loss, or poker revenue, in accordance with the standard rules for poker;

g. Be capable of generating reports setting forth, by gaming day, for each table game using the electronic table game system:

(1) The total amount deposited into the game account of a player;

(2) The total amount deposited into game accounts by all players;

(3) The total amount credited to the game account of a player in payment of winnings;

(4) The total amount credited to the game accounts of all players in payment of winnings;

(5) The total amount collected from a player as losing wagers;

(6) The total amount collected from all players as losing wagers;

(7) The total amount withdrawn from game accounts by each player;

(8) The total amount withdrawn from game accounts by all players; and

(9) The table game win or loss; and

(10) If applicable, for poker:

(a) The total amount deducted from the game account of a player for collection of poker rake time charges under the standard rules for poker;

(b) The total amount collected from the accounts of each player for collection of poker rake time charges under the standard rules for poker;

(c) The total amount collected from poker pots for collection of poker rake under the standard rules for poker; and

(d) The table game poker revenue.

7. The display of a virtual chip on an electronic table game system that depicts the transactions described in subdivision 6 of this subsection is not required to meet the physical requirements for chips otherwise required by this chapter.

8. Each table game position used in an electronic table game shall meet the requirements for slot machines.

9. After installation, department staff shall inspect an electronic table game system prior to use by a facility operator.

U. Dealer controlled electronic table game system procedures.

1. A player shall participate in wagering at a dealer controlled electronic table game by presenting a gaming voucher or value chips to the dealer or boxperson.

2. When a player presents a gaming voucher or value chips:

a. The dealer controlled electronic table game shall:

(1) Credit to the player's game account an amount of funds equivalent to the gaming voucher or value chips presented by the player; and

(2) Display on the electronic fund display the amount of funds deposited into the player's game account; and

b. The player shall acknowledge the amount of funds deposited into the player's game account.

3. A player shall cash out of a dealer controlled electronic table game system by receiving:

a. A gaming voucher equal in value to the balance in the player's game account; or

b. Value chips from the dealer or boxperson from the table inventory container that are equal in value to the balance in the player's game account.

4. After a player has cashed out of a dealer controlled electronic table game system, the dealer or boxperson shall zero out the electronic fund display of the player's game account.

5. A dealer controlled electronic table game shall have no more than 50 table game positions in operation for each dealer.

V. Tables.

1. A facility operator shall submit to the department for approval the layout for a table game that contains at least:

a. The name or logo of the facility operator;

b. Betting areas designated for the placement of wagers authorized under the standard rules; and

c. Inscriptions that advise a player of the payout odds or amounts for all permissible wagers offered by the facility operator, except that if payout odds or amounts are not inscribed on the layout, a sign identifying the payout odds or amounts for all permissible wagers shall be posted at each table.

2. If a facility operator offers a progressive payout wager, a table shall have a progressive table game system for the placement of progressive payout wagers that includes a:

a. Wagering device at each betting position that acknowledges or accepts the placement of the progressive payout wager; and

b. Device that controls or monitors the placement of progressive payout wagers at the gaming table and includes a lock-out button or other mechanism that prevents the recognition of any progressive payout wager that a player attempts to place after the dealer has announced "no more bets."

3. A table shall have a drop box and a tip box attached on the same side of the gaming table as, but on opposite sides of, the dealer, as approved by the department.

4. The department may approve an alternative location for the tip box when a card shuffling device or other table game equipment prevents the placement of the drop box and tip box on the same side of the gaming table as, but on opposite sides of, the dealer.

5. Each table shall have a discard rack securely attached to the top of the dealer's side of the table except for:

a. Craps; and

b. Roulette.

W. Roulette ball, table, and wheel inspection; security procedures.

1. A ball used in roulette shall be:

a. Made completely of a nonmetallic substance; and

b. Not less than 12/16-inch nor more than 14/16-inch in diameter.

2. Roulette shall be played on a table having a roulette:

a. Wheel of at least 30 inches in diameter at one end of the table; and

b. Layout imprinted on the opposite end of the table.

3. Prior to opening a roulette table for gaming activity, a floorperson or member of a facility operator's security department shall:

a. Inspect the roulette ball by passing it over a magnet or compass to assure its nonmagnetic quality;

b. Inspect the roulette table and roulette wheel for any magnet or contrivance that would affect the fair operation of the roulette wheel;

c. Inspect the roulette wheel to assure that the wheel is level and rotating freely and evenly; and

d. Inspect the roulette wheel to assure that all parts are secure and free from movement.

4. If a facility operator uses a roulette wheel that has external movable parts, any adjustments to the movable parts shall be made by a floorperson or a member of the facility operator's gaming operations department in the presence of a security department member.

5. All adjustments shall be completed prior to the inspections required under subdivision 3 of this subsection.

6. A facility operator may replace any of the movable parts at any time, except that an inspection required under subdivision 3 of this subsection shall be completed prior to reopening the roulette wheel and table for play.

7. A facility operator shall maintain an inspection log that shall include:

a. The date and time of inspection;

b. The roulette table number;

c. Whether an adjustment or replacement was completed;

d. A description of the adjustment or replacement;

e. If required, a certification that an inspection was completed; and

f. The signature and license number of the individual making the adjustment or replacement.

7. When a roulette table is not open for play, the roulette wheel shall be secured by a cover that is placed over the entire wheel and securely locked.

11VAC5-90-180. Table games procedures.

A. Applicability of definitions. In addition to terms defined in the casino gaming law and 11VAC5-90-10, the definitions in 11VAC5-90-170 shall apply in this section unless the context clearly requires otherwise.

B. Personnel operating and conducting table games.

1. A facility operator may use the following personnel to operate table games:

a. Dealer;

b. Stickperson;

c. Boxperson;

d. Floorperson;

e. Pit manager;

f. Poker manager;

g. Assistant table games shift manager; and

h. Table games shift manager.

2. A facility operator shall maintain the following minimum levels of staffing when table games are being operated:

a. Excluding craps or baccarat, one dealer for a table game;

b. Two dealers for a big baccarat table;

c. Two dealers for a craps table, one of whom shall act as the stickperson; and

d. One boxperson or floorperson for a craps table.

3. A facility operator shall provide a sufficient number of floorpersons to supervise the operation of table games in accordance with the standards in this section, so that a

floorperson may not supervise more than the number of tables specified in one of the following:

a. Excluding baccarat, midibaccarat, craps, mini-craps, and pai gow, six tables comprised of a combination of banking table games;

b. One baccarat table;

c. Three midibaccarat tables;

d. Excluding baccarat, craps, and mini-craps, one midibaccarat table and one table of any other table game;

e. Three craps tables;

f. Excluding baccarat, midibaccarat, mini-craps, and pai gow, two craps tables and two tables of a banking table game;

g. If only one dealer is assigned to a table, two mini-craps table;

h. If the there is a dealer and a stickperson assigned to the tables, four mini-craps tables;

i. If the tables are in a side-by-side configuration, two pai gow tables;

j. Excluding baccarat, craps, and mini-craps, one pai gow table and one table of another banking table game;

k. 10 poker tables; and

l. If the floorperson assigned to poker does not have responsibilities for seating players, 12 poker tables.

4. If the gaming tables being supervised by a floorperson are dealer controlled electronic table games, the maximum number of gaming tables that the floorperson may supervise may be increased by 100% of the limits provided in subdivision 3 of this subsection.

5. Subject to the limitation that a pit manager or assistant table games shift manager may not directly supervise more than 12 floorpersons, a facility operator shall provide a sufficient number of pit managers or assistant table games shift managers to supervise the operation of table games.

6. A facility operator shall provide a poker manager to supervise all open poker tables.

7. If no more than three poker tables are open, a poker manager is not required.

8. Table games shift manager.

a. A facility operator shall provide a table games shift manager to supervise the operation of table games during every shift.

b. An assistant table games shift manager may be designated to act as the table games shift manager in the table games shift manager's absence.

c. An assistant table games shift manager may not be counted toward the required number of pit managers or assistant table games shift managers.

9. A facility operator may request the department to approve its use of a staffing plan that differs from the minimum standards in this section by submitting a written alternate minimum staffing plan which must include at least:

a. The pit number and configuration of any pit affected;

b. The type, location, and table number of any table affected;

c. The standard staffing level required under this regulation for a gaming table and the proposed alternative staffing;

d. The days, shifts, or times during which the alternative staffing would be in effect; and

e. A narrative explaining the rationale for the proposed alternative staffing and how the alternative staffing would protect the integrity of gaming at the affected gaming tables.

10. A facility operator may not implement an alternate minimum staffing plan unless the department has approved the plan in writing.

11. Nothing in this regulation shall be construed to limit:

a. A facility operator from using more personnel than required by this subsection; or

b. The department's discretion to direct a facility to use more personnel than required by this regulation in the operation of table games.

C. Table inventory.

1. When a table game is opened for gaming, table game operations shall commence with the table inventory.

2. A facility operator may not cause or permit gaming chips, coins, or plaques to be added to or removed from a table inventory during the gaming day except:

a. For the payment of winning wagers and collection of losing wagers made at the gaming table;

b. In exchange for a gaming chip or plaque received from a player having an equal aggregate face value;

c. In conformity with fill procedures; and

d. For the collection of vigorish.

3. When a table game is not open for gaming activity, the table inventory and a Table Inventory Slip shall:

a. Be stored in a locked container that is clearly marked on the outside with the game and the gaming table number to which it corresponds;

b. Have the information on the Table Inventory Slip be visible from the outside of the container; and

c. Be stored either in the cage or secured to the gaming table, in a manner consistent with the facility's approved internal controls.

4. Notwithstanding the requirements in subdivision 3 of this subsection, for table games that are not open for gaming activity during the gaming day, a facility operator may use this alternative procedure:

a. A floorperson or above shall complete a Closed Table Form for every table that was not open for gaming during the gaming day;

b. The table inventory shall remain locked during completion of the Closed Table Form;

c. The Closed Table Form shall contain:

(1) The date and identification of the shift ended;

(2) The game and table number;

(3) The date the table was last opened for gaming; and

(4) The signature and license number of the floorperson or above who completed the Closed Table Form; and

d. After completion of the procedure, the floorperson or above who completed the Closed Table Form shall deposit the form into the drop box.

5. The keys to the locked containers containing the table inventories shall be maintained and controlled by the gaming operations department and may not be made accessible to cage personnel or to any employee responsible for transporting the table inventories to or from the gaming tables.

6. Table Inventory Slips shall be two-part forms upon which the following is recorded:

a. The date and identification of the shift ended;

b. The game and table number;

c. The total value of each denomination of value chips, coins, and plaques remaining at the gaming table;

d. The total value of all denominations of value chips, coins, and plaques remaining at the gaming table; and

e. The signatures of the dealer, or boxperson and floorperson, assigned to the gaming table who conducted the count of the table inventory when the gaming table was closed and when the gaming table was opened.

D. Procedures for opening a table game.

1. When a table game is to be opened for gaming activity, a security department employee shall transport directly from the cage to the gaming table the locked container with the table inventory and the duplicate copy of the Table Inventory Slip if the slip is not already attached to the gaming table.

2. Immediately prior to opening the table game for gaming, the floorperson assigned to the gaming table shall unlock the container with the table inventory after assuring that it is the proper container for that gaming table.

3. The dealer or boxperson assigned to the gaming table shall count the contents of the table inventory in the presence of the floorperson assigned to the gaming table and reconcile the count to the totals on the duplicate copy of the Table Inventory Slip removed from the container.

4. The dealer or boxperson assigned to the table, and the floorperson who observed the dealer or boxperson count the contents of the container, shall attest to the accuracy of the information recorded on the duplicate copy of the Table Inventory Slip by signing the duplicate copy of the Table Inventory Slip.

5. After the duplicate copy of the Table Inventory Slip has been signed, the dealer, boxperson, or floorperson shall immediately deposit the slip into the table game drop box attached to the gaming table.

6. If there is a discrepancy between the amount of gaming chips and plaques counted and the amount of the gaming chips and plaques recorded on the duplicate copy of the Table Inventory Slip:

a. The discrepancy shall be immediately verbally reported to the floorperson or above, the security department, and department staff;

b. In the presence of the floorperson or above, the dealer or boxperson assigned to the table shall recount the table inventory and complete a new Table Inventory Slip reflecting the results of the dealer's or boxperson's recount of the table inventory;

c. The floorperson or above shall:

(1) Prepare an Error Notification Slip, which shall be a three-part form containing:

(a) The date and time;

(b) The type of game;

(c) The table number and pit; and

(d) An explanation of the discrepancy;

(2) Write "Incorrect Copy" on the copy of the Table Inventory Slip that was in the table inventory;

(3) Sign the "Incorrect Copy"; and

(4) Write "Correct Copy" on both copies of the Table Inventory Slip required to be prepared by the dealer or boxperson.

d. The "Correct Copy" shall be signed by the dealer or boxperson who recounted the table inventory, and the floorperson or above.

e. After the required signatures have been obtained, the dealer or boxperson shall deposit in the drop box the "Incorrect Copy" Table Inventory Slip, both copies of the "Correct Copy" Table Inventory Slip and the first copy of the Error Notification Slip.

7. A dealer or boxperson shall give the second copy of the Error Notification Slip to the pit clerk or floorperson or above, and shall deliver the third copy of the Error Notification Slip to a Department compliance representative.

8. For any unresolved discrepancy greater than $100, the security or surveillance department shall investigate the discrepancy and, within 24 hours, complete a written incident report and immediately forward a copy to department staff.

E. Procedure for distributing chips, coins, and plaques to a gaming table.

1. A pit clerk or floorperson or above shall prepare a request for a fill to add value chips, coins, and plaques to a table game using a Fill Request Slip.

2. Access to the blank Fill Request Slips shall be restricted to pit clerks and floorpersons or above.

3. A Fill Request Slip shall be a two-part form on which the following information shall be recorded:

a. The date, time, and shift of preparation;

b. The denomination of value chips, coins, and plaques to be distributed to the gaming table;

c. The total amount of each denomination of value chips, coins, and plaques to be distributed to the gaming table;

d. The game and table number to which the value chips, coins, and plaques are to be distributed; and

e. The signature of the floorperson or above requesting the fill.

4. After the Fill Request Slip has been prepared, the security department employee shall transport the chip bank copy of the Fill Request Slip directly to the chip bank.

5. The dealer or boxperson shall place the drop box copy of the Fill Request Slip in view of the facility operator's surveillance system on the gaming table to which the value chips, coins, and plaques are to be received.

6. Notwithstanding the requirements of subdivisions 1 through 5 of this subsection, a fill request may be prepared electronically if:

a. The input data for preparation of the fill is entered by and ability to input data is restricted to the pit clerk or a floorperson or above; and

b. A Fill Slip is generated in the chip bank as a direct result of the input.

7. A Fill Slip shall be prepared by a chip bank cashier or, if the required information was inputted in conformity with subdivision 6 of this subsection, the Fill Slip may be electronically generated in the chip bank.

8. A Fill Slip shall be:

a. A serially prenumbered form;

b. Used in sequential order;

c. Accounted for by employees with no incompatible functions; and

d. If applicable, marked "Void" and signed by the preparer.

9. If a Fill Slip is manually prepared, the following procedures and requirements shall be observed:

a. Each series of Fill Slips shall be a four-part form and shall be inserted in a locked dispenser or bound in a Fill Slip form book that permits an individual Fill Slip in the series and its copies to be written upon while still locked in the dispenser or bound in the Fill Slip form book;

b. The Fill Slip dispenser shall discharge the drop box, acknowledgment and chip bank copies of the Fill Slip while the accounting copy remains in a continuous, unbroken form in the dispenser; or

c. If a Fill Slip form book is utilized, the accounting copy must remain in the bound Fill Slip form book until removed in accordance with subdivision 9 d of this subsection; and

d. Access to copies of the Fill Slips shall be maintained and controlled by accounting department employees with no incompatible functions who are responsible for controlling and accounting for the unused supply of Fill Slips, placing Fill Slips in the dispensers and removing the accounting copies of the Fill Slips from the dispensers or Fill Slip form book each gaming day.

10. If a Fill Slip is electronically prepared, each series of Fill Slips must be a three-part form and:

a. Be inserted in a printer that will simultaneously print a drop box, acknowledgment, and chip bank copy of the Fill Slip in the chip bank; and

b. Store, in machine readable form, the information printed on the drop box, acknowledgment, and chip bank copies of the Fill Slips so that the stored data may not be susceptible to change or removal by any personnel involved in the preparation of a Fill Slip after the Fill Slip has been prepared.

11. A copy of a Fill Slip and, if applicable, the stored data, must contain at least the:

a. Denominations of the value chips, coins, and plaques being distributed;

b. Total amount of each denomination of value chips, coins, and plaques being distributed;

c Total amount of all denominations of value chips, coins, and plaques being distributed;

d. Game and table number to which the value chips, coins, and plaques are being distributed;

e. Date and shift during which the distribution of value chips, coins, and plaques occurs; and

f. Signature of the preparer or, if electronically prepared, the license number of the prepared.

12. The time of preparation of the Fill Slip shall be recorded on the drop box, acknowledgment, and chip bank copies of the Fill Slip upon preparation.

13. A security department employee shall directly transport a value chip, coin, or plaque distributed to a gaming table from the chip bank to a gaming table.

14. Upon receipt of a value chip, coin, or plaque at a gaming table, the floorperson shall:

a. Compare the Fill Request Slip to the Fill Slip; and

b. Attest to the accuracy of the fill by signing the drop box copy and acknowledgment copy of the Fill Slip.

15. If a fill request is generated electronically in the chip bank, the floorperson shall:

a. Compare the Fill Slip with the electronically generated fill request; and

b. Attest to the accuracy of the fill by signing the drop box and acknowledgment copies of the Fill Slip.

16. Signatures on the drop box and acknowledgment copies of the Fill Slip attesting to the accuracy of the information contained on a Fill Slip shall be required of the specified employees at the specified times, including:

a. The chip bank cashier, upon preparation;

b. The security department employee transporting the value chips, coins, and plaques to the gaming table, upon receipt from the cashier of the value chips, coins, and plaques to be transported;

c. The dealer or boxperson assigned to the gaming table, upon receipt and verification of the amounts of the value chips, coins, and plaques at the gaming table from the security department employee; and

d. The floorperson assigned to the gaming table, upon receipt and verification of the amounts of the value chips, coins, and plaques at the gaming table.

17. After the signature requirements in subdivision 16 of this subsection have been satisfied, the security department employee who transported to a gaming table a value chip, coin, or plaque; the drop box; and acknowledgment copies of the Fill Slip, shall:

a. Observe the dealer's or boxperson's immediate placement of the drop box copy of the Fill Slip and the drop box copy of the Fill Request Slip, if applicable, in the drop box attached to the gaming table to which a value chip, coin, or plaque was transported; and

b. Return the acknowledgment copy of the Fill Slip to the chip bank cashier.

18. The chip bank cashier shall maintain together the chip bank copies of the Fill Request Slip, if applicable, and the chip bank and acknowledgment copies of the Fill Slip, until those items are forwarded to the accounting department.

19. All parts of voided Fill Slips, as well as the chip bank copies of Fill Request Slips, if applicable, and the acknowledgment and chip bank copies of the Fill Slips that are maintained and controlled in conformity with subdivision 17 of this subsection, shall be forwarded to the accounting department for agreement, on a daily basis, with:

a. The drop box copies of the Fill Request Slips, if applicable, and Fill Slips removed from the drop box on the gaming table; and

b. If applicable, the electronically stored data and accounting copies of the Fill Slips.

F. Removing a value chip, coin, or plaque from a gaming table.

1. A pit clerk or floorperson or above shall prepare a request for a credit to remove a value chip, coin or plaque from a table game by using a Credit Request Slip.

2. Access to the blank Credit Request Slips shall be restricted to pit clerks and floorpersons or above.

3. A Credit Request Slip shall be a two-part form on which the following information shall be recorded:

a. The date, time, and shift of preparation;

b. The denomination of chips, coins, and plaques to be removed from the gaming table;

c. The total amount of each denomination of value chips, coins, and plaques to be removed from the gaming table;

d. The game and table number from which the value chips, coins, and plaques are to be removed; and

e. The signature of the floorperson or above assigned to the gaming table from which the value chips, coins, and plaques are to be removed.

4. A security department employee shall transport the chip bank copy of a prepared Credit Request Slip directly to the chip bank.

5. A dealer or boxperson shall place the drop box copy of the Credit Request Slip in view of the facility operator's surveillance system on the gaming table from which the value chips, coins and plaques are to be removed.

6. The drop box copy of the Credit Request Slip may not be removed until the drop box and acknowledgment copies of the Credit Slip are received from the chip bank.

7. Notwithstanding the requirements of subdivisions 1 through 6 of this subsection, a request for a credit may be prepared electronically if:

a. The input data for preparation of the credit is entered by and ability to input data is restricted to the pit clerk or a floorperson or above; and

b. A Credit Slip is generated in the chip bank as a direct result of the input.

8. A Credit Slip shall be prepared by a chip bank cashier or, if the required information was inputted in conformity with subdivision 7 of this subsection, the Credit Slip may be electronically generated in the chip bank.

9. Credit Slips shall be:

a. Serially prenumbered forms;

b. Used in sequential order;

c. Accounted for by employees with no incompatible functions; and

d. If applicable, marked "Void" and signed by the preparer.

10. When Credit Slips are manually prepared, the following procedures and requirements shall be observed:

a. Each series of Credit Slips shall be a four-part form and shall be inserted in a locked dispenser or bound in a Credit Slip form book that permits an individual Credit Slip in the series and its copies to be written upon while still locked in the dispenser or bound in the Credit Slip form book;

b. The Credit Slip dispenser must discharge the drop box, acknowledgment and chip bank copies of the Credit Slip while the accounting copy remains in a continuous, unbroken form in the dispenser;

c. If a Credit Slip form book is utilized, the accounting copy must remain in the bound Credit Slip form book until removed in accordance with subdivision 10 d of this subsection; and

d. Access to the copies of the Credit Slips shall be maintained and controlled by accounting department employees with no incompatible functions who shall be responsible for controlling and accounting for the unused supply of the Credit Slips, placing Credit Slips in the dispensers, and removing the accounting copies of the Credit Slips from the dispensers or Credit Slip form book each gaming day.

11. When Credit Slips are electronically prepared, each series of Credit Slips must be a three-part form and:

a. Be inserted in a printer that simultaneously prints drop box, acknowledgment and chip bank copies of the Credit Slip in the chip bank;

b. Store, in machine-readable form, the information printed on the drop box, acknowledgment, and chip bank copies of the Credit Slip; and

c. The stored data may not be susceptible to change or removal by any personnel after the preparation of a Credit Slip after the Credit Slip has been prepared.

12. Copies of the Credit Slip and, when applicable, the stored data must contain at least the following information:

a. The denominations of the value chips, coins, and plaques being returned to the chip bank;

b. The total amount of each denomination of value chips, coins, and plaques being returned;

c. The total amount of all denominations of value chips, coins, and plaques being returned;

d. The game and table number from which the value chips, coins, and plaques are being returned;

e. The date and shift during which the removal of value chips, coins, and plaques occurs; and

f. The signature of the preparer or, if electronically prepared, the identification code of the preparer.

13. When the Credit Slip is prepared, the time of its preparation shall be recorded on the drop box, acknowledgment, and chip bank copies of the Credit Slip.

14. After the Credit Slip has been prepared by the chip bank cashier or has been printed in the chip bank as a result of the information being inputted electronically by a pit clerk or floorperson or above, the security department employee shall transport the drop box, acknowledgment, and chip bank copies of the Credit Slip directly to the gaming table.

15. The dealer or boxperson shall compare the value chips, coins, and plaques to be removed from the table inventory container with the drop box copy of the Credit Slip and the Credit Request Slip, if applicable, and shall sign the Credit Slip.

16. Signatures on the drop box, acknowledgment, and chip bank copies of a Credit Slip attesting to the accuracy of the information contained on the Credit Slip shall be required of the specified employees at the specified times:

a. The chip bank cashier, upon receipt of the value chips from the table;

b. The dealer or boxperson assigned to the gaming table, upon removal of the value chips, coins, and plaques from the table inventory container and verification of the Credit Slip and Credit Request Slip, if applicable;

c. The floorperson assigned to the gaming table, upon observing the removal of the value chips, coins, and plaques from the table inventory container and the verification of the Credit Slip and Credit Request Slip, if applicable; and

d. The security department employee, upon receipt of the value chips, coins, and plaques from the gaming table.

17. After meeting the signature requirements required under subdivision 16 of this subsection:

a. The security department employee shall transport the value chips, coins, and plaques directly to the chip bank along with the acknowledgment and chip bank copies of the Credit Slip;

b. The dealer or boxperson shall place the drop box copy of the Credit Slip on the gaming table in view of the facility's surveillance system;

c. Upon receipt of the value chips, coins, and plaques from the security department employee, the chip bank cashier shall:

(1) Compare the chip bank copy of the Credit Request Slip with the Credit Slip; or

(2) If the credit request is electronically generated, the chip bank cashier shall compare the Credit Slip with the electronically generated credit request; and

(3) The chip bank cashier shall attest to the accuracy of the credit by signing the acknowledgment and chip bank copies of the Credit Slip.

d. After transporting the acknowledgment copy of the Credit Slip back to the gaming table from which the value chips, coins, and plaques were removed, the security department employee shall observe the immediate placement by the dealer or boxperson of the drop box copy of the Credit Request Slip, if applicable, and the drop box and acknowledgment copies of the Credit Slip into the drop box.

e. The chip bank copies of the Credit Request Slip, if applicable, and Credit Slip shall be maintained together by the chip bank cashier until forwarded to the accounting department.

18. All parts of voided Credit Slips; chip bank copies of Credit Request Slips, if applicable; and the chip bank copies of the Credit Slips that are maintained and controlled in conformity with subdivision 17 of this subsection, shall be forwarded by a chip bank cashier to the accounting department for agreement, on a daily basis, with:

a. The drop box copies of the Credit Request Slips, if applicable, and the drop box and acknowledgment copies of the Credit Slips removed from the drop box on the gaming table; and

b. The electronically stored data and accounting copies of Credit Slips, if applicable.

G. Drop at an open table game.

1. When a table game being dropped is to remain open for gaming activity, the dealer or boxperson assigned to the gaming table shall count the value chips, coins, and plaques remaining in the table inventory at the time of the drop and record the amount on a Table Inventory Slip.

2. The floorperson who is responsible for supervising the table game at the time of the drop shall observe the count required by subdivision 1 of this subsection.

3. The dealer or boxperson assigned to the table, and the floorperson who observed the dealer or boxperson count the contents of the table inventory, shall attest to the accuracy of the information recorded on the Table Inventory Slip by signing the Table Inventory Slip.

4. After the Table Inventory Slip is signed as required:

a. The dealer or boxperson shall deposit the original copy of the Table Inventory Slip in the drop box that is attached to the gaming table immediately before the drop box is removed from the gaming table as part of the drop; and

b. The dealer or boxperson shall deposit the duplicate copy of the Table Inventory Slip in the drop box that is attached to the gaming table immediately after the removal of the drop box that is removed from the gaming table as part of the drop.

H. Procedure for closing a table game.

1. When gaming activity at a table game is concluded, the dealer or boxperson assigned to the gaming table, in the presence of the floorperson assigned to the gaming table, shall count the value chips, coins, and plaques remaining at the gaming table.

2. The floorperson assigned to the gaming table shall record the amounts of the value chips, coins, and plaques counted on the Table Inventory Slip, and the original copy of the Table Inventory Slip shall be signed by the dealer or boxperson who counted the table inventory and by the floorperson who observed the dealer or boxperson count the contents of the table inventory.

3. After the original copy of the Table Inventory Slip has been signed, the dealer or boxperson shall immediately deposit the original copy of the Table Inventory Slip in the table game drop box attached to the gaming table.

4. After the original copy of the Table Inventory Slip has been deposited in the table game drop box attached to the gaming table, the dealer or boxperson shall place the duplicate copy of the Table Inventory Slip and the value chips, coins, and plaques remaining at the gaming table in the container required by 11VAC5-90-170, after which the floorperson shall lock the table inventory container and cause it to be transported directly to the cage by a security department member or secured to the gaming table.

5. If the locked table inventory containers are transported to the cage, a cage supervisor shall determine that all locked containers have been returned.

6. If the locked table inventory containers are secured to the gaming table, a pit manager or above shall verify that all the containers are locked.

I. Table inventory for a poker table.

1. Notwithstanding other requirements in this section, a facility operator may establish procedures for the issuance of table inventories that are maintained by poker dealers on an impress basis.

2. A facility operator shall submit to the department for approval the procedures developed under subdivision 1 of this subsection as part of the facility operator's internal controls.

J. Table inventory counts.

1. In addition to other requirements in this section for opening a table game, conducting a drop during an open game, and closing a table game, a facility operator may establish procedures for the use of a three-compartment drop box.

2. The use of a three-compartment drop box requires the preparation of a Table Inventory Slip for each shift that the table was open at least once each gaming day.

3. A facility operator shall submit to the department for approval the procedures developed under subdivision 1 of this subsection as part of the facility operator's internal controls.

K. Match play coupons and direct bet coupons.

1. A facility operator may use match play coupons and direct bet coupons.

2. A coupon may not be issued by a facility operator or used in a facility until:

a. The design specifications of the proposed coupon are submitted to and approved by the department; and

b. A system of internal procedures and administrative and accounting controls governing the inventory, distribution, and redemption of the coupon is submitted to and approved by the department as part of the facility operator's internal controls.

3. A coupon issued by a facility operator shall contain at least:

a. The name or logo of the facility operator;

b. The value of the coupon, which can be identified when viewing the coupon through the facility operator's surveillance system;

c. A sequential serial number;

d. Any restrictions regarding redemption, including the type of game or wager on which the coupon may be used; and

e. The expiration date of the coupon.

4. Match play coupons shall contain an area designated for the placement thereon of the required gaming chips that does not obscure the visibility of the denomination of the coupon.

5. Administration of coupon program.

a. The accounting department and the marketing department, or other department as specified in the facility operator's internal controls, shall be responsible for administering the coupon program.

b. The marketing department shall be responsible for distributing the coupon to a player.

c. The accounting department shall be responsible for maintaining the coupon ledger and administering the coupon accounting procedures set forth in subdivision 14 of this subsection.

6. A shipment of coupons received from a manufacturer or contractor, or those coupons produced by the facility operator, in accordance with this subsection, shall be opened and examined by at least one member of the accounting department and one member of the marketing department, who shall report any deviation between the invoice accompanying the coupon and the actual coupon received to a supervisor from the accounting department.

7. After checking a coupon received from a manufacturer or contractor, or produced by the facility operator, an accounting department supervisor shall record the following information in the coupon ledger:

a. The date a coupon was received;

b. The quantity and denomination of coupons received;

c. The beginning and ending serial number of the coupons received; and

d. The name, signature, and license number of the individuals who checked the coupons.

8. A marketing department supervisor shall estimate the number of coupons needed for each gaming day or promotion and complete a requisition document that contains the following information:

a. The date the requisition was prepared;

b. The date for which the coupons are needed;

c. The denomination and quantity of coupons requested;

d. The name, signature, and license number of the marketing department supervisor completing the requisition; and

e. The name, signature, and license number of the accounting department supervisor authorizing the requisition.

9. Upon receipt of the requisition document, the accounting department supervisor shall record in the coupon ledger the following information before issuing the coupons to the marketing department supervisor:

a. The beginning and ending serial number of the coupons to be issued;

b. The denomination and quantity of coupons to be issued;

c. The name, signature, and license number of the accounting department supervisor who will be issuing the coupons; and

d. A record and explanation of coupons that were voided.

10. A coupon that is not issued to the marketing department shall be controlled by an accounting department supervisor or above and stored in a secured and locked area approved by the department and as designated in the facility operator's internal controls.

11. The marketing department shall maintain a daily Coupon Reconciliation Form that shall contain:

a. The date;

b. The beginning and ending serial numbers of the coupons received from the accounting department;

c. The denomination and quantity of coupons the marketing department has to distribute to players;

d. The denomination and quantity of coupons the marketing department distributed to players;

e. The denomination, quantity, and serial numbers of coupons remaining;

f. The serial numbers of coupons that were voided and the reason the coupons were voided;

g. Any discrepancy discovered in the accounting for coupons and an explanation of the discrepancy; and

h. The name, signature, and license number of the marketing department supervisor completing the form.

12. Undistributed coupons.

a. At the end of the gaming day or promotional period, a copy of the Coupon Reconciliation Form and all coupons that were not distributed to players shall be returned to the accounting department.

b. The marketing department may keep for use during the next gaming day all coupons that were not distributed to players if the coupons are:

(1) Stored in a secured and locked area approved in advance by the department; and

(2) Recorded on the daily Coupon Reconciliation Form for the next gaming day.

c. All expired coupons shall be returned to the accounting department on a daily basis.

d. When unused and expired coupons are returned to the accounting department, an accounting department supervisor shall record the following information in the coupon ledger:

(1) The date the coupons were returned;

(2) The beginning and ending serial numbers of the coupons returned;

(3) The denomination and quantity of coupons returned;

(4) The serial numbers of any coupons that were voided and the reason the coupons were voided;

(5) The name, signature, and license number of the marketing department supervisor returning the unused coupons; and

(6) The name, signature, and license number of the accounting department supervisor who received the unused coupons.

13. All documentation, voided coupons, redeemed coupons, and coupons that were not distributed to players shall be forwarded daily to the accounting department where the coupons shall be:

a. Counted and examined for proper calculation and recording;

b. Reviewed for the propriety of signatures on the documentation and canceled;

c. Reconciled by total number of coupons given to the marketing department for distribution to players, returned for reissuance, voided, distributed to players, and redeemed; and

d. Recorded, maintained, and controlled by the accounting department.

14. At least once every month, a facility operator shall inventory all coupons that are not distributed to players and record the result of the inventory in the coupon ledger in accordance with the inventory procedures that the department approved as part of the facility operator's internal controls.

15. A facility operator shall prepare and submit to the department a quarterly report that lists the total value of the coupons redeemed by players.

16. If a facility operator's department-approved internal controls include its production and subsequent reconciliation of coupons, a facility operator may internally manufacture or print coupons.

17. If a facility operator's department-approved internal controls include the production of coupons by a manufacturer or contractor, a facility operator may authorize a manufacturer or contractor to print and mail coupons directly to players in accordance with the following requirements:

a. The coupons shall comply with the requirements in subdivisions 17 b and 17 c of this subsection;

b. The facility operator shall supply the manufacturer or contractor, through electronic means, a list of the following information for each player to whom the coupon shall be mailed:

(1) The player's name and address;

(2) The denomination of the coupon;

(3) The expiration date of the coupon; and

(4) A serial number on each coupon;

c. The coupon issued shall include a magnetic strip or bar code that will enable the facility operator's computer system to identify the information required by subdivision 18 b of this subsection;

d. The information in subdivision 18 b of this subsection shall be provided to the accounting department, which shall maintain the information for purposes of reconciliation as required by subdivision 14 of this subsection;

e. Prior to redemption of the coupon, a dealer shall verify the expiration date and confirm that the coupon has not expired; and

f. All coupons issued shall be electronically canceled in the facility operator's computer system immediately upon redemption or during the counting of the table game drop boxes.

18. A facility operator may use a computerized system that complies with the requirements in this regulation if:

a. The computerized system creates coupons that comply with the requirements in subdivisions 18 b and 18 c of this subsection;

b. The computerized system provides an audit trail and allows for the segregation of duties to satisfy the requirements in this section; and

c. The facility operator includes in its internal controls procedures governing the production, recording, redemption, and reconciliation of computer-generated coupons.

L. Use of match play coupons and direct bet coupons.

1. A coupon may be redeemed only at a gaming table in which a player wagers against the house.

2. For redemption, the dealer shall:

a. Verify the coupon is valid prior to accepting it as a wager;

b. Ensure that a coupon is placed on an authorized wager so that the value of the coupon is visible at all times; and

c. Settle winning wagers in accordance with the terms and conditions of the coupon.

3. Whether the wager wins or loses, the dealer shall deposit the coupon into the drop box attached to the gaming table at the time the winning wager is paid or the losing wager is collected.

4. The coupon shall remain in the event of a push.

M. Electronic, electrical, and mechanical devices prohibited.

1. A player or an individual acting in concert with a player may not use or possess with the intent to use at a table game a calculator; computer; or other electronic, electrical, or mechanical device to assist in:

a. Projecting an outcome at any table game;

b. Tracking or analyzing cards that have been dealt;

c. Tracking the changing probabilities of a table game; or

d. Developing or tracking a playing strategy to be used by a player.

2. A violation of this subsection may be the basis for immediate ejection from the facility, placement on the department's mandatory exclusion list, or other sanction or civil or criminal penalty.

N. Minimum and maximum wagers; payout odds.

1. In accordance with subsection V of this section, a facility operator shall provide notice of the minimum and maximum wagers in effect at each gaming table.

2. A wager accepted by a dealer that exceeds the current table maximum or is lower than the current table minimum shall be paid or lost in its entirety in accordance with the rules of the game.

3. If a facility operator includes a wagering requirement in its rules of the game under subsection T of this section, nothing in this regulation shall preclude a facility operator from establishing additional wagering requirements that are consistent with the rules of the game, including a requirement that wagers be made in specified increments.

4. Unless otherwise specified in a department-approved paytable, the payout odds for wagers printed on a layout, signage, brochure, or other publication distributed by the facility operator shall be stated through the use of the word "to" and may not be stated through use of the word "for."

O. Approval of table game layout, signage, and equipment.

1. A facility operator shall submit to the department for approval table game staffing plans, tournament schedules, dealer training programs, and schematics of gaming guides, table game layouts, signage and equipment.

2. For purposes of the department's review and approval, schematics of table game equipment shall include:

a. Cards;

b. Dice;

c. Pai gow tiles;

d. Gaming chips;

e. Plaques;

f. Commemorative chips;

g. Pai gow and sic bo shakers;

h. Big six and roulette wheels;

i. Envelopes and containers used to hold or transport table game equipment;

j. Match play coupons;

k. Direct bet coupons; and

l. Table game equipment not otherwise required to be submitted to an independent certified testing laboratory for approval.

3. Upon receipt of written approval from the department, a facility operator may implement its table game staffing plan, tournament schedule, or dealer training program and may utilize a gaming guide, table game layout, signage, or equipment in the facility.

4. A facility operator's equipment storage and destruction areas may not be used until its location and physical characteristics have been approved by the department.

5. A facility operator shall obtain approval from the department for:

a. Alternative locations for:

(1) Equipment that is required to be on the gaming table, including drop boxes, shakers, shufflers, discard racks, and tip boxes; and

(2) The complete text of the rules of all authorized games;

b. Amendments to the facility operator's plan for the distribution and collection of slot storage boxes, table game drop boxes, or bad beat boxes;

c. Sample sets of gaming chips and plaques manufactured in accordance with approved design specifications; and

d. The collection times for dice, cards, tiles, and other table game equipment from the gaming floor.

P. Employee training by facility operators. A facility operator shall develop a training program for its dealers that, at a minimum, includes training in:

1. Procedures for opening and closing tables for gaming, including the proper security procedures regarding table chip inventories;

2. Procedures for distributing and removing gaming chips and plaques from gaming tables;

3. Procedures for accepting cash at gaming tables;

4. Procedures for the acceptance of tips and gratuities from players;

5. Procedures for shift changes at gaming tables;

6. Procedures for the proper placement of wagers by players and the proper collection of losing wagers and payment of winning wagers; and

7. Recognizing problem and compulsive gamblers at table games and procedures for informing supervisory personnel.

Q. Table test; employee personnel fill.

1. Before conducting a table game on the facility operator's gaming floor, a prospective dealer shall pass a table test on the table games that the dealer will be conducting.

2. A table test shall consist of the dealer demonstrating proficiency at the table game to the satisfaction of an employee of the facility operator who is a pit manager or higher.

3. A facility operator shall document the following in a dealer's personnel file:

a. Completion of the training program required by subsection P of this section; and

b. Successful completion of the table test.

R. Table games rules submissions.

1. Before offering a table game authorized under the standard rules, a facility operator shall submit to the department a rules submission that specifies which options the facility operator will use in the conduct of the table game.

2. A facility operator may implement the provisions in a rules submission only after receipt of written notice of approval from the department.

3. A facility operator shall maintain the current edition of each department-approved rules submission so that it is available in electronic form, through secure computer access, to the facility operator's internal audit and surveillance department and department staff.

4. Each page of a table game's rules submission shall indicate the date on which it was approved by the department.

5. A facility operator shall maintain a paper or electronic copy of any superseded rules submission for a minimum of five years from the date of department approval.

S. Request to offer a new table game or feature.

1. A facility operator that desires to offer a table game or feature that is not already in the standard rules, or to offer a new wager, paytable, or other feature as part of table game that has been approved by the department, shall submit a written request to the department that contains at least:

a. A detailed description of the table game or new feature, including the rules of play and wagering for the new table game or feature;

b. A description of whether the game is a variation of an authorized game, a composite of authorized games, or a new game;

c. The true odds, the payout odds, and the house advantage for each wager;

d. A sketch or picture of the game layout, if any;

e. Sketches, pictures, or samples of the equipment used to play the game;

f. The reason for proposing the new table game or feature;

g. A list of other gaming jurisdictions where the new table game or feature is currently being offered;

h. Whether the game, its name, or any of the equipment used to play the game is covered by any issued or pending copyrights, trademarks, or patents; and

i. Any other information the department requests.

2. In addition to submitting a change request with the department, a facility operator shall, at its expense, submit the new table game or new feature for review to an independent certified testing laboratory that is certified by the department.

3. Following testing by the independent certified testing laboratory, the department will notify the facility operator whether the new table game or new feature has been approved, approved with conditions, or rejected.

T. Game rules; notice; wagers.

1. The department shall maintain:

a. A list of all table games that have been approved by the department and the standard rules for each approved table game; and

b. Records of a facility operator's table game or feature rules that have been approved by the department.

2. Except as provided in subdivision 3 of this subsection, a facility operator may not change the rules under which a particular table game is being operated unless the facility operator submits to and receives written approval from the department for an amendment to its rules submission under subsection R of this section.

3. A facility operator may increase or decrease the permissible maximum wager or decrease the permissible minimum wager at a table game:

a. If no players are playing at that table, at any time; or

b. While players are playing the game, if the facility operator:

(1) Provides at least 30 minutes' advance notice of the change;

(2) Posts a sign at the gaming table advising players of the change and the time that it will go into effect; and

(3) Announces the change to players who are at the table.

4. A facility operator shall submit to the department for approval the minimum and maximum bets the facility will accept from players for table games.

5. A facility operator may not accept a bet at a table game in an amount less than $5.00 or more than $50,000.

U. Player access to game rules; gaming guide.

1. A facility operator shall maintain, at its security podium or other location approved in advance by the department, a printed copy of the complete text of the standard rules of all authorized games that shall be available to the public for inspection upon request.

2. A facility operator shall make available to players upon request a gaming guide that contains, in a printed format, an abridged edition of the complete text of the standard rules of all authorized games.

3. The gaming guide required may not be issued, displayed, or distributed by a facility operator until a sample of the gaming guide has been submitted to and approved by the department.

4. A facility operator may display an approved gaming guide at any location in its licensed facility.

5. Each facility operator shall make the approved gaming guide available on its website.

V. Table game payouts.

1. A facility operator shall use a table game payout document meeting the requirements of this subsection to pay a single payout event that requires the filing of IRS Form W-2G, Certain Gambling Winnings.

2. A facility operator shall prepare and timely file IRS Form W-2G, Certain Gambling Winnings, in accordance with federal Internal Revenue Service (IRS) rules and regulations.

3. A facility operator shall pay a table game payout of:

a. $50,000 or more by check; and

b. Less than $50,000 by:

(1) Cash or check; or

(2) On the request of a player, any combination of cash, gaming ticket, check, or other methods of payment approved by the department.

4. A facility operator shall develop and include in the internal controls submitted to and approved by the department procedures to address the payment of a table game payout event that requires the filing of an IRS Form W-2G, Certain Gambling Winnings.

5. A facility operator's internal controls shall include:

a. The use of a two-part computer generated table game payout document initiated on the request of a dealer or above after verifying the winning combination of characters at the table game and the amount of the payout.

b. A requirement that, if a single payout event that requires the filing of an IRS Form W-2G, Certain Gambling Winnings is less than $50,000, a security department employee or floorperson or above sign the payout document after verifying the winning combination of characters at the table game and the amount of the payout.

c. A requirement that, if a single payout event that requires the filing of IRS Form W-2G, Certain Gambling Winnings, is $50,000 or more, a pit manager or higher level gaming operations department employee other than the preparer of the document sign the table game payout document after verifying the winning combination of characters at the table game and amount of the payout.

d. A requirement that the following information be on a two-part computer generated table game payout document:

(1) Date and time;

(2) Identification number of the table game on which the payout was registered;

(3) Winning combination of characters constituting the payout or a code corresponding to the winning combination of characters constituting the payout;

(4) Amount to be paid;

(5) Signature or identification code of the preparer of the document;

(6) The signature or identification code of a verifying witness in accordance with this regulation; and

(7) The signature or identification code of the employee issuing the funds;

e. A requirement that the surveillance department:

(1) Be notified of a table game payout of $25,000 or more;

(2) Log all notices regarding a table game payout in the surveillance log required under 11VAC5-90-110 K; and

(c) Obtain and retain, in accordance with 11VAC5-90-110 J, a photograph of the face of the player receiving the payout;

f. Details pertaining to:

(1) Payment of a payout at the table game;

(2) The use of an accounting drop box; and

(3) Audit procedures to be performed by the facility operator's accounting department at the conclusion of each gaming day;

g. Procedures addressing unclaimed table game payouts;

h. Details that establish the ability of the facility operator's casino management system to:

(1) Ensure that a two-part computer generated table game payout document is not susceptible to change or deletion from the system after preparation;

(2) Process and document system overrides or adjustments to table game payouts including:

(a) Overrides or adjustments where the payout requested does not match the payout amount; and

(b) Identification of the level of employee having override authority; and

(3) Process voided table game payout documents; and

i. Procedures utilized to issue a manual table game payout document that:

(1) Are to be used only when the casino management system is unable to generate a table game payout document;

(2) Conform to the table game payout verification and signature requirements of this regulation;

(3) Involve use of a three-part serially pre-numbered manual table game payout document residing in a book, wiz machine, or functional equivalent;

(4) Require manual table game payout books or their functional equivalent to be maintained in a secured locked cabinet; and

(5) Require the key to the secure locked cabinet to be:

(a) Controlled by the security department or the table games department in a manual key box or an automated key tracking system; and

(b) Limited to sign out by a floorperson or above.

W. Progressive table games.

1. A table game offering a progressive jackpot may:

a. Stand alone;

b. Be linked to:

(1) Other table games in a facility; or

(2) Table games in two or more facilities in or outside the state through a wide area progressive system.

2. A manufacturer may not install in a facility, and a facility operator may not make available for play, table game equipment offering a progressive jackpot without written department approval of:

a. A progressive proposal; and

b. Internal controls submitted addressing the payment of a progressive jackpot.

3. A manufacturer may not modify the terms of a progressive jackpot, and a facility operator may not make available for play, a table game or table game equipment that offers a progressive jackpot that differs from its approved progressive proposal without the approval in writing of the department.

4. A table game may offer multiple progressive jackpots.

5. A progressive jackpot amount may be calculated and transmitted to a table game or table game device by:

a. The operating system of a table game; or

b. A separate progressive controller interfaced to a table game or table game equipment.

6. A progressive controller shall be:

a. Located in a restricted area;

b. Secured:

(1) In a dual key controlled compartment with:

(a) One key controlled by a manufacturer; and

(b) One key controlled by the department; or

(2) By alternative means approved by the department; and

c. Capable of:

(1) Displaying an available progressive jackpot amount on a table game's, or table game equipment's:

(a) Progressive meter; or

(b) Common progressive meter;

(2) Transmitting to a table game for metering purposes the amount of a progressive jackpot;

(3) If linked to a common progressive meter, displaying the department asset number of the table game on which a progressive jackpot is won;

(4) If a progressive controller is servicing multiple table games, automatically resetting all table games connected to it to a pre-established reset amount; and

(5) If the progressive offers multiple jackpot levels, maintaining and displaying for each progressive level the:

(a) Number of progressive jackpots won;

(b) Cumulative amount paid;

(c) Maximum progressive payout;

(d) Minimum amount or reset amount; and

(5) Rate of progression.

7. A table game offering a progressive jackpot shall be equipped, for each progressive jackpot offered, with the following mechanical, electrical, or electronic meters:

a. A progressive meter that:

(1) May increase in value based upon wagers;

(2) Advises the player of the amount that may be won if the table game characters which result in the award of a progressive jackpot appear as a result of activation of play; and

(3) Is visible from the table game through:

(a) A meter display housed in the table game; or

(b) A common progressive meter display unit;

b. A progressive payout meter;

c. An attendant paid progressive jackpot meter; and

d. A cumulative progressive payout meter that continuously and automatically records the total value of progressive jackpots paid, whether paid:

(1) Directly at the table game; or

(2) Hand paid by a facility operator as a result of a progressive jackpot that exceeds the physical or configured capability of a table game or table game equipment.

8. A table game linked to a common progressive meter for the purpose of offering the same progressive jackpot on two or more table games shall:

a. Have the same probability of hitting the combination of characters that will award the progressive jackpot as every other table game linked to that common progressive meter; and

b. Require each:

(1) Player to wager the same amount to receive a chance at winning the progressive jackpot; and

(2) Wager to increment the progressive meter by the same rate of progression on every table game connected to the common progressive meter.

9. Notwithstanding the requirements of subdivision 8 of this subsection, table games linked to a common progressive meter for the purpose of offering the same progressive jackpot on two or more table games may be of different denominations or require different wagers, or both, if:

a. The probability of winning the progressive jackpot is directly proportional to the wager required to win a jackpot; and

b. A notice indicating the proportional probability of hitting the progressive jackpot on the common progressive meter is conspicuously displayed in a manner specified by the Department on each linked table game.

10. A manufacturer may not:

a. Set a limit for a progressive jackpot that exceeds the display capability of the progressive meter; and

b. Adjust a progressive meter without the prior approval of the department unless the adjustment is:

(1) Required as a direct result of table game equipment or meter malfunction; and

(2) Reported by the manufacturer in a form and in a time frame specified by the department to the department and facility operator.

X. Table game statistical data.

1. A facility operator shall maintain complete and accurate records that identify for each table game and type of game by daily, cumulative month-to-date, and cumulative year-to-date basis:

a. Statistical drop;

b. Statistical win; and

c. Statistical win-to-drop percentages.

2. A facility operator shall:

a. Prepare and distribute statistical reports to gaming facility management on at least a monthly basis;

b. Using a 95% confidence interval, investigate fluctuations outside of the standard deviation from:

(1) The facility operator's table game win-to-drop percentage for the previous business year; or

(2) In the initial year of operations, the previous month; and

c. Document the results of the required investigation in writing and submit a copy of the written investigation results to the department.

Y. Inspecting cards.

1. If the decks of cards received at a table are preinspected and preshuffled, the provisions of this subsection shall not apply.

2. After receiving one or more decks of cards at the table, the dealer shall inspect the cards for any defects and a floorperson assigned to the table shall verify the inspection.

3. After the cards are inspected, the dealer shall spread the cards out face up on the table, in horizontal fan shaped columns by deck according to suit and in sequence, for visual inspection by the first player to arrive at the table.

4. After the first player arriving at the table has been afforded an opportunity to visually inspect the cards, the dealer shall:

a. Turn the cards face down on the table;

b. Mix the cards thoroughly by washing them; and

c. Stack the cards.

5. After the cards have been stacked, the dealer shall shuffle them in accordance with subsection Z of this section.

6. If an automated card shuffling device is utilized and two decks of cards are received at the table, each deck of cards shall be spread for inspection, mixed, stacked, and shuffled in accordance with subdivisions 2 through 5 of this subsection.

Z. Shuffling and cutting the cards.

1. Unless the cards were preshuffled, the dealer shall shuffle the cards so that they are randomly intermixed, manually or with an automated card shuffling device:

a. Immediately prior to commencement of play;

b. After each round of play has been completed; or

c. When directed by a floorperson or above.

2. A facility operator may use an automated card shuffling device that inserts the stack of cards directly into a dealing shoe after shuffling is complete.

3. A deck shall be removed from the table if an automated card shuffling device:

a. Is being used which counts the number of cards in the deck after the completion of each shuffle and indicates the number of cards present; and

b. Reveals that an incorrect number of cards are present.

4. Upon completion of the shuffle, the dealer or automated shuffling device shall place the decks of cards in a single stack, and:

a. If the cards were shuffled using an automated card shuffling device, deal the cards in accordance with subsections AA, BB, and CC of this section; or

b. If the cards were shuffled manually or were preshuffled, cut the cards in accordance with subdivision 5 of this subsection.

5. If a cut of the cards is required, the dealer shall perform the cut in accordance with the standard rules.

6. After the cards have been cut and before any cards have been dealt, a floorperson or above may require the cards to be recut if the floorperson determines that the cut was performed improperly or in any way that might affect the integrity or fairness of the game.

7. If there is no gaming activity at a table that is open for gaming, the dealer shall:

a. Remove the cards from the dealing shoe and discard rack;

b. Unless a player requests that the cards be spread face up on the table, spread out the cards on the table face down;

c. After the first player arriving at the table is afforded an opportunity to visually inspect the cards, complete the procedures in subsection Y of this section and this subsection if there is no automated shuffling device in use; and

d. If an automated shuffling device is in use, stack the cards and place them into the automated shuffling device to be shuffled, and:

(1) Remove the batch of cards already in the shuffler; and

(2) If the automated card shuffling device stores a single batch of shuffled cards inside the shuffler in a secure manner at a player's request, remove the batch of cards from the shuffler and spread the cards for inspection and reshuffle them prior to dealing.

8. A facility operator may use a dealing shoe or other device that automatically reshuffles and counts the cards provided that the device is submitted to the department and approved prior to its use in the facility.

9. If a facility operator is using a dealing shoe or other device approved by the department, subdivisions 5 through 8 of this subsection do not apply.

AA. Procedure for dealing cards from a manual dealing shoe.

1. If a manual dealing shoe is used, it shall be located on the table in a location approved by the department, and the following requirements shall be met:

a. After the procedures required under subsection Z of this section have been completed, the stacked deck of cards shall be placed in the dealing shoe by the dealer or by an automated card shuffling device.

b. Prior to dealing any cards, the dealer shall announce "no more bets."

c. If the progressive payout wager is being offered, the dealer shall use the progressive table game system to prevent the placement of any additional progressive payout wagers.

d. If a player has made a progressive payout wager, the dealer shall:

(1) Collect the progressive payout wager in accordance with the standard rules;

(2) On the layout in front of the table inventory container, verify that the number of value chips wagered equals the number of progressive payout wagers accepted by the progressive table game system; and

(3) Place the value chips into the table inventory container.

e. The dealer shall remove each card from the dealing shoe with the hand of the dealer that is closest to the dealing shoe and place the card on the appropriate area of the layout with the opposite hand.

2. The dealer shall deal the cards in accordance with the standard rules.

3. After dealing cards in accordance with the standard rules, the dealer shall:

a. Remove the stub from the manual dealing shoe; and

b. Place the stub in the discard rack without exposing the cards.

4. If an automated card shuffling device is not being used, the dealer shall count the stub at least once every five rounds of play to determine if the correct number of cards required by the standard rules are still present in the deck.

5. The dealer shall determine the number of cards in the stub by counting the cards face down on the layout.

a. If the count of the stub indicates that the correct number of cards is in the deck, the dealer shall place the stub in the discard rack without exposing the cards.

b. If the count of the stub indicates that the number of cards in the deck is not correct, the dealer shall determine if the cards were misdealt.

c. If correct number of cards remain in the deck, but the cards were misdealt so that a player has more or less than the required number of cards, or the dealer has more or less than the required number of cards, all hands are void and the dealer shall return all wagers to the players.

d. If the cards were not misdealt, all hands are void and the dealer shall return all wagers to the players and remove the entire deck of cards from the table.

BB. Procedure for dealing cards from the hand.

1. If the cards are dealt from a dealer's hand, the following requirements shall be met:

a. An automated shuffling device shall be used to shuffle the cards.

b. After the procedures required under subsection Z of this section have been completed, the dealer shall place the stacked deck of cards in either of the dealer's hand.

c. After the dealer has chosen the hand in which to hold the cards, the dealer shall continue to use that hand while holding the cards during that round of play.

d. The cards held by the dealer shall be kept over the table inventory container and in front of the dealer at all times.

e. Before dealing any cards, the dealer shall:

(1) Announce "no more bets;" and

(2) If the progressive payout wager is being offered, use the progressive table game system to prevent the placement of any additional progressive payout wagers.

f. If any progressive payout wagers have been made, the dealer shall:

(1) On the layout in front of the table inventory container, collect the wagers in accordance with the standard rules;

(2) Verify that the number of value chips wagered equals the number of progressive payout wagers accepted by the progressive table game system; and

(3) Place the value chips into the table inventory container.

2. The dealer shall:

a. Deal each card by holding the deck of cards in the chosen hand;

b. Use the other hand to remove the top card of the deck to place it face down on the appropriate area of the layout;

c. Deal the cards in accordance with the standard rules.

d. Except as provided in subdivision 3 of this subsection, after dealing cards in accordance with the standard rules, place the stub in the discard rack without exposing the cards.

3. If an automated card shuffling device is not being used, the dealer shall:

a. Count the stub at least once every five rounds of play to determine if the correct number of cards is still present in the deck in accordance with the standard rules; and

b. Determine the number of cards in the stub by counting the cards face down on the layout.

4. If the count of the stub indicates that the correct number of cards is in the deck, the dealer shall place the stub in the discard rack without exposing the cards.

5. If the count of the stub indicates that the number of cards in the deck is not correct, the dealer shall determine if the cards were misdealt.

6. If the correct number of cards remains in the deck, but the cards were misdealt so that a player has more or less than the required number of cards or the dealer has more or less than the required number of cards, all hands are void and the dealer shall return all wagers to the players.

7. If the cards were not misdealt, all hands are void and the dealer shall return all wagers to the players and remove the entire deck of cards from the table.

CC. Procedure for dealing cards from an automated dealing shoe or shuffler.

1. If cards are dealt from an automated dealing shoe, the following requirements shall be met:

a. After the procedures required under subsection Z of this section have been completed, the dealer shall place the cards in an automated dealing shoe or shuffler.

b. Prior to the shoe or shuffler dispensing any stacks of cards, the dealer shall:

(1) Announce "no more bets;" and

(2) If the progressive payout wager is being offered, use the progressive table game system to prevent the placement of any additional progressive payout wagers.

c. If any progressive payout wagers have been made, the dealer shall:

(1) On the layout in front of the table inventory container, collect the wagers in accordance with the standard rules;

(2) Verify that the number of value chips wagered equals the number of progressive payout wagers accepted by the progressive table game system; and

(3) Place the value chips into the table inventory container.

2. The dealer shall deal the cards in accordance with the standard rules.

3. After the cards have been dispensed and delivered in accordance with the standard rules, the dealer shall:

a. Remove the stub from the automated dealing shoe; and

b. Except as provided in subdivision 4 of this subsection, place the cards in the discard rack without exposing the cards.

4. If the count of the stub indicates that the correct number of cards required by the standard rules is in the deck, the dealer shall place the stub in the discard rack without exposing the cards.

5. If the count of the stub indicates that the number of cards in the deck is not correct, the dealer shall determine if the cards were misdealt.

6. If the correct number of cards remains in the deck, but the cards were misdealt so that a player has more or less than the required number of cards or the dealer has more or less than the required number of cards, all hands are void and the dealer shall return all wagers to the players.

7. If the cards were not misdealt, all hands are void and the dealer shall return all wagers to the players and remove the entire deck of cards from the table.

DD. Mixing tiles.

1. After receiving a set of tiles at the table, the dealer shall sort and inspect the tiles and the floorperson assigned to the table shall verify the inspection.

2. Nothing in this section precludes a facility operator from cleaning the tiles prior to the inspection required in subsection 3 of this subsection.

3. A dealer shall inspect the tiles at the gaming table by:

a. Sorting a set of tiles into pairs;

b. Placing each tile side by side to determine that all tiles are the same size and shading; and

c. Examining the back and sides of each tile to ensure that it is not flawed, scratched, or marked, and if the dealer finds that a tile is unsuitable for use:

(1) A floorperson or above shall bring another set of tiles to the table from the reserve in the pit stand; and

(2) The unsuitable set of tiles shall be placed in a sealed envelope or container, identified by table number, date, and time and signed by the dealer and floorperson or above.

4. Following the inspection and verification of the tiles, the dealer shall:

a. Turn the tiles face up;

b. Place the tiles into 16 pairs;

c. Arrange the tiles according to rank; and

d. Leave the tiles in pairs for visual inspection by the first player to arrive at the table.

5. After the first player arriving at the table is afforded an opportunity to visually inspect the tiles, the dealer shall:

a. Turn the tiles face down on the table;

b. Mix the tiles:

(1) With the heels of the hands;

(2) In a circular motion with one hand moving clockwise and the other hand moving counterclockwise; and

(3) With each hand completing at least eight circular motions to provide a random mixing; and

c. Randomly pick up four tiles with each hand and place them side by side in stacks in front of the table inventory container, forming eight stacks of four tiles.

6. The entire set of tiles shall be remixed if, during the stacking process, a tile is turned over and exposed to the players.

7. After each round of play has been completed, the dealer shall turn all of the tiles face down and mix the tiles in accordance with subdivision 5 of this subsection.

8. If there is no gaming activity at the table, the dealer shall turn the tiles face up and place them into 16 pairs according to rank.

9. After a player arrives at the table, the dealer shall follow the procedures in subdivision 5 of this subsection.

11VAC5-90-190. Sports betting.

A. Definitions. In addition to the terms defined in 11VAC65-90-10, the following terms have the meanings indicated.

"Sports betting kiosk" means the physical device and collective hardware, software, communications technology,

and other ancillary equipment used for sports betting voucher and ticket processing and automated functions as approved by the department.

"Sports betting law" means Article 2 (§ 58.1-4030 et seq.) of Chapter 40 of Title 58.1 of the Code of Virginia.

"Sports betting lounge" means a designated area in a casino gaming facility where sports betting is conducted.

"Sports betting platform" means a website, mobile application, or other platform accessible via the Internet or mobile, wireless, or similar communications technology that sports bettors use to participate in sports betting.

"Sports betting ticket" means a printed record issued or an electronic record maintained by the casino gaming operator that evidences a sports wager.

"Sports betting voucher" means a printed record or digital representation thereof issued by a casino gaming operator that may be used to fund a wager or may be redeemable for cash.

B. Sports betting transactions.

1. Before offering sports betting transactions in its sports betting facility, a facility operator shall submit a plan to the department that meets the requirements of 11VAC5-90-100 and has been approved by the department.

2. Sports betting transactions may be conducted from:

a. A sports betting lounge counter located in the sports betting lounge or other window locations as approved by the department;

b. Sports betting kiosks in locations as approved by the department;

c. Devices as approved by the department; or

d. A designated window in a cashiers' cage for the redemption of winning sports betting tickets only.

C. Security requirements.

1. Sports betting operations within a casino gaming facility shall be designed to promote optimum security of the casino gaming facility, and shall include the installation and maintenance of security and surveillance equipment pursuant to the requirements of 11VAC5-90-110 and 11VAC5-90-120 and shall be approved by the department.

2. The department shall have direct access to the system and its transmissions.

3. At least 60 days before sports betting operations are to commence, a facility operator shall submit to the department the surveillance plan for its sports betting facility.

D. Internal controls. At least 60 days before sports betting operations are to commence, a facility operator shall submit to the department for approval its internal controls which, in addition to those required by11VAC5-70, shall address at a minimum the following items:

1. Description of the limitations placed on anonymous wagering at the sports betting kiosks;

2. Description of the process for accepting wagers and issuing payouts in excess of $10,000;

3. Description of the process for accepting multiple wagers from a single player in a 24-hour cycle, including a process to identify player structuring of wagers to circumvent recording and reporting requirements;

4. Detailed procedures for reconciliation of assets and documents contained in a sports betting lounge cashier's drawer and sports betting kiosks, which shall include the drop, fill and count procedures for sports betting kiosks;

5. Procedures for cashing winning tickets at the cashiers' cage after the sports betting facility has closed, if applicable;

6. Procedures for accepting value game chips for sports wagers, if applicable;

7. Detailed procedure for the issuance of IRS Form W-2G, Certain Gambling Winnings;

8. If allowed, the procedure for redeeming lost tickets; and

9. In the event of a failure of the facility's ability to pay winning wagers, detailed procedures for the method of paying winning wagers.

E. House rules. The house rules required by 11VAC5-70, together with any other information the director deems appropriate, shall be conspicuously displayed in the sports betting facility, and copies shall be made readily available to players.

F. Player wagers.

1. Wagers available to players shall be displayed in a manner visible to the public and the facility operator's closed circuit television system. The display shall include a brief description of the event and the odds.

2. All sports betting tickets generated by a sports betting facility shall contain the following information:

a. Description of the sporting event;

b. Wager selection;

c. Type of wager;

d. Amount of wager;

e. Date and time of the wager;

f. Unique wager identifier;

g. An indication of when the ticket expires;

h. Name and address of the party issuing the ticket;

i. A barcode or similar symbol or marking as approved by the department corresponding to the unique wager identifier;

j. Method of redeeming winning ticket via mail; and

k. Cashier, device, or sports betting kiosk generating the ticket.

3. If the facility operator issues and redeems a sports betting voucher, the system shall be capable of recording the following information for each voucher:

a. Amount of voucher;

b. Date, time, and location of issuance;

c. Unique voucher identifier;

d. Expiration date of the voucher; and

e. Date, time, and location of redemption, if applicable.

4. Sports betting vouchers issued by a facility operator shall contain the following information:

a. Date, time, and location of issuance;

b. Amount of the voucher;

c. Unique voucher identifier;

d. Expiration date of the voucher;

e. Name of the issuing facility operator; and

f. An indication that the voucher can only be redeemed in exchange for a sports wager or cash.

5. A cashier may not cancel a wager for which the cashier wrote the ticket and must instead call a supervisor to cancel the wager.

6. For all lost tickets that are redeemed, the facility operator's sports betting platform shall record and maintain the following information:

a. Date and time of redemption;

b. Employee responsible for redeeming the ticket;

c. Name of player redeeming the wager;

d. Unique wager identifier; and

e. Location of the redemption.

7. A player may redeem a winning sports wagering ticket by mail according to the facility operator's internal controls.

8. A winning sports wagering ticket that has not been redeemed within 180 days shall be treated like an unclaimed jackpot under 11VAC5-90-20.

G. Sports betting kiosks.

1. A facility operator may utilize sports betting kiosks within a casino gaming facility for sports betting wagering transactions at a location approved by the department.

2. All aspects of a sports betting kiosk, including the computer and any related hardware, software, or related devices, shall be tested by an independent certified testing laboratory and approved by the department prior to use by a facility operator.

3. When used to redeem sports betting tickets or vouchers, sports betting kiosks shall work in conjunction with the facility operator's sports betting platform and shall be designed to:

a. Accurately obtain the unique identification number of the item presented for redemption and cause such information to be accurately and securely relayed to the facility operator's sports betting platform for the purpose of redemption;

b. Issue currency, a sports betting voucher, or both in exchange for the item presented only if the facility operator's sports betting platform has authorized and recorded the transaction; and

c. Return a sports betting ticket and voucher to the player when it cannot be validated by the facility operator's sports betting platform or is otherwise unredeemable.

4. A facility operator shall be able to generate the following reports by a sports betting kiosk or ancillary system or application for the reconciliation period, which may be by gaming day, shift, or drop cycle as approved by the department:

a. A sports betting ticket issuance report that details:

(1) Unique wager identifier;

(2) Date and time of issuance; and

(3) Amount of wager;

b. A sports betting ticket redemption report that details:

(1) Unique wager identifier;

(2) Date and time of redemption; and

(3) Amount redeemed;

c. A sports betting voucher issuance report that details:

(1) Unique voucher identifier;

(2) Date and time of issuance; and

(3) Amount of voucher;

d. A sports betting voucher redemption report that details:

(1) Unique voucher identifier;

(2) Date and time of redemption; and

(3) Amount redeemed;

e. A reconciliation report that details:

(1) Date and time;

(2) Unique asset identification number of the sports betting kiosk;

(3) Total amount of cash in the currency and coin cassettes;

(4) Total number of bills accepted by denomination;

(5) Total amount of credit card and debit card transactions;

(6) Total amount of sports betting vouchers dispensed and inserted; and

(7) Total amount of sports betting tickets dispensed and inserted;

f. A transaction history report that details all critical player transaction history including for each transaction, whether complete or incomplete, the following:

(1) Date and time;

(2) Amount;

(3) Disposition as complete or incomplete;

(4) Error conditions including failed access attempts;

(5) User access data; and

(6) If equipped to issue or redeem multiple sports betting tickets and sports betting vouchers in a single transaction, a breakdown of the transaction by individual sports betting ticket and sports betting voucher.

5. On a daily basis, a facility operator shall:

a. Remove the bill validator boxes in the sports betting kiosks; and

b. Monitor and record by surveillance the removal of each bill validator box.

6. A facility operator shall submit to the department in advance its daily schedule for removal of the sports betting kiosk bill validator boxes.

7. A facility operator's accounting department shall reconcile the sports betting kiosks on a daily basis pursuant to internal controls. Any variance of $500 or more shall be documented by the accounting department and reported in writing to the department within three days after the gaming day during which the variance was discovered. The report shall indicate the cause of the variance and shall contain any documentation required to support the stated explanation.

H. Accounting controls.

1. A cashier shall begin a shift with an imprest amount of sports betting inventory, consisting of currency and coin. No funds shall be added to or removed from the sports betting inventory during a shift except:

a. In collection of sports wagers;

b. In order to make change for a player buying a sports betting ticket;

c. In collection for the issuance of sports betting vouchers;

d. In payment of winning or properly canceled or refunded sports betting tickets;

e. In payment of sports betting vouchers; or

f. In exchanges with the cashiers' cage, a satellite cage, or sports betting lounge booth vault supported by proper documentation which documentation shall be sufficient for accounting reconciliation purposes.

2. A sports betting count sheet shall be completed and signed by a supervisor, and the following information, at a minimum, shall be recorded on the count sheet at the beginning of a shift:

a. The date, time, and shift of preparation;

b. The denomination of currency and coin in the sports betting inventory issued to the cashier;

c. The total amount of each denomination of currency and coin in the sports betting inventory issued to the cashier;

d. The sports betting window number to which the cashier is assigned; and

e. The signature of the sports betting shift supervisor.

3. A cashier assigned to a cashier window shall count and verify the sports betting inventory at the sports betting vault and ensure that the inventory agrees with the count sheet. The cashier shall sign the count sheet attesting to the accuracy of the information on the count sheet. The sports betting inventory shall be placed in a cashier's drawer and transported directly to the appropriate sports betting lounge booth window by the cashier.

4. If the system generated sports betting window net receipts for a shift do not agree with the sports betting count sheet total plus the sports betting inventory, the shift supervisor shall record any overage or shortage. If the count does not agree, the cashier and the shift supervisor shall attempt to determine the cause of the discrepancy in the count. Any discrepancy that cannot be resolved by the cashier and the shift supervisor shall be submitted in writing immediately to the department.

5. If a discrepancy identified in subdivision G 4 of this section is more than $500, within three days the facility operator shall submit a report to the department that includes the:

a. Date on which the discrepancy occurred;

b. Shift during which the discrepancy occurred;

c. Name of the cashier;

d. Name of the supervisor;

e. Window number; and

f. Amount of the discrepancy.

6. A sports betting shift supervisor shall:

a. Compare the cashier window net for each shift as generated by the terminal, and

b. If the cashier window net agrees with the sports betting count sheet total plus the sports betting inventory:

(1) Certify the count on the sports betting count sheet, and

(2) Sign the sports betting count sheet attesting to its accuracy.

11VAC5-90-200. Information security system.

A facility operator shall implement, maintain, regularly review and revise, and comply with a comprehensive information security system, the purpose of which (i) shall be to take reasonable steps to protect the confidentiality, integrity, and availability of personal information of individuals who

place a wager with the facility operator and (ii) shall contain administrative, technical, and physical safeguards appropriate to the size, complexity, nature, and scope of the operations and the sensitivity of the personal information owned, licensed, maintained, handled, or otherwise in the possession of the facility operator.

11VAC5-90-210. System integrity and security assessment.

A. Within 90 days after beginning operations and annually thereafter, a facility operator shall engage an independent certified testing laboratory to perform a system integrity and security assessment of its casino gaming operations, including any sports betting operations not already reviewed in compliance with 11VAC5-70-200.

B. The scope of the integrity and security assessment shall include, at a minimum:

1. A vulnerability assessment of internal, external, and wireless networks with the intent of identifying vulnerabilities of all devices, systems, and applications transferring, storing, or processing personally identifiable information or other sensitive information connected to or present on the networks;

2. A penetration test of all internal, external, and wireless networks to confirm if identified vulnerabilities of all devices, systems, platforms, and applications are susceptible to compromise;

3. A technical security control assessment against the provisions of the gaming law and this chapter consistent with generally accepted professional standards and as approved by the director;

4. An evaluation of information security services, cloud services, payment services (financial institutions, payment processors, etc.), location services, and any other services that may be offered directly by the facility operator or involve the use of third parties; and

5. Any other specific criteria or standards for the integrity and security assessment required by the director.

C. The independent certified testing laboratory shall issue a report on its assessment and submit it to the director. The report shall include, at a minimum the:

1. Scope of review;

2. Name and company affiliation of any individual who conducted the assessment;

3. Date of assessment;

4. Findings;

5. Recommended corrective action, if any; and

6. Facility operator's response to the findings and recommended corrective action.

VA.R. Doc. No. R21-6662; Filed October 6, 2021, 2:10 p.m.

TITLE 13. HOUSING

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

Final Regulation

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

Title of Regulation: **13VAC5-112. Enterprise Zone Grant Program Regulation (amending 13VAC5-112-10, 13VAC5-112-270, 13VAC5-112-280, 13VAC5-112-285).**

Statutory Authority: § 59.1-541 of the Code of Virginia.

Effective Date: January 1, 2022.

Agency Contact: Kyle Flanders, Senior Policy Analyst, Department of Housing and Community Development, Main Street Centre, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 786-6761, FAX (804) 371-7090, TDD (804) 371-7089, or email kyle.flanders@dhcd.virginia.gov.

Summary:

Pursuant to Chapter 402 of the 2021 Acts of Assembly, Special Session I, the amendments (i) change the definition of "minimum wage" for purposes of the Enterprise Zone Job Creation Grant Program so that "minimum wage" shall be the higher of the state minimum wage or the federal minimum wage instead of simply the federal minimum wage; (ii) reduce the percentage of the minimum wage that grant eligible jobs must meet in order to receive funding; and (iii) require that small, women-owned, and minority-owned businesses certified under § 2.2-1606 of the Code of Virginia receive the same grants as businesses in high unemployment areas.

13VAC5-112-10. Definitions.

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

"Agreed-upon procedures engagement" means an engagement between an independent certified public accountant licensed by the Commonwealth and the business or zone investor seeking to qualify for Enterprise Zone incentive grants pursuant to § 59.1-549 of the Code of Virginia, whereby

the independent certified public accountant, using procedures specified by the department, will test and report on the assertion of the business or zone investor as to their qualification to receive the Enterprise Zone incentive.

"Assumption or acquisition" means, in connection with a trade or business, that the inventory, accounts receivable, liabilities, customer list, and good will of an existing Virginia company has been assumed or acquired by another taxpayer, regardless of a change in federal identification number or employees.

"Average number of permanent full-time employees" means the number of permanent full-time employees during each payroll period of a business firm's taxable year divided by the number of payroll periods. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20:

1. In calculating the average number of permanent full-time employees, a business firm may count only those permanent full-time employees who worked at least half of their normal workdays during the payroll period. Paid leave time may be counted as work time.

2. For a business firm that uses different payroll periods for different classes of employees, the average number of permanent full-time employees of the firm shall be defined as the sum of the average number of permanent full-time employees for each class of employee.

"Base taxable year" means either of two taxable years immediately preceding the first year of qualification, at the choice of the business firm. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20.

"Base year" means either of the two calendar years immediately preceding a qualified business firm's first year of grant eligibility, at the choice of the business firm.

"Building" means any construction meeting the common ordinarily accepted meaning of the term (building, a usually roofed and walled structure built for permanent use) where (i) areas separated by interior floors or other horizontal assemblies and (ii) areas separated by fire walls or vertical assemblies shall not be construed to constitute separate buildings, irrespective of having separate addresses, ownership, or tax assessment configurations, unless there is a property line contiguous with the fire wall or vertical assembly.

"Business firm" means any corporation, partnership, electing small business (subchapter S) corporation, limited liability company, or sole proprietorship authorized to do business in the Commonwealth of Virginia. This shall also include business and professional organizations and associations whose classification falls under sectors 813910 and 813920 of the North American Industry Classification Systems and that generate the majority of their revenue from customers outside the Commonwealth.

"Capital lease" means a lease that meets one or more of the following criteria and as such is classified as a purchase by the lessee: the lease term is greater than 75% of the property's estimated economic life; the lease contains an option to purchase the property for less than fair market value; ownership of the property is transferred to the lessee at the end of the lease term; or the present value of the lease payments exceed 90% of the fair market value of the property.

"Common control" means those firms as defined by Internal Revenue Code § 52(b).

"Department" means the Department of Housing and Community Development.

"Establishment" means a single physical location where business is conducted or where services or industrial operations are performed.

1. A central administrative office is an establishment primarily engaged in management and general administrative functions performed centrally for other establishments of the same firm.

2. An auxiliary unit is an establishment primarily engaged in performing supporting services to other establishments of the same firm. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-110.

"Existing business firm" means a business firm that was actively engaged in the conduct of trade or business in an area prior to such an area being designated as an enterprise zone or that was engaged in the conduct of trade or business in the Commonwealth and relocates to begin operation of a trade or business within an enterprise zone. An existing business firm is also one that was not previously conducted in the Commonwealth by such taxpayer who acquires or assumes a trade or business and continues its operations. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20.

"Expansion" means an increase in square footage or the footprint of an existing nonresidential building via a shared wall, or enlargement of an existing room or floor plan. Pursuant to real property investment grants this shall include mixed-use buildings.

"Facility" means a complex of buildings, co-located at a single physical location within an enterprise zone, all of which are necessary to facilitate the conduct of the same trade or business. This definition applies to new construction, as well as to the rehabilitation and expansion of existing structures.

"Federal minimum wage" means the minimum wage standard as currently defined by the U.S. Department of Labor in the Fair Labor Standards Act, 29 USC § 201 et seq. Such definition

applies to permanent full-time employees paid on an hourly or wage basis.

"Food and beverage service" means a business whose classification falls under subsector 722 Food Services and Drinking Places of North American Industry Classification System.

"Full month" means the number of days that a permanent full-time position must be filled in order to count in the calculation of the grant amount under 13VAC5-112-260. A full month is calculated by dividing the total number of days in calendar year by 12. A full month for the purpose of calculating job creation grants is equivalent to 30.416666 days.

"Grant-eligible position" means a new permanent full-time position created above the threshold number at an eligible business firm. Positions in retail, personal service, or food and beverage service shall not be considered grant-eligible positions.

"Health benefits" means that at a minimum medical insurance is offered to employees, and the employer shall offer to pay at least 50% of the cost of the premium at the time of employment and annually thereafter.

"High unemployment area" means enterprise zone localities with unemployment rates one and one-half times or more than the state average based on the most recent annualized unemployment data published by the Virginia Employment Commission.

"Household" means all the persons who occupy a single housing unit. Occupants may be a single family, one person living alone, two or more families living together, or any group of related or unrelated persons who share living arrangements. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20.

"Household income" means all income actually received by all household members older than 16 years of age from the following sources. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20:

1. Gross wages, salaries, tips, commissions, etc. (before deductions);

2. Net self-employment income (gross receipts minus operating expenses);

3. Interest and dividend earnings; and

4. Other money income received from net rents, Old Age and Survivors Insurance, social security benefits, pensions, alimony, child support, and periodic income from insurance policy annuities and other sources.

The following types of income are excluded from household income:

1. Noncash benefits such as food stamps and housing assistance;

2. Public assistance payments;

3. Disability payments;

4. Unemployment and employment training benefits;

5. Capital gains and losses; and

6. One-time unearned income.

When computing household income, income of a household member shall be counted for the portion of the income determination period that the person was actually a part of the household.

"Household size" means the largest number of household members during the income determination period. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20.

"Housing unit" means a house, apartment, group of rooms, or single room that is occupied or intended for occupancy as separate living quarters. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20.

"Income determination period" means the 12 months immediately preceding the month in which the person was hired. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20.

"Independent certified public accountant" means a public accountant certified and licensed by the Commonwealth of Virginia who is not an employee of the business firm seeking to qualify for state tax incentives and grants under this program.

"Job creation grant" means a grant provided under § 59.1-547 of the Code of Virginia.

"Joint enterprise zone" means an enterprise zone located in two or more adjacent localities.

"Jurisdiction" means the city or county that made the application to have an enterprise zone. In the case of a joint application, it means all parties making the application. Pursuant to enterprise zone designations made prior to July 1, 2005, this shall include towns.

"Large qualified business firm" means a qualified business firm making qualified zone investments in excess of $15 million when such zone investments result in the creation of at least 50 permanent full-time positions. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20.

"Large qualified zone resident" means a qualified zone resident making qualified zone investments in excess of $100 million when such qualified zone investments result in the creation of at least 200 permanent full-time positions. This

definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-110.

"Local zone administrator" means the chief executive of the city or county, in which an enterprise zone is located, or his designee. Pursuant to enterprise zone designations made prior to July 1, 2005, this shall include towns.

"Low-income" means household income was less than or equal to 80% of area median household income during the income determination period. Persons who meet the definition of both low-income and zone resident may not be counted as both for purposes of meeting employment requirements for the general tax credit. Instead, qualifying business firms must claim these persons as either low-income or zone resident. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20.

"Median household income" means the dollar amount, adjusted for household size, as determined annually by the department for the city or county in which the zone is located. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20.

"Minimum wage" means the federal minimum wage or the Virginia minimum wage, whichever is higher as determined for the current calendar year as of December 1 of the prior calendar year by the department. Such determination will be continuously in effect throughout the calendar year, regardless of changes to the federal minimum wage or the Virginia minimum wage during that year.

"Mixed use" means a building incorporating residential uses in which a minimum of 30% of the useable floor space will be devoted to commercial, office, or industrial use. Buildings where less than 30% of the useable floor space is devoted to commercial, office, or industrial use shall be considered primarily residential in nature and shall not be eligible for a grant under 13VAC5-112-330. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-330.

"Net loss" applies to firms that relocate or expand operations and means (i) after relocating into a zone, a business firm's gross permanent employment is less than it was before locating into the zone, or (ii) after a business firm locates or expands within a zone, its gross employment at its nonzone location is less than it was before the zone location occurred.

"New business" means a business not previously conducted in the Commonwealth by such taxpayer and that begins operation in an enterprise zone after the zone was designated. A new business is also one created by the establishment of a new facility and new permanent full-time employment by an existing business firm in an enterprise zone and does not result in a net loss of permanent full-time employment outside the zone. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20.

"New construction" means a single, nonresidential facility built on previously undeveloped land or a nonresidential structure built on the site or parcel of a previously razed structure with no remnants of the prior structure or physical connection to existing structures or outbuildings on the property. Pursuant to real property investment grants this shall include mixed-use buildings.

"Number of eligible permanent full-time positions" means the amount by which the number of permanent full-time positions at a business firm in a grant year exceeds the threshold number. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-260.

"Payroll period" means the period of time for which a business firm normally pays its employees.

"Permanent full-time employee" means a person employed by a business firm who is normally scheduled to work (i) a minimum of 35 hours per week for the entire normal year of the business firm's operations, which normal year must consist of at least 48 weeks, (ii) a minimum of 35 hours per week for a portion of the taxable year in which the employee was initially hired for, or transferred to the business firm, or (iii) a minimum of 1,680 hours per year if the standard fringe benefits are paid by the business firm for the employee. Permanent full-time employee also means two or more individuals who together share the same job position and together work the normal number of hours a week as required by the business firm for that one position. Seasonal, temporary, leased, or contract labor employees or employees shifted from an existing location in the Commonwealth to a business firm location within an enterprise zone shall not qualify as permanent full-time employees. This definition only applies to business firms for the purpose of qualifying for enterprise zone incentives pursuant to 13VAC5-112-20.

"Permanent full-time position" (for the purpose of qualifying for grants pursuant to § 59.1-547 of the Code of Virginia) means a job of indefinite duration at a business firm located within an enterprise zone requiring the employee to report to work within the enterprise zone; and requiring (i) a minimum of 35 hours of an employee's time per week for the entire normal year of the business firm's operation, which "normal year" must consist of at least 48 weeks, (ii) a minimum of 35 hours of an employee's time per week for the portion of the calendar year in which the employee was initially hired for or transferred to the business firm, or (iii) a minimum of 1,680 hours per year. Such position shall not include (a) seasonal, temporary, or contract positions, (b) a position created when a job function is shifted from an existing location in the Commonwealth to a business firm located with an enterprise zone, (c) any position that previously existed in the Commonwealth, or (d) positions created by a business that is simultaneously closing facilities in other areas of the Commonwealth.

"Personal service" means such positions classified under NAICS 812.

"Placed in service" means the final certificate of occupancy has been issued or the final building inspection has been approved by the local jurisdiction for real property improvements or real property investments, or in cases where a project does not require permits, the licensed third party inspector's report that the project was complete; pursuant to 13VAC5-112-110, the first moment that machinery becomes operational and is used in the manufacturing of a product for consumption; or in the case of tools and equipment, the first moment they are used in the performance of duty or service.

"Qualification year" the calendar year for which a qualified business firm or qualified zone investor is applying for a grant pursuant to 13VAC5-112-260.

"Qualified business firm" means a business firm meeting the business firm requirements in 13VAC5-112-20 or 13VAC5-112-260 and designated a qualified business firm by the department.

"Qualified real property investment" (for purposes of qualifying for a real property investment grant) means the amount expended for improvements to rehabilitate, expand, or construct depreciable real property placed in service during the calendar year within an enterprise zone provided that the total amount of such improvements equals or exceeds (i) $100,000 with respect to a single building or a facility in the case of rehabilitation or expansion or (ii) $500,000 with respect to a single building or a facility in the case of new construction. "Qualified real property investment" includes any such expenditure regardless of whether it is considered properly chargeable to a capital account or deductible as a business expense under federal Treasury regulations. Qualified real property investments include expenditures associated with (a) any exterior, interior, structural, mechanical, or electrical improvements necessary to construct, expand, or rehabilitate a building for commercial, industrial, or mixed use; (b) excavations; (c) grading and paving; (d) installing driveways; and (e) landscaping or land improvements. Qualified real property investments shall include costs associated with demolition, carpentry, sheetrock, plaster, painting, ceilings, fixtures, doors, windows, fire suppression systems, roofing, flashing, exterior repair, cleaning and cleanup, and installation of solar panels consistent with the provisions of § 59.1-548 of the Code of Virginia and 13VAC5-112-340 A.

Qualified real property investment shall not include:

1. The cost of acquiring any real property or building.

2. Other costs including (i) the cost of furnishings; (ii) any expenditure associated with appraisal, architectural, engineering, surveying, and interior design fees; (iii) loan fees, points, or capitalized interest; (iv) legal, accounting, realtor, sales and marketing, or other professional fees; (v) closing costs, permits, user fees, zoning fees, impact fees, and inspection fees; (vi) bids, insurance, signage, utilities, bonding, copying, rent loss, or temporary facilities incurred during construction; (vii) utility connection or access fees; (viii) outbuildings; (ix) the cost of any well or septic or sewer system; and (x) roads.

3. The basis of any property (i) for which a grant under this section was previously provided; (ii) for which a tax credit under § 59.1-280.1 of the Code of Virginia was previously granted; (iii) that was previously placed in service in Virginia by the qualified zone investor, a related party as defined by Internal Revenue Code § 267(b), or a trade or business under common control as defined by Internal Revenue Code § 52(b); or (iv) that was previously in service in Virginia and has a basis in the hands of the person acquiring it, determined in whole or in part by reference to the basis of such property in the hands of the person from whom it was acquired or Internal Revenue Code § 1014(a).

"Qualified zone improvements" (for purposes of qualifying for an Investment Tax Credit) means the amount expended for improvements to rehabilitate or expand depreciable nonresidential real property placed in service during the taxable year within an enterprise zone, provided that the total amount of such improvements equals or exceeds (i) $50,000 and (ii) the assessed value of the original facility immediately prior to the rehabilitation or expansion. "Qualified zone expenditures" includes any such expenditure regardless of whether it is considered properly chargeable to a capital account or deductible as a business expense under federal Treasury regulations. Qualified zone improvements include expenditures associated with any exterior, structural, mechanical, or electrical improvements necessary to construct, expand, or rehabilitate a building for commercial or industrial use.

1. Qualified zone improvements include the costs associated with excavation, grading, paving, driveways, roads, sidewalks, landscaping or other land improvements, demolition, carpentry, sheetrock, plaster, painting, ceilings, fixtures, doors, windows, fire suppression systems, roofing and flashing, exterior repair, cleaning, and clean-up.

2. Qualified zone improvements do not include (i) the cost of furnishings; (ii) any expenditure associated with appraisal, architectural, engineering, and interior design fees; (iii) loan fees, points, or capitalized interest; (iv) legal, accounting, realtor, sales, and marketing or other professional fees; (v) closing costs, permits, user fees, zoning fees, impact fees, or inspection fees; (vi) bids insurance, signage, utilities, bonding, copying, rent loss, or temporary facilities incurred during construction; (vii) utility hook-up or access fees; (viii) outbuildings; (ix) the cost of any well, septic, or sewer system; or (x) cost of acquiring land or an existing building.

3. In the case of new nonresidential construction, qualified zone improvements also do not include land, land

improvements, paving, grading, driveway, and interest. This definition applies only for the purposes of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-110.

"Qualified zone investment" means the sum of qualified zone improvements and the cost of machinery, tools, and equipment used in manufacturing tangible personal property and placed in service on or after July 1, 1995. Machinery, equipment, tools, and real property that are leased through a capital lease and that are being depreciated by the lessee or that are transferred from out-of-state to a zone location by a business firm may be included as qualified zone investment. Such leased or transferred machinery, equipment, tools, and real property shall be valued using the depreciable basis for federal income tax purposes. Machinery, tools, and equipment shall not include the basis of any property (i) for which a credit was previously granted under § 59.1-280.1 of the Code of Virginia; (ii) that was previously placed in service in Virginia by the taxpayer, a related party, as defined by Internal Revenue Code § 267(b), or a trade or business under common control, as defined by Internal Revenue Code § 52(b); or (iii) that was previously in service in Virginia and has a basis in the hands of the person acquiring it, determined in whole or in part by reference to the basis of such property in the hands of the person whom acquired it, or Internal Revenue Code § 1014(a). This definition applies only for the purposes of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-110.

"Qualified zone investor" means an owner or tenant of real property located within an enterprise zone who expands, rehabilitates, or constructs such real property for commercial, industrial, or mixed use. In the case of a tenant, the amounts of qualified zone investment specified in this section shall relate to the proportion of the building or facility for which the tenant holds a valid lease. In the case of an owner of an individual unit within a horizontal property regime, the amounts of qualified zone investments specified in this section shall relate to that proportion of the building for which the owner holds title and not to common elements. Units of local, state, and federal government or political subdivisions shall not be considered qualified zone investors.

"Qualified zone resident" means an owner or tenant of nonresidential real property located in an enterprise zone who expands or rehabilitates such real property to facilitate the conduct of a trade or business by such owner or tenant within the enterprise zone. In the case of a partnership, limited liability company, or S corporation, the term "qualified zone resident" means the partnership, limited liability company, or S corporation. This definition applies only for the purposes of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-110.

"Real property investment grant" means a grant made under § 59.1-548 of the Code of Virginia. This definition applies only for the purposes of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-330.

"Reduced wage rate threshold" means ~~150%~~ 125% of the ~~federal~~ minimum wage pursuant to 13VAC5-112-270, 13VAC5-112-280, and 13VAC5-112-285 and high unemployment areas.

"Rehabilitation" means the alteration or renovation of all or part of an existing nonresidential building without an increase in square footage. Pursuant to real property investment grants this shall include mixed-use buildings.

"Regular basis" means at least once a month. This definition applies only for the purposes of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-260.

"Related party" means those as defined by Internal Revenue Code § 267(b).

"Report to work" means that the employee filling a permanent full-time position reports to the business' zone establishment on a regular basis.

"Retail" means a business whose classification falls under sectors 44-45 Retail Trade of North American Industry Classification System.

"Same trade or business" means the operations of a single company, related companies, or companies under common control.

"Seasonal employee" means any employee who normally works on a full-time basis and whose customary annual employment is less than nine months. For example, individuals hired by a certified public accountant firm during the tax return season in order to process returns and who work full-time over a three-month period are seasonal employees.

"Small qualified business firm" means any qualified business firm other than a large qualified business firm. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20.

"Small qualified zone resident" means any qualified zone resident other than a large qualified zone resident. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-350 C.

"Subsequent base year" means the base year for calculating the number of grant-eligible positions in a second or subsequent five consecutive calendar year grant period. If a second or subsequent five-year grant period is requested within two years after the previous five-year grant period, the subsequent base year will be the last grant year. The calculation of this subsequent base year employment will be determined by the number of permanent full-time positions in the preceding base year, plus the number of threshold positions, plus the number of grant-eligible positions in the final year of the previous grant period. If a business firm applies for subsequent five consecutive calendar-year grant periods beyond the two years immediately following the completion of the previous five-year grant period, the business firm shall use

one of the two preceding calendar years as subsequent base year, at the choice of the business firm.

"Tax due" means the amount of tax liability as determined by the Department of Taxation or the State Corporation Commission. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20 and 13VAC5-112-110.

"Tax year" means the year in which the assessment is made. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-110.

"Taxable year" means the year in which the tax due on state taxable income, state taxable gross receipts, or state taxable net capital is accrued. This definition applies only for the purpose of qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20 and 13VAC5-112-110.

"Threshold number" means an increase of four permanent full-time positions over the number of permanent full-time positions in the base year or subsequent base year.

"Transferred employee" means an employee of a firm in the Commonwealth who is relocated to an enterprise zone facility owned or operated by that firm.

"Useable floor space" means all space in a building finished as appropriate to the use of the building as represented in measured drawings. Unfinished basements, attics, and parking garages would not constitute useable floor space. Finished common areas such as stairwells and elevator shafts should be apportioned appropriately based on the majority use (51%) of that floor.

"Virginia minimum wage" means the applicable minimum wage as determined pursuant to the Virginia Minimum Wage Act (§ 40.1-28.8 et seq. of the Code of Virginia).

"Wage rate" means the hourly wage paid to an employee inclusive of shift premiums and commissions. In the case of salaried employees, the hourly wage rate shall be determined by dividing the annual salary, inclusive of shift premiums and commissions, by 1,820 hours. Bonuses, overtime, and tips are not to be included in the determination of wage rate.

"Zone" means an enterprise zone declared by the Governor to be eligible for the benefits of this program.

"Zone real property investment tax credit" means a credit provided to a large qualified zone resident pursuant to § 59.1-280.1 J of the Code of Virginia. This definition applies only for qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-110.

"Zone resident" means a person whose principal place of residency is within the boundaries of any enterprise zone. Persons who meet the definition of both low-income and zone resident may not be counted as both for purposes of meeting employment requirements for the general tax credit. Instead, qualifying business firms must claim these persons as either low-income or zone resident. Zone residency must be verified annually. This definition applies only for qualifying for Enterprise Zone incentives pursuant to 13VAC5-112-20.

13VAC5-112-270. Computation of grant amount.

A. For any qualified business the grant amount is calculated as follows:

1. $800 per year for up to five consecutive years for each grant-eligible position that is paid a wage rate during the qualification year that is at least of ~~200%~~ 175% of the ~~federal~~ minimum wage in place during the qualification year, and that is provided with health benefits, or

2. $500 per year for up to five years for each grant-eligible position that is paid a wage rate during such year that is less than ~~200%~~ 175% of the ~~federal~~ minimum wage, but at least ~~175%~~ 150% of the ~~federal~~ minimum wage or the reduced wage rate threshold if in a high unemployment area or if the business is certified pursuant to 13VAC5-112-285 subsection C, and that is provided with health benefits.

B. A business firm may receive grants for up to a maximum of 350 grant-eligible jobs annually.

C. Job creation grants are based on a calendar year. The grant amount for any permanent full-time position that is filled for less than a full calendar year must be prorated based on the number of full months worked.

1. In cases where a position is grant eligible for only a portion of a qualification year the grant amount will be prorated based on the number of full months the position was grant eligible. This shall include cases where changes in wage rate, health benefits, or the ~~federal~~ minimum wage rate change a position's grant eligibility.

2. In cases where a change in a grant-eligible position's wage rate or the ~~federal~~ minimum wage rate during a qualification year changes the per position maximum grant amount available for that position, the grant amount shall be prorated based on the period the position was paid a minimum of ~~200%~~ 175% of the ~~federal~~ minimum wage rate and the period the position was paid a minimum of ~~175%~~ 150% of the ~~federal~~ minimum wage or the reduced wage rate threshold if in a high unemployment area~~,~~ or if the business is certified pursuant to 13VAC5-112-285 C but less than ~~200%~~ 175%.

D. The amount of the job creation grant for which a qualified business firm is eligible in any year shall not include amounts for grant-eligible positions in any year other than the preceding calendar year. Job creation grants shall not be available for any calendar year prior to 2005.

E. Permanent full-time positions that have been used to qualify for any other enterprise zone incentive pursuant to former §§ 59.1-270 through 59.1-284.01 of the Code of Virginia shall not be eligible for job creation grants and shall

not be counted as a part of the minimum threshold of four new positions.

1. Large qualified business firms and large qualified zone residents may qualify for job creation grants pursuant to this section for permanent full-time positions that have been created above the permanent full-time positions as required by their documented negotiation agreement with the department pursuant to subdivision 2 of 13VAC5-112-20.

2. Small qualified business firms may qualify for job creation grants pursuant to this section for net new permanent full-time positions that have been created above the net new permanent full-time employees in the most recently reported qualification year.

3. Business firms that have previously qualified for department enterprise zone job grants may qualify for job creation grants pursuant to this section for net new permanent full-time positions that have been created above the net new permanent full-time positions in the most recently reported qualification year.

13VAC5-112-280. Eligibility.

A. A business firm shall be eligible to receive job creation grants for five consecutive years beginning with the first year of grant eligibility for permanent full-time positions created above the threshold number. Additional permanent full-time positions created during the remainder of years in the grant period are eligible for additional grant funding over the previous year's level or such positions may be used instead to begin a subsequent grant period pursuant to subsection B of this section.

B. A business firm may be eligible for subsequent five consecutive calendar-year grant periods if it creates new grant-eligible positions above the threshold number for its subsequent base year.

1. If a second or subsequent five-year grant period is requested within two years of the previous grant period, the subsequent base year will be the last grant year. The calculation of this subsequent base year employment will be determined by the number of permanent full-time positions in the preceding base year, plus the number of threshold positions, plus the number of grant-eligible positions in the final year of the previous grant period.

2. If a business firm applies for subsequent five consecutive calendar-year grant periods beyond the two years immediately following the completion of the previous five-year grant period, the business firm shall use one of the two preceding calendar years as the subsequent base year, at the choice of the business firm.

C. A business firm is eligible to receive enterprise zone job creation grants for any and all years in which the business firm qualifies in the five consecutive calendar years period commencing with the first year of grant eligibility.

D. Job creation grants shall be available beginning with calendar year 2005.

E. Any qualified business firm receiving a major business facility job tax credit pursuant to § 58.1-439 of the Code of Virginia shall not be eligible to receive an enterprise zone job creation grant under this section for any job used to qualify for the major business facility job tax credit.

F. The following positions are not grant eligible:

1. Those in retail, personal service or food and beverage service.

2. Those paying less than ~~175%~~ 150% of the ~~federal~~ minimum wage or that are not provided with health benefits.

3. Notwithstanding subdivision 2 of this subsection, in a high unemployment area those paying less than the reduced wage rate threshold or that are not provided with health benefits.

4. Seasonal, temporary or contract positions.

13VAC5-112-285. Eligibility for reduced wage rate threshold.

A. Prior to each qualification year, the department shall prepare the list of enterprise zone localities that are high unemployment areas that shall be used in determining eligibility for reduced wage rate thresholds for that qualification year.

B. Qualified business firms located in an enterprise zone listed as a high unemployment area are eligible to use the reduced wage rate threshold (~~150%~~ 125% of ~~federal~~ minimum wage) in qualifying for the $500 grant amount.

C. Qualified business firms that are certified under regulations adopted by the Director of the Department of Small Business and Supplier Diversity pursuant to subdivision 8 of § 2.2-1606 of the Code of Virginia are eligible to use the reduced wage rate threshold (125% of minimum wage) in qualifying for the $500 grant amount.

D. Once a qualified business is eligible for the reduced wage rate threshold it remains so through the end of its current five consecutive calendar-year grant period, regardless of changes to the unemployment rate of the enterprise zone locality.

VA.R. Doc. No. R22-6801; Filed September 23, 2021, 2:06 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

COMMON INTEREST COMMUNITY BOARD

Final Regulation

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

Title of Regulation: **18VAC48-50. Common Interest Community Manager Regulations (amending 18VAC48-50-30, 18VAC48-50-35, 18VAC48-50-180).**

Statutory Authority: § 54.1-2349 of the Code of Virginia.

Effective Date: December 1, 2021.

Agency Contact: Trisha L. Lindsey, Executive Director, Common Interest Community Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8510, FAX (866) 490-2723, or email cic@dpor.virginia.gov.

Summary:

Pursuant to Chapters 500 and 501 of the 2021 Acts of Assembly, Special Session I, the amendments conform regulations concerning qualifications for licensure and certification to the requirements of § 19.2-389.3 of the Code of Virginia and remove requirements for reporting by applicants or licensees of misdemeanor marijuana convictions.

18VAC48-50-30. Qualifications for licensure as a common interest community manager.

A. Firms that provide common interest community management services shall submit an application on a form prescribed by the board and shall meet the requirements set forth in § 54.1-2346 of the Code of Virginia, as well as the additional qualifications of this section.

B. Any firm offering management services as defined in § 54.1-2345 of the Code of Virginia shall hold a license as a common interest community manager. All names under which the common interest community manager conducts business shall be disclosed on the application. The name under which the firm conducts business and holds itself out to the public (i.e., the trade or fictitious name) shall also be disclosed on the application. Firms shall be organized as business entities under the laws of the Commonwealth of Virginia or otherwise authorized to transact business in Virginia. Firms shall register any trade or fictitious names with the State Corporation Commission in accordance with Chapter 5 of Title 59.1 (§ 59.1-69 et seq.) of the Code of Virginia before submitting an application to the board.

C. The applicant for a common interest community manager license shall disclose the firm's mailing address, the firm's physical address, and the address of the office from which the firm provides management services to Virginia common interest communities. A post office box is only acceptable as a mailing address when a physical address is also provided.

D. In accordance with § 54.1-204 of the Code of Virginia, each applicant for a common interest community manager license shall disclose the following information about the firm, the responsible person, and any of the principals of the firm:

1. All felony convictions.

2. All misdemeanor convictions, except marijuana convictions, in any jurisdiction that occurred within three years of the date of application.

3. Any plea of nolo contendere or finding of guilt regardless of adjudication or deferred adjudication shall be considered a conviction for the purposes of this section. The record of conviction certified or authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such guilt.

E. The applicant for a common interest community manager license shall submit evidence of a blanket fidelity bond or employee dishonesty insurance policy in accordance with § 54.1-2346 D of the Code of Virginia. Proof of current bond or insurance policy with the firm as the named bondholder or insured must be submitted in order to obtain or renew the license. The bond or insurance policy must be in force no later than the effective date of the license and shall remain in effect through the date of expiration of the license.

F. The applicant for a common interest community manager license shall be in compliance with the standards of conduct and practice set forth in Part V (18VAC48-50-140 et. seq.) of this chapter at the time of application, while the application is under review by the board, and at all times when the license is in effect.

G. The applicant for a common interest community manager license, the responsible person, and any principals of the firm shall be in good standing in Virginia and in every jurisdiction and with every board or administrative body where licensed, certified, or registered and the board, in its discretion, may deny licensure to any applicant who has been subject to, or whose principals have been subject to, or any firm in which the principals of the applicant for a common interest community manager license hold a 10% or greater interest have been subject to, any form of adverse disciplinary action, including reprimand, revocation, suspension or denial, imposition of a monetary penalty, required to complete remedial education, or any other corrective action, in any jurisdiction or by any board

or administrative body or surrendered a license, certificate, or registration in connection with any disciplinary action in any jurisdiction prior to obtaining licensure in Virginia.

H. The applicant for a common interest community manager license shall provide all relevant information about the firm, the responsible person, and any of the principals of the firm for the seven years prior to application on any outstanding judgments, past-due tax assessments, defaults on bonds, or pending or past bankruptcies and specifically shall provide all relevant financial information related to providing management services as defined in § 54.1-2345 of the Code of Virginia. The applicant for a common interest community manager license shall further disclose whether or not one or more of the principals who individually or collectively own more than a 50% equity interest in the firm are or were equity owners holding, individually or collectively, a 10% or greater interest in any other entity licensed by any agency of the Commonwealth of Virginia that was the subject of any adverse disciplinary action, including revocation of a license, within the seven-year period immediately preceding the date of application.

I. An applicant for a common interest community manager license shall hold an active designation as an Accredited Association Management Company by the Community Associations Institute.

J. Prior to July 1, 2012, in lieu of the provisions of subsection I of this section, an application for a common interest community manager license may be approved provided the applicant certifies to the board that the applicant has:

1. At least one supervisory employee, officer, manager, owner, or principal of the firm who is involved in all aspects of the management services offered and provided by the firm and who has satisfied one of the following criteria:

a. Holds an active designation as a Professional Community Association Manager by Community Associations Institute;

b. Has successfully completed a comprehensive training program as described in 18VAC48-50-250 B, as approved by the board, and has at least three years of experience in providing management services, the quality of which demonstrates to the board that the individual is competent to have supervisory responsibility or principal responsibility for management services;

c. Has successfully completed an introductory training program as described in 18VAC48-50-250 A, as approved by the board, and has at least five years of experience in providing management services, the quality of which demonstrates to the board that the individual is competent to have supervisory responsibility or principal responsibility for management services; or

d. Has not completed a board-approved training program but who, in the judgment of the board, has obtained the equivalent of such training program by documented course work that meets the requirements of a board-approved comprehensive training program as described in Part VI (18VAC48-50-230 et seq.) of this chapter and has at least 10 years of experience in providing management services, the quality of which demonstrates to the board that the individual is competent to have supervisory responsibility or principal responsibility for management services.

2. At least 50% of persons in the firm with principal responsibility for management services to a common interest community in the Commonwealth of Virginia have satisfied one of the following criteria:

a. Hold an active designation as a Professional Community Association Manager and certify having provided management services for a period of 12 months immediately preceding application;

b. Hold an active designation as a Certified Manager of Community Associations by the National Board of Certification for Community Association Managers and certify having two years of experience in providing management services. Of the required two years <u>of</u> experience, a minimum of 12 months of experience must have been gained immediately preceding application;

c. Hold an active designation as an Association Management Specialist and certify having two years of experience in providing management services. Of the required two years <u>of</u> experience, a minimum of 12 months of experience must have been gained immediately preceding application; or

d. Have completed a comprehensive or introductory training program, as set forth in 18VAC48-50-250 A or B, and passed a certifying examination approved by the board and certify having two years <u>of</u> experience in providing management services. Of the required two years <u>of</u> experience, a minimum of 12 months of experience must have been gained immediately preceding application.

K. Effective July 1, 2012, the applicant for a common interest community manager license shall attest that all employees of the firm who have principal responsibility for management services provided to a common interest community or who have supervisory responsibility for employees who participate directly in the provision of management services to a common interest community shall, within two years after employment with the common interest community manager, hold a certificate as a certified principal or supervisory employee issued by the board or shall be under the direct supervision of a certified principal or supervisory employee.

L. Effective July 1, 2012, in lieu of the provisions of subsection I of this section, an application for a common interest community manager license may be approved provided the applicant certifies to the board that the applicant has at least one supervisory employee, officer, manager,

owner, or principal of the firm who is involved in all aspects of the management services offered and provided by the firm and who has satisfied one of the following criteria:

1. Holds an active designation as a Professional Community Association Manager by Community Associations Institute;

2. Has successfully completed a comprehensive training program as described in 18VAC48-50-250 B, as approved by the board, and has at least three years of experience in providing management services, the quality of which demonstrates to the board that the individual is competent to have supervisory responsibility or principal responsibility for management services;

3. Has successfully completed an introductory training program as described in 18VAC48-50-250 A, as approved by the board, and has at least five years of experience in providing management services, the quality of which demonstrates to the board that the individual is competent to have supervisory responsibility or principal responsibility for management services; or

4. Has not completed a board-approved training program but, in the judgment of the board, has obtained the equivalent of such training program by documented coursework that meets the requirements of a board-approved comprehensive training program as described in Part VI (18VAC48-50-230 et seq.) of this chapter and has at least 10 years of experience in providing management services, the quality of which demonstrates to the board that the individual is competent to have supervisory responsibility or principal responsibility for management services.

M. The firm shall designate a responsible person.

18VAC48-50-35. Qualifications for certification as a certified principal or supervisory employee effective July 1, 2012.

A. Principal or supervisory employees requiring certification pursuant to § 54.1-2346 of the Code of Virginia shall meet the requirements of this section and submit an application for certification on or after July 1, 2012.

B. The applicant for certification shall be at least 18 years of age.

C. The applicant for certification shall have a high school diploma or its equivalent.

D. The applicant for certification shall provide a mailing address. A post office box is only acceptable as a mailing address when a physical address is also provided. The mailing address provided shall serve as the address of record.

E. In accordance with § 54.1-204 of the Code of Virginia, each applicant for certification shall disclose the following information:

1. All felony convictions.

2. All misdemeanor convictions, except marijuana convictions, that occurred in any jurisdiction within three years of the date of application.

3. Any plea of nolo contendere or finding of guilt regardless of adjudication or deferred adjudication shall be considered a conviction for the purposes of this section. The record of conviction certified or authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such guilt.

F. The applicant for certification shall be in compliance with the standards of conduct and practice set forth in Part V (18VAC48-50-140 et seq.) of this chapter at the time of application, while the application is under review by the board, and at all times when the certificate is in effect.

G. The applicant for certification shall be in good standing in Virginia and in every jurisdiction and with every board or administrative body where licensed, certified, or registered to provide management or related services; and the board, in its discretion, may deny certification to any applicant for certification who has been subject to any form of adverse disciplinary action, including ~~but not limited to~~ reprimand, revocation, suspension or denial, imposition of a monetary penalty, requirement to complete remedial education, or any other corrective action, in any jurisdiction or by any board or administrative body or surrendered a license, certificate, or registration in connection with any disciplinary action in any jurisdiction prior to obtaining certification in Virginia.

H. The applicant for certification shall provide all relevant information for the seven years prior to application on any outstanding judgments, past-due tax assessments, defaults on bonds, or pending or past bankruptcies, all as related to providing management services as defined in § 54.1-2345 of the Code of Virginia. The applicant for certification shall further disclose whether or not he was the subject of any adverse disciplinary action, including revocation of a license, certificate, or registration within the seven-year period immediately preceding the date of application.

I. An applicant for certification may be certified provided the applicant provides proof to the board that the applicant meets one of the following:

1. Holds an active designation as a Professional Community Association Manager by Community Associations Institute and certifies having provided management services for a period of three months immediately preceding application;

2. Holds an active designation as a Certified Manager of Community Associations by the National Board of Certification for Community Association Managers and certifies having two years of experience in providing management services. Of the required two years of experience, a minimum of six months of experience must have been gained immediately preceding application;

3. Holds an active designation as an Association Management Specialist by Community Associations Institute and certifies having two years of experience in providing management services. Of the required two years of experience, a minimum of three months of experience must have been gained immediately preceding application; or

4. Has completed an introductory or comprehensive training program as set forth in 18VAC48-50-250 A or B and passed a certifying examination approved by the board and certifies having two years of experience in providing management services. Of the required two years of experience, a minimum of six months of experience must have been gained immediately preceding application.

J. The applicant for certification shall provide the name of his employing common interest community manager, if applicable.

18VAC48-50-180. Notice of adverse action.

A. Licensed firms shall notify the board of the following actions against the firm, the responsible person, and any principals of the firm:

1. Any disciplinary action taken by any jurisdiction, board, or administrative body of competent jurisdiction, including ~~but not limited to~~ any reprimand, license or certificate revocation, suspension or denial, monetary penalty, or requirement for remedial education or other corrective action.

2. Any voluntary surrendering of a license, certificate, or registration done in connection with a disciplinary action in another jurisdiction.

3. Any conviction, finding of guilt, or plea of guilty, regardless of adjudication or deferred adjudication, in any jurisdiction of the United States of any misdemeanor involving moral turpitude, sexual offense, non-marijuana drug distribution, or physical injury, or any felony, there being no appeal pending therefrom or the time for appeal having lapsed. Review of convictions shall be subject to the requirements of § 54.1-204 of the Code of Virginia. Any plea of nolo contendere shall be considered a conviction for the purpose of this section.

B. Certified principal or supervisory employees shall notify the board, and the responsible person of the employing firm, if applicable, of the following actions against the certified principal or supervisory employee:

1. Any disciplinary action taken by any jurisdiction, board, or administrative body of competent jurisdiction, including ~~but not limited to~~ any reprimand, license or certificate revocation, suspension or denial, monetary penalty, requirement for remedial education, or other corrective action.

2. Any voluntary surrendering of a license, certificate, or registration done in connection with a disciplinary action in another jurisdiction.

3. Any conviction, finding of guilt, or plea of guilty, regardless of adjudication or deferred adjudication, in any jurisdiction of the United States of any misdemeanor involving moral turpitude, sexual offense, non-marijuana drug distribution, or physical injury, or any felony, there being no appeal pending therefrom or the time for appeal having lapsed. Review of convictions shall be subject to the requirements of § 54.1-204 of the Code of Virginia. Any plea of nolo contendere shall be considered a conviction for the purpose of this section.

The notice must be made to the board in writing within 30 days of the action. A copy of the order or other supporting documentation must accompany the notice. The record of conviction, finding, or case decision shall be considered prima facie evidence of a conviction or finding of guilt.

VA.R. Doc. No. R22-6970; Filed September 27, 2021, 6:15 p.m.

BOARD FOR CONTRACTORS

Final Regulation

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

Titles of Regulations: **18VAC50-22. Board for Contractors Regulations (amending 18VAC50-22-40, 18VAC50-22-50, 18VAC50-22-60, 18VAC50-22-62, 18VAC50-22-260).**

18VAC50-30. Individual License and Certification Regulations (amending 18VAC50-30-30, 18VAC50-30-190).

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

Effective Date: December 1, 2021.

Agency Contact: Eric L. Olson, Executive Director, Board for Contractors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-2785, FAX (866) 430-1033, or email contractors@dpor.virginia.gov.

Summary:

Pursuant to Chapters 500 and 501 of the 2021 Acts of Assembly, Special Session I, the amendments conform regulations concerning qualifications for licensure or certification and standards of conduct to the requirements of § 19.2-389.3 of the Code of Virginia and remove requirements for reporting by applicants or licensees of misdemeanor marijuana convictions.

18VAC50-22-40. Requirements for a Class C license.

A. A firm applying for a Class C license must meet the requirements of this section.

B. For every classification or specialty in which the firm seeks to be licensed, the firm shall name a qualified individual who meets the following requirements:

1. Is at least 18 years old;

2. Has a minimum of two years of experience in the classification or specialty for which he is the qualifier;

3. Is a full-time employee of the firm as defined in this chapter or is a member of the responsible management of the firm; and

4. a. Has obtained the appropriate certification for the following specialties:

(1) Blast/explosive contracting (Department of Fire Programs explosive use certification);

(2) Fire sprinkler (NICET Sprinkler III certification); and

(3) Radon mitigation (EPA or DEQ accepted radon certification).

b. Has obtained, pursuant to the Individual Licensing and Certification Regulations, a master license for Plumbing, HVAC, Electrical, Gas Fitting, Natural Gas Fitting Provider, and Liquefied Petroleum Gas Contracting.

c. Has completed, for the drug lab remediation specialty, a remediation course approved by the board and a board-approved examination.

d. Has obtained, pursuant to the Individual Licensing and Certification Regulations, certification as an Elevator Mechanic for Elevator Escalator Contracting and certification as a Water Well Systems Provider for Water Well/Pump Contracting.

e. Has been approved by the Board for Contractors for the miscellaneous specialty (MSC).

f. Has completed a board-approved examination for all other classifications and specialties that do not require other certification or licensure.

C. The firm shall provide information for the past five years prior to application on any outstanding, past-due debts and judgments; outstanding tax obligations; defaults on bonds; or pending or past bankruptcies. The firm and all members of the responsible management of the firm shall submit information on any past-due debts and judgments or defaults on bonds directly related to the practice of contracting as defined in Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia.

D. The firm and all members of the responsible management of the firm shall disclose at the time of application any current or previous contractor licenses held in Virginia or in other jurisdictions and any disciplinary actions taken on these licenses. This includes any monetary penalties, fines, suspensions, revocations, surrender of a license in connection with a disciplinary action, or voluntary termination of a license in Virginia or in any other jurisdiction.

E. In accordance with § 54.1-204 of the Code of Virginia, all applicants shall disclose the following information about the firm, all members of the responsible management, and the qualified individual ~~or individuals~~ for the firm:

1. All non-marijuana misdemeanor convictions within three years of the date of application; and

2. All felony convictions during their lifetimes.

Any plea of nolo contendere shall be considered a conviction for purposes of this subsection. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt. The board, in its discretion, may deny licensure to any applicant in accordance with § 54.1-204 of the Code of Virginia.

F. A member of responsible management shall have successfully completed a board-approved basic business course.

18VAC50-22-50. Requirements for a Class B license.

A. A firm applying for a Class B license must meet the requirements of this section.

B. A firm shall name a designated employee who meets the following requirements:

1. Is at least 18 years old;

2. Is a full-time employee of the firm as defined in this chapter, or is a member of responsible management as defined in this chapter;

3. Has passed a board-approved examination as required by § 54.1-1108 of the Code of Virginia or has been exempted from the exam requirement in accordance with § 54.1-1108.1 of the Code of Virginia; and

4. Has followed all rules established by the board or by the testing service acting on behalf of the board with regard to conduct at the examination. Such rules shall include any written instructions communicated prior to the examination date and any oral or written instructions given at the site on the date of the exam.

C. For every classification or specialty in which the firm seeks to be licensed, the firm shall name a qualified individual who meets the following requirements:

1. Is at least 18 years old;

2. Has a minimum of three years of experience in the classification or specialty for which he is the qualifier;

3. Is a full-time employee of the firm as defined in this chapter or is a member of the responsible management of the firm;

4. a. Has obtained the appropriate certification for the following specialties:

(1) Blast/explosive contracting (Department of Fire Programs explosive use certification);

(2) Fire sprinkler (NICET Sprinkler III certification); and

(3) Radon mitigation (EPA or DEQ accepted radon certification).

b. Has obtained, pursuant to the Individual Licensing and Certification Regulations, a master license for Plumbing, HVAC, Electrical, Gas Fitting, Natural Gas Fitting Provider, and Liquefied Petroleum Gas Contracting.

c. Has completed, for the drug lab remediation specialty, a remediation course approved by the board and a board-approved examination.

d. Has obtained, pursuant to the Individual Licensing and Certification Regulations, certification as an Elevator Mechanic for Elevator Escalator Contracting and certification as a Water Well Systems Provider for Water Well/Pump Contracting.

e. Has been approved by the Board for Contractors for the miscellaneous specialty (MSC).

f. Has completed a board-approved examination for all other classifications and specialties that do not require other certification or licensure.

D. Each firm shall submit information on its financial position. Excluding any property owned as tenants by the entirety, the firm shall state a net worth or equity of $15,000 or more.

E. Each firm shall provide information for the five years prior to application on any outstanding, past-due debts and judgments; outstanding tax obligations; defaults on bonds; or pending or past bankruptcies. The firm, its designated employee, and all members of the responsible management of the firm shall submit information on any past-due debts and judgments or defaults on bonds directly related to the practice of contracting as defined in Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia.

F. The firm, the designated employee, and all members of the responsible management of the firm shall disclose at the time of application any current or previous substantial identities of interest with any contractor licenses issued in Virginia or in other jurisdictions and any disciplinary actions taken on these licenses. This includes any monetary penalties, fines, suspension, revocation, or surrender of a license in connection with a disciplinary action. The board, in its discretion, may deny licensure to any applicant when any of the parties listed in this subsection have had a substantial identity of interest (as deemed in § 54.1-1110 of the Code of Virginia) with any firm that has had a license suspended, revoked, voluntarily terminated or surrendered in connection with a disciplinary action in Virginia or any other jurisdiction.

G. In accordance with § 54.1-204 of the Code of Virginia, all applicants shall disclose the following information about the firm, designated employee, all members of the responsible management, and the qualified individual ~~or individuals~~ for the firm:

1. All non-marijuana misdemeanor convictions within three years of the date of application; and

2. All felony convictions during their lifetimes.

Any plea of nolo contendere shall be considered a conviction for purposes of this subsection. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt. The board, in its discretion, may deny licensure to any applicant in accordance with § 54.1-204 of the Code of Virginia.

H. The designated employee or a member of responsible management shall have successfully completed a board-approved basic business course.

18VAC50-22-60. Requirements for a Class A license.

A. A firm applying for a Class A license shall meet all of the requirements of this section.

B. A firm shall name a designated employee who meets the following requirements:

1. Is at least 18 years old;

2. Is a full-time employee of the firm as defined in this chapter or is a member of the responsible management of the firm as defined in this chapter;

3. Has passed a board-approved examination as required by § 54.1-1106 of the Code of Virginia or has been exempted from the exam requirement in accordance with § 54.1-1108.1 of the Code of Virginia; and

4. Has followed all rules established by the board or by the testing service acting on behalf of the board with regard to conduct at the examination. Such rules shall include any written instructions communicated prior to the examination date and any oral or written instructions given at the site on the day of the exam.

C. For every classification or specialty in which the firm seeks to be licensed, the firm shall name a qualified individual who meets the following requirements:

1. Is at least 18 years old;

2. Has a minimum of five years of experience in the classification or specialty for which he is the qualifier;

3. Is a full-time employee of the firm as defined in this chapter or is a member of the firm as defined in this chapter or is a member of the responsible management of the firm;

4. a. Has obtained the appropriate certification for the following specialties:

(1) Blast/explosive contracting (DHCD explosive use certification);

(2) Fire sprinkler (NICET Sprinkler III certification); and

(3) Radon mitigation (EPA or DEQ accepted radon certification).

b. Has obtained, pursuant to the Individual Licensing and Certification Regulations, a master license for Plumbing, HVAC, Electrical, Gas Fitting, Natural Gas Fitting Provider, and Liquefied Petroleum Gas Contracting.

c. Has completed, for the drug lab remediation specialty, a remediation course approved by the board and a board-approved examination.

d. Has obtained, pursuant to the Individual Licensing and Certification Regulations, certification as an Elevator Mechanic for Elevator Escalator Contracting and certification as a Water Well Systems Provider for Water Well/Pump Contracting.

e. Has been approved by the Board for Contractors for the miscellaneous specialty (MSC).

f. Has completed a board-approved examination for all other classifications and specialties that do not require other certification or licensure.

D. Each firm shall submit information on its financial position. Excluding any property owned as tenants by the entirety, the firm shall state a net worth or equity of $45,000.

E. The firm shall provide information for the five years prior to application on any outstanding, past-due debts and judgments; outstanding tax obligations; defaults on bonds; or pending or past bankruptcies. The firm, its designated employee, and all members of the responsible management of the firm shall submit information on any past-due debts and judgments or defaults on bonds directly related to the practice of contracting as defined in Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia.

F. The firm, the designated employee, and all members of the responsible management of the firm shall disclose at the time of application any current or previous substantial identities of interest with any contractor licenses issued in Virginia or in other jurisdictions and any disciplinary actions taken on these licenses. This includes any monetary penalties, fines, suspensions, revocations, or surrender of a license in connection with a disciplinary action. The board, in its discretion, may deny licensure to any applicant when any of the parties listed in this subsection have had a substantial identity of interest (as deemed in § 54.1-1110 of the Code of Virginia) with any firm that has had a license suspended, revoked, voluntarily terminated, or surrendered in connection with a disciplinary action in Virginia or in any other jurisdiction.

G. In accordance with § 54.1-204 of the Code of Virginia, all applicants shall disclose the following information about the firm, all members of the responsible management, the designated employee, and the qualified individual ~~or individuals~~ for the firm:

1. All non-marijuana misdemeanor convictions within three years of the date of application; and

2. All felony convictions during their lifetimes.

Any plea of nolo contendere shall be considered a conviction for purposes of this subsection. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt. The board, in its discretion, may deny licensure to any applicant in accordance with § 54.1-204 of the Code of Virginia.

H. The designated employee or a member of responsible management shall have successfully completed a board-approved basic business course.

18VAC50-22-62. Requirements for residential building energy analyst firm.

A. An applicant for a residential building energy analyst firm license must meet the requirements of this section.

B. The firm shall name a qualified individual who meets all of the following requirements:

1. Is at least 18 years old;

2. Holds a current individual residential building energy analyst license issued by the board; and

3. Is a full-time employee of the firm as defined in this chapter or is a member of the responsible management of the firm.

C. The applicant shall provide documentation, acceptable to the board, that the firm currently carries a minimum of $500,000 of general liability insurance from a company authorized to provide such insurance in the Commonwealth of Virginia.

D. The firm, the qualified individual, and all members of the responsible management of the firm shall disclose at the time of application (i) any current or previous energy analyst or home inspection licenses held in Virginia or in other jurisdictions and (ii) any disciplinary actions taken on these licenses. This includes~~, but is not limited to,~~ any monetary penalties, fines, suspensions, revocations, surrender of a license in connection with a disciplinary action, or voluntary termination of a license in Virginia or in any other jurisdiction.

E. The firm shall provide information for the past five years prior to application on any outstanding past-due debts,

outstanding judgments, outstanding tax obligations, defaults on bonds, or pending or past bankruptcies. The firm, its qualified individual, and all members of the responsible management of the firm shall submit information on any past-due debts and judgments or defaults on bonds directly related to the practice of residential building energy analysis as defined in § 54.1-1144 of the Code of Virginia.

F. In accordance with § 54.1-204 of the Code of Virginia, all applicants shall disclose the following information about the firm, all members of the responsible management, and the qualified individual for the firm:

1. All non-marijuana misdemeanor convictions within three years of the date of application; and

2. All felony convictions during their lifetimes.

Any plea of nolo contendere shall be considered a conviction for purposes of this subsection. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt. The board, in its discretion, may deny licensure to any applicant in accordance with § 54.1-204 of the Code of Virginia.

18VAC50-22-260. Filing of charges; prohibited acts.

A. All complaints against contractors and residential building energy analyst firms may be filed with the Department of Professional and Occupational Regulation at any time during business hours, pursuant to § 54.1-1114 of the Code of Virginia.

B. The following acts are prohibited acts:

1. Failure in any material way to comply with provisions of Chapter 1 (§ 54.1-100 et seq.) or Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia or the regulations of the board.

2. Furnishing substantially inaccurate or incomplete information to the board in obtaining, renewing, reinstating, or maintaining a license.

3. Failure of the responsible management, designated employee, or qualified individual to report to the board, in writing, the suspension or revocation of a contractor license by another state or conviction in a court of competent jurisdiction of a building code violation.

4. Publishing or causing to be published any advertisement relating to contracting that contains an assertion, representation, or statement of fact that is false, deceptive, or misleading.

5. Negligence or incompetence in the practice of contracting or residential building energy analyses.

6. Misconduct in the practice of contracting or residential building energy analyses.

7. A finding of improper or dishonest conduct in the practice of contracting by a court of competent jurisdiction or by the board.

8. Failure of all those who engage in residential contracting, excluding subcontractors to the contracting parties and those who engage in routine maintenance or service contracts, to make use of a legible written contract clearly specifying the terms and conditions of the work to be performed. For the purposes of this chapter, residential contracting means construction, removal, repair, or improvements to single-family or multiple-family residential buildings, including accessory-use structures as defined in § 54.1-1100 of the Code of Virginia. Prior to commencement of work or acceptance of payments, the contract shall be signed by both the consumer and the licensee or his agent.

9. Failure of those engaged in residential contracting as defined in this chapter to comply with the terms of a written contract that contains the following minimum requirements:

a. When work is to begin and the estimated completion date;

b. A statement of the total cost of the contract and the amounts and schedule for progress payments including a specific statement on the amount of the down payment;

c. A listing of specified materials and work to be performed, which is specifically requested by the consumer;

d. A "plain-language" exculpatory clause concerning events beyond the control of the contractor and a statement explaining that delays caused by such events do not constitute abandonment and are not included in calculating timeframes for payment or performance;

e. A statement of assurance that the contractor will comply with all local requirements for building permits, inspections, and zoning;

f. Disclosure of the cancellation rights of the parties;

g. For contracts resulting from a door-to-door solicitation, a signed acknowledgment by the consumer that he has been provided with and read the Department of Professional and Occupational Regulation statement of protection available to him through the Board for Contractors;

h. Contractor's name, address, license number, class of license, and classifications or specialty services;

i. A statement providing that any modification to the contract, which changes the cost, materials, work to be performed, or estimated completion date, must be in writing and signed by all parties; and

j. Effective with all new contracts entered into after July 1, 2015, a statement notifying consumers of the existence of the Virginia Contractor Transaction Recovery Fund that includes information on how to contact the board for claim information.

10. Failure to make prompt delivery to the consumer before commencement of work of a fully executed copy of the contract as described in subdivisions 8 and 9 of this subsection for construction or contracting work.

11. Failure of the contractor to maintain for a period of five years from the date of contract a complete and legible copy of all documents relating to that contract, including the contract and any addenda or change orders.

12. Refusing or failing, upon request, to produce to the board, or any of its agents, any document, book, record, or copy of it in the licensee's possession concerning a transaction covered by this chapter or for which the licensee is required to maintain records.

13. Failing to respond to an agent of the board or providing false, misleading, or incomplete information to an investigator seeking information in the investigation of a complaint filed with the board against the contractor. Failing or refusing to claim certified mail sent to the licensee's address of record shall constitute a violation of this regulation.

14. Abandonment defined as the unjustified cessation of work under the contract for a period of 30 days or more.

15. The intentional and unjustified failure to complete work contracted for or to comply with the terms in the contract.

16. The retention or misapplication of funds paid, for which work is either not performed or performed only in part.

17. Making any misrepresentation or making a false promise that might influence, persuade, or induce.

18. Assisting another to violate any provision of Chapter 1 (§ 54.1-100 et seq.) or Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia, or this chapter; or combining or conspiring with or acting as agent, partner, or associate for another.

19. Allowing a firm's license to be used by another.

20. Acting as or being an ostensible licensee for undisclosed persons who do or will control or direct, directly or indirectly, the operations of the licensee's business.

21. Action by the firm, responsible management as defined in this chapter, designated employee, or qualified individual to offer, give, or promise anything of value or benefit to any federal, state, or local employee for the purpose of influencing that employee to circumvent, in the performance of his duties, any federal, state, or local law, regulation, or ordinance governing the construction industry.

22. Where the firm, responsible management as defined in this chapter, designated employee, or qualified individual has been convicted or found guilty, after initial licensure, regardless of adjudication, in any jurisdiction, of any felony or ~~of any~~ non-marijuana misdemeanor, there being no appeal pending therefrom or the time of appeal having elapsed. Any plea of guilty or nolo contendere shall be considered a conviction for the purposes of this subdivision. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt.

23. Failure to inform the board in writing, within 30 days, that the firm, a member of responsible management as defined in this chapter, its designated employee, or its qualified individual has pleaded guilty or nolo contendere or was convicted and found guilty of any felony or of a Class 1 misdemeanor or any non-marijuana misdemeanor conviction for activities carried out while engaged in the practice of contracting.

24. Having been disciplined by any county, city, town, or any state or federal governing body including action by the Virginia Department of Health, which action shall be reviewed by the board before it takes any disciplinary action of its own.

25. Failure to abate a violation of the Virginia Uniform Statewide Building Code~~, as amended~~ (13VAC5-63).

26. Failure of a contractor to comply with the notification requirements of the Virginia Underground Utility Damage Prevention Act, Chapter 10.3 (§ 56-265.14 et seq.) of Title 56 of the Code of Virginia (Miss Utility).

27. Practicing in a classification, specialty service, or class of license for which the contractor is not licensed.

28. Failure to satisfy any judgments.

29. Contracting with an unlicensed or improperly licensed contractor or subcontractor in the delivery of contracting services.

30. Failure to honor the terms and conditions of a warranty.

31. Failure to obtain written change orders, which are signed by both the consumer and the licensee or his agent, to an already existing contract.

32. Failure to ensure that supervision, as defined in this chapter, is provided to all helpers and laborers assisting licensed tradesman.

33. Failure to obtain a building permit or applicable inspection, where required.

34. Failure of a residential building energy analyst firm to ensure that residential building energy analyses conducted by the firm are consistent with the requirements set forth by the board, the U.S. Environmental Protection Agency, the U.S. Department of Energy, or the Energy Star Program.

35. Failure of a residential building energy analyst firm to maintain the general liability insurance required in 18VAC50-22-62 C at any time while licensed by the board.

36. Failure of a contractor holding the drug lab remediation specialty to ensure that remediation work conducted by the firm or properly licensed subcontractors is consistent with the guidelines set forth by the U.S. Environmental Protection Agency, Virginia Department of Environmental Quality, Virginia Department of Health, or Virginia Department of Forensic Science.

37. Failure of a contractor to appropriately classify all workers as employees or as independent contractors as provided by law.

18VAC50-30-30. General qualifications for licensure or certification.

Every applicant to the Board for Contractors for licensure or certification shall meet the requirements and have the qualifications provided in this section.

1. The applicant shall be at least 18 years old.

2. Unless otherwise exempted, the applicant shall meet the current educational requirements by passing all required courses prior to the time the applicant sits for the examination and applies for licensure or certification.

3. Unless exempted, the applicant shall have passed the applicable examination provided by the board or by a testing organization acting on behalf of the board.

4. The applicant shall meet the experience requirements as set forth in 18VAC50-30-40.

5. In those instances where the applicant is required to take the license or certification examination, the applicant shall follow all rules established by the board with regard to conduct at the examination. Such rules shall include any written instructions communicated prior to the examination date and any instructions communicated at the site, either written or oral, on the date of the examination. Failure to comply with all rules established by the board and the testing organization with regard to conduct at the examination shall be grounds for denial of application.

6. The applicant shall disclose ~~his~~ the applicant's physical home address; a post office box alone is not acceptable.

7. Each nonresident applicant for a license or certification card shall file and maintain with the department an irrevocable consent for the department to serve as service agent for all actions filed in any court in this Commonwealth. In those instances where service is required, the director of the department will mail the court document to the individual at the address of record.

8. The applicant shall sign, as part of the application, a statement certifying that the applicant has read and understands Article 3 (§ 54.1-1128 et seq.) of Chapter 11 of Title 54.1 of the Code of Virginia and this chapter.

9. The board may make further inquiries and investigations with respect to the qualifications of the applicant or require a personal interview with the applicant.

10. In accordance with § 54.1-204 of the Code of Virginia, each applicant shall disclose a conviction, in any jurisdiction, of any ~~misdemeanor or~~ felony or non-marijuana misdemeanor. Any plea of nolo contendere shall be considered a conviction for the purpose of this subdivision. The record of conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt. The board, at its discretion, may deny licensure or certification to any applicant in accordance with § 54.1-204 of the Code of Virginia.

11. The applicant shall report any suspensions, revocations, or surrendering of a certificate or license in connection with a disciplinary action or which has been the subject of discipline in any jurisdiction prior to applying for licensure or certification in Virginia. The board, at its discretion, may deny licensure or certification to any applicant based on prior suspensions, revocations, or surrender of certifications or licenses based on disciplinary action by any jurisdiction.

18VAC50-30-190. Prohibited acts.

Any of the following are cause for disciplinary action:

1. Failure in any material way to comply with provisions of Chapter 1 (§ 54.1-100 et seq.) or Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia or the regulations of the board;

2. Furnishing substantially inaccurate or incomplete information to the board in obtaining, renewing, reinstating, or maintaining a license or certification card;

3. Where the regulant has failed to report to the board, in writing, the suspension or revocation of a tradesman, liquefied petroleum gas fitter or natural gas fitter provider license, certificate or card, or backflow prevention device worker, water well systems provider, elevator mechanic, or accessibility mechanic certification card, by another state or a conviction in a court of competent jurisdiction of a building code violation;

4. Negligence or incompetence in the practice of a tradesman, liquefied petroleum gas fitter, natural gas fitter provider, backflow prevention device worker, elevator mechanic, accessibility mechanic, water well systems provider, or automatic fire sprinkler inspector;

5. Misconduct in the practice of a tradesman, liquefied petroleum gas fitter, natural gas fitter provider, backflow prevention device worker, elevator mechanic, accessibility mechanic, water well systems provider, or automatic fire sprinkler inspector;

6. A finding of improper or dishonest conduct in the practice of a tradesman, liquefied petroleum gas fitter, natural gas

fitter provider, backflow prevention device worker, elevator mechanic, accessibility mechanic, or water well systems provider by a court of competent jurisdiction;

7. For licensed tradesmen, liquefied petroleum gas fitters or natural gas fitter providers performing jobs under $1,000, or backflow prevention device workers, elevator mechanics, accessibility mechanics, or water well systems providers performing jobs of any amount, abandonment, the intentional and unjustified failure to complete work contracted for, or the retention or misapplication of funds paid, for which work is either not performed or performed only in part (unjustified cessation of work under the contract for a period of 30 days or more shall be considered evidence of abandonment);

8. Making any misrepresentation or making a false promise of a character likely to influence, persuade, or induce;

9. Aiding or abetting an unlicensed contractor to violate any provision of Chapter 1 or Chapter 11 of Title 54.1 of the Code of Virginia or these regulations or combining or conspiring with or acting as agent, partner, or associate for an unlicensed contractor; or allowing one's license or certification to be used by an unlicensed or uncertified individual;

10. Where the regulant has offered, given, or promised anything of value or benefit to any federal, state, or local government employee for the purpose of influencing that employee to circumvent, in the performance of his duties, any federal, state, or local law, regulation, or ordinance governing the construction industry;

11. Where the regulant has been convicted or found guilty, after initial licensure or certification, regardless of adjudication, in any jurisdiction of any felony or of a misdemeanor involving lying, cheating or stealing, sexual offense, non-marijuana drug distribution, physical injury, or relating to the practice of the profession, there being no appeal pending therefrom or the time of appeal having elapsed. Any pleas of guilty or nolo contendere shall be considered a conviction for the purposes of this subdivision. The record of a conviction certified or authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such guilt;

12. Having failed to inform the board in writing, within 30 days, that the regulant has pleaded guilty or nolo contendere or was convicted and found guilty of any felony or a misdemeanor involving lying, cheating, stealing, sexual offense, non-marijuana drug distribution, physical injury, or relating to the practice of the profession;

13. Having been disciplined by any county, city, town, or any state or federal governing body for actions relating to the practice of any trade, backflow prevention device work, elevator or accessibility work, or water well systems provider work, which action shall be reviewed by the board before it takes any disciplinary action of its own;

14. Failure to comply with the Virginia Uniform Statewide Building Code (13VAC5-63);

15. Practicing in a classification or specialty service for which the regulant is not licensed or certified;

16. Failure to obtain any document required by the Virginia Department of Health for the drilling, installation, maintenance, repair, construction, or removal of water wells, water well systems, water well pumps, or other water well equipment;

17. Failure to obtain a building permit or applicable inspection where required;

18. Failure to perform a residential building energy analysis consistent with the requirements set forth by the board, the U.S. Environmental Protection Agency, the U.S. Department of Energy, or the Energy Star Program;

19. Failure of a residential building energy analyst to maintain the general liability insurance required in 18VAC50-30-40 I 4; and

20. Failure of a certified automatic fire sprinkler inspector to continually maintain the certification required in § 54.1-1147 of the Code of Virginia.

VA.R. Doc. No. R22-6957; Filed September 27, 2021, 11:43 a.m.

BOARD OF PHARMACY

Action Withdrawn

Title of Regulation: **18VAC110-60. Regulations Governing Pharmaceutical Processors (amending 18VAC110-60-10, 18VAC110-60-20, 18VAC110-60-40 through 18VAC110-60-90, 18VAC110-60-130, 18VAC110-60-160, 18VAC110-60-170, 18VAC110-60-190 through 18VAC110-60-230, 18VAC110-60-300, 18VAC110-60-310, 18VAC110-60-320; adding 18VAC110-60-251).**

Statutory Authority: §§ 54.1-2400 and 54.13442.6 of the Code of Virginia.

The Board of Pharmacy has WITHDRAWN the regulatory action for **18VAC110-60. Regulations Governing Pharmaceutical Processors,** which was published as an emergency regulation in 36:10 VA.R. 1218-1231 January 6, 2020, and as a proposed regulation in 37:14 VA.R. 2087-2100 March 1, 2021. This action is being withdrawn because the amendments were incorporated into a regulatory action that was published in 37:25 VA.R. 3883-3909 August 2, 2021, and became effective on September 1, 2020. This action is no longer necessary.

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

VA.R. Doc. No. R20-6129; Filed September 27, 2021, 9:50 a.m.

Action Withdrawn

Title of Regulation: **18VAC110-60. Regulations Governing Pharmaceutical Processors (amending 18VAC110-60-280).**

Statutory Authority: §§ 54.1-2400 and 54.1-3442.6 of the Code of Virginia.

The Board of Pharmacy has WITHDRAWN the regulatory action for **18VAC110-60. Regulations Governing Pharmaceutical Processors,** which was published as an emergency regulation in 37:1 VA.R. 103 August 31, 2020, and as a proposed regulation in 37:20 VA.R. 3302-3303 May 24, 2021. This action is being withdrawn because the amendments were incorporated into a regulatory action that was published in 37:25 VA.R. 3883-3909 August 2, 2021, and became effective on September 1, 2020. This action is no longer necessary.

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

VA.R. Doc. No. R21-6250; Filed September 27, 2021, 9:49 a.m.

Action Withdrawn

Title of Regulation: **18VAC110-60. Regulations Governing Pharmaceutical Processors (amending 18VAC110-60-10, 18VAC110-60-20, 18VAC110-60-40, 18VAC110-60-50, 18VAC110-60-60, 18VAC110-60-90 through 18VAC110-60-270, 18VAC110-60-300 through 18VAC110-60-330; adding 18VAC110-60-135, 18VAC110-60-136, 18VAC110-60-251, 18VAC110-60-321).**

Statutory Authority: §§ 54.1-2400 and 54.1-3442.6 of the Code of Virginia.

The Board of Pharmacy has WITHDRAWN the regulatory action for **18VAC110-60. Regulations Governing Pharmaceutical Processors,** which was published as an emergency regulation in 37:14 VA.R. 2100-2118 March 1, 2021. The Notice of Intended Regulatory Action was published in 37:14 VA.R. 1456 March 1, 2021. This action is being withdrawn because the amendments were incorporated into a regulatory action that was published in 37:25 VA.R. 3883-3909 August 2, 2021, and became effective on September 1, 2020. This action is no longer necessary.

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

VA.R. Doc. No. R21-6538; Filed September 27, 2021, 9:50 a.m.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

Final Regulation

REGISTRAR'S NOTICE: The Department of Professional and Occupational Regulation 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 department will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **18VAC120-30. Regulations Governing Polygraph Examiners (amending 18VAC120-30-40, 18VAC120-30-240).**

Statutory Authority: § 54.1-1802.1 of the Code of Virginia.

Effective Date: December 1, 2021.

Agency Contact: Eric L. Olson, Board Executive Director, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-7226, FAX (866) 430-1033, or email polygraph@dpor.virginia.gov.

Summary:

Pursuant to Chapters 500 and 501 of the 2021 Acts of Assembly, Special Session I, the amendments conform regulations concerning qualifications for licensure and standards of conduct to the requirements of § 19.2-389.3 of the Code of Virginia and remove requirements for reporting by applicants or licensees of misdemeanor marijuana convictions.

18VAC120-30-40. Basic qualifications for licensure and registration.

A. Every applicant to the board for a license shall provide information on his application establishing that:

1. The applicant is at least 18 years old.

2. The applicant is in good standing as a licensed polygraph examiner in every jurisdiction where licensed. The applicant must disclose if he has had a license as a polygraph examiner which was suspended, revoked, or surrendered in connection with a disciplinary action or which has been the subject of discipline in any jurisdiction prior to applying for licensure in Virginia. At the time of application for licensure, the applicant must also disclose any disciplinary action taken in another jurisdiction in connection with the applicant's practice as a polygraph examiner and whether he has been previously licensed in Virginia as a polygraph examiner.

3. The applicant is fit and suited to engage in the profession of polygraphy. The applicant must disclose if he has been convicted in any jurisdiction of a felony or misdemeanor involving lying, cheating, stealing, sexual offense, non-

marijuana drug distribution, physical injury, or relating to the practice of the profession. Any plea of nolo contendere shall be considered a conviction for purposes of this subdivision. The record of a conviction authenticated in such form as to be admissible in the evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such conviction.

4. The applicant has disclosed ~~his~~ the applicant's physical address. A post office box is not acceptable.

5. The nonresident applicant for a license has filed and maintained with the department an irrevocable consent for the department to serve as a service agent for all actions filed in any court in this Commonwealth.

6. The applicant has signed, as part of the application, a statement certifying that ~~he~~ the applicant has read and understands the Virginia polygraph examiner's license law and regulations.

7. The applicant has submitted an application, provided by the department, which shall include criminal history record information from the Central Criminal Records Exchange, with a report date within 30 days of the date the application is received by the department.

B. The department may (i) make further inquiries and investigations with respect to the qualifications of the applicant, (ii) require a personal interview with the applicant, or (iii) both.

C. The applicant shall pass all parts of the polygraph examiners licensing examination approved by the department within one year from examination approval in order to be eligible for a polygraph examiners license.

18VAC120-30-240. Prohibited acts.

The department may fine, deny, suspend, or revoke any license or registration, or deny or withdraw school approval upon a finding that the applicant, licensee, registrant, or school:

1. Has presented false or fraudulent information when applying for any license or registration, renewal of license or registration, or approval;

2. Has violated, aided, or abetted others to violate Chapters 1 (§ 54.1-100 et seq.) through 3 (§ 54.1-300 et seq.) of Title 54.1 or §§ 54.1-1800 through 54.1-1806 of the Code of Virginia, or of any other statute applicable to the practice of the profession herein regulated, or of any provisions of this chapter;

3. Has been convicted or found guilty, regardless of the manner of adjudication, in any jurisdiction of the United States of any felony or non-marijuana misdemeanor ~~or felony~~. Review of convictions shall be subject to the requirements of § 54.1-204 of the Code of Virginia. Any pleas of nolo contendere shall be considered a conviction for the purposes of this subsection. The record of a conviction authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where the conviction occurred shall be forwarded to the board within 30 days of entry and shall be admissible as prima facie evidence of such conviction;

4. Has made, in the course of soliciting for or advertising a business or service licensed under § 54.1-1802 of the Code of Virginia, a false, deceptive, or misleading statement orally, in writing, or in printed form;

5. Has allowed one's license or registration to be used by anyone else;

6. Has failed, within a reasonable period of time 21 days, to provide any records or other information requested or demanded by the department;

7. Has displayed professional incompetence or negligence in the performance of polygraphy;

8. Has violated any provision of 18VAC120-30-220;

9. Has failed to maintain for a period of one year from the date of each administered polygraph examination a complete and legible copy of all documents relating to the polygraph examination including~~, but not limited to,~~ examination questions, results, conclusions drawn, and written or electronic reports;

10. Has failed to inform the board in writing within 30 days that the regulant, school's owner, or instructor has pleaded guilty or nolo contendere or was convicted and found guilty of any felony or of a Class 1 misdemeanor or any non-marijuana misdemeanor conviction for activities carried out while engaged in the practice of polygraphy;

11. Has refused or failed, upon request, to produce to the board, or any of its agents, any document, book, or record, or copy of it in the regulant's or school's owner's possession concerning all records for which the regulant, school's owner, or instructor is required to maintain; or

12. Has failed to respond to an investigator or provides false, misleading, or incomplete information to an investigator seeking information in the investigation of a complaint filed with the board against the regulant, school's owner, or instructor.

VA.R. Doc. No. R22-6978; Filed September 29, 2021, 9:11 a.m.

REAL ESTATE BOARD

Final Regulation

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

Title of Regulation: **18VAC135-50. Fair Housing Regulations (amending 18VAC135-50-10, 18VAC135-50-50, 18VAC135-50-80 through 18VAC135-50-160 18VAC135-50-200, 18VAC135-50-220, 18VAC135-50-270, 18VAC135-50-290).**

Statutory Authority: § 36-96.8 of the Code of Virginia.

Effective Date: December 1, 2021.

Agency Contact: Christine Martine, Executive Director, Real Estate Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8552, FAX (804) 527-4299, or email reboard@dpor.virginia.gov.

Summary:

In response to changes made by Chapters 17 and 477 and 478 of the 2021 Acts of Assembly, Special Session I, to the Virginia Fair Housing Law (§ 36-96.1 et seq. of the Code of Virginia), the amendments change language referencing a protected class and clarify a reasonable accommodation.

18VAC135-50-10. Definitions.

The definitions provided in the Virginia Fair Housing Law, as they may be supplemented in this section, shall apply throughout this chapter.

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

"Authorized representative" means (i) an attorney licensed to practice law in the Commonwealth, or (ii) a law student appearing in accordance with the third-year student practice rule, or (iii) a non-lawyer under the supervision of an attorney and acting pursuant to Part 6, § 1, Rule 1 (UPR 1-101(A)(1)) of the Rules of the Supreme Court of Virginia, or (iv) a person who, without compensation, advises a complainant, respondent, or aggrieved person in connection with a complaint, a conciliation conference, or a proceeding before the board. When a complainant, respondent, or aggrieved person authorizes a person to represent him under ~~subdivision~~ clause (iv) of this definition, such authority shall be made to the board, either in writing or orally in an appearance before the board, and shall be accepted by the representative by sending a written acknowledgement to the board or by the representative's appearance before the board.

"Board" means the Real Estate Board or the Fair Housing Board, or both.

"Broker" or "agent" means any person authorized to perform an action on behalf of another person regarding any matter related to the sale or rental of dwellings, including offers, solicitations, or contracts and the administration of matters regarding such offers, solicitations, or contracts or any residential real estate-related transactions.

"Department" means the Virginia Department of Professional and Occupational Regulation.

"Fair housing administrator" means the individual employed and designated as such by the Director of the Department of Professional and Occupational Regulation.

"Fair housing law" means the Virginia Fair Housing Law, Chapter 5.1 (§ 36-96.1 et seq.) of Title 36 of the Code of Virginia, effective July 1, 1991.

"Gender identity" means the gender-related identity, appearance, or other gender-related characteristics of an individual, with or without regard to the individual's designated sex at birth.

"Person in the business of selling or renting dwellings" means any person who (i) within the preceding 12 months, has participated as principal in three or more transactions involving the sale or rental of any dwelling or any interest therein; (ii) within the preceding 12 months, has participated as agent, other than in the sale of his own personal residence, in providing sales or rental facilities or sales or rental services in two or more transactions involving the sale or rental of any dwelling or any interest therein; or (iii) is the owner of any dwelling designed or intended for occupancy by or occupied by, five or more families.

"Receipt of notice" means the day that personal service is completed by handing or delivering a copy of the document to an appropriate person or the date that a document is delivered by certified mail, or three days after the date of the proof of mailing of first class mail.

"Sexual orientation" means a person's actual or perceived heterosexuality, bisexuality, or homosexuality.

~~"Status as a veteran" means a person who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform service in the Army, Marines, Navy, Air Force, or Coast Guard; the Reserve components thereof, including the Army and Air National Guard and the Virginia Defense Force; the commissioned corps of the Public Health Service; and any other category of persons designated as members of the armed forces by the President in time of war or national emergency.~~

18VAC135-50-50. Scope.

It is the policy of Virginia to provide, within constitutional limitations, for fair housing throughout the Commonwealth and to impose obligations, rights, and remedies substantially equivalent to those granted under federal law. No person shall be subject to discriminatory housing practices in the sale, rental, advertising of dwellings, inspection of dwellings, or entry into a neighborhood, in the provision of brokerage services, financing, the availability of residential real estate-related transactions, or any other discriminatory conduct prohibited by the Virginia Fair Housing Law because of race, color, religion, sex, disability, elderliness, familial status, national origin, source of funds, sexual orientation, gender identity, or military status ~~as a veteran~~.

18VAC135-50-80. Unlawful refusal to sell or rent or to negotiate for the sale or rental.

Prohibited actions under this section include:

1. Failing to accept or consider a bona fide offer because of race, color, religion, sex, disability, familial status, elderliness, national origin, source of funds, sexual orientation, gender identity, or military status ~~as a veteran~~.

2. Refusing to sell or rent a dwelling to, or to negotiate for the sale or rental of a dwelling with any person because of race, color, religion, sex, disability, familial status, elderliness, national origin, source of funds, sexual orientation, gender identity, or military status ~~as a veteran~~.

3. Imposing different sales prices or rental charges for the sale or rental of a dwelling upon any person because of race, color, religion, sex, disability, familial status, elderliness, national origin, source of funds, sexual orientation, gender identity, or military status ~~as a veteran~~.

4. Using different qualification criteria or applications or sale or rental standards or procedures, such as income standards, application requirements, application fees, credit analysis, or sale or rental approval procedures or other requirements, because of race, color, religion, sex, disability, familial status, elderliness, national origin, source of funds, sexual orientation, gender identity, or military status ~~as a veteran~~.

5. Evicting tenants because of their race, color, religion, sex, disability, familial status, elderliness, national origin, source of funds, sexual orientation, gender identity, or military status ~~as a veteran~~ or because of the race, color, religion, sex, disability, familial status, elderliness, national origin, source of funds, sexual orientation, gender identity, or military status ~~as a veteran~~ of a tenant's guest.

18VAC135-50-90. Discrimination in terms, conditions and privileges and in services and facilities.

Examples of prohibited actions under this section include:

1. Using different provisions in leases or contracts of sale, such as those relating to rental charges, security deposits, and the terms of a lease and those relating to down payment and closing requirements, because of race, color, religion, sex, disability, familial status, elderliness, national origin, source of funds, sexual orientation, gender identity, or military status ~~as a veteran~~.

2. Failing or delaying maintenance or repairs of sale or rental dwellings because of race, color, religion, sex, disability, familial status, elderliness, national origin, source of funds, sexual orientation, gender identity, or military status ~~as a veteran~~.

3. Failing to process an offer for the sale or rental of a dwelling or to communicate an offer accurately because of race, color, religion, sex, disability, familial status, elderliness, national origin, source of funds, sexual orientation, gender identity, or military status ~~as a veteran~~.

4. Limiting the use of privileges, services, or facilities associated with a dwelling because of the race, color, religion, sex, disability, familial status, elderliness, national origin, source of funds, sexual orientation, gender identity, or military status ~~as a veteran~~ of an owner, tenant, or a person associated with ~~him~~ the owner or tenant.

5. Denying or limiting services or facilities in connection with the sale or rental of a dwelling because a person failed or refused to provide sexual favors.

18VAC135-50-100. Other prohibited sale and rental conduct.

A. It shall be unlawful, because of race, color, religion, sex, disability, familial status, elderliness, national origin, source of funds, sexual orientation, gender identity, or military status ~~as a veteran~~ to restrict or attempt to restrict the choices of a person by word or conduct in connection with seeking, negotiating for, buying, or renting a dwelling so as to perpetuate or tend to perpetuate segregated housing patterns or to discourage or obstruct choices in a community, neighborhood, or development.

Prohibited actions under this subsection, which are generally referred to as unlawful steering practices, include ~~but are not limited to~~:

1. Discouraging any person from inspecting, purchasing, or renting a dwelling because of race, color, religion, sex, disability, familial status, elderliness, national origin, source of funds, sexual orientation, gender identity, or military status ~~as a veteran~~ or because of the race, color, religion, sex, disability, familial status, elderliness, national origin, source of funds, sexual orientation, gender identity, or military status ~~as a veteran~~ of persons in a community, neighborhood, or development.

2. Discouraging the purchase or rental of a dwelling because of race, color, religion, sex, disability, familial status, elderliness, national origin, source of funds, sexual orientation, gender identity, or military status ~~as a veteran~~ by exaggerating drawbacks or failing to inform any person of desirable features of a dwelling or of a community, neighborhood, or development.

3. Communicating to any prospective purchaser that the purchaser would not be comfortable or compatible with existing residents of a community, neighborhood, or development because of race, color, religion, sex, disability, familial status, elderliness, national origin, source of funds, sexual orientation, gender identity, or military status ~~as a veteran~~.

4. Assigning any person to a particular section of a community, neighborhood, or development or to a particular floor or section of a building because of race, color, religion,

sex, disability, familial status, elderliness, national origin, source of funds, sexual orientation, gender identity, or military status ~~as a veteran~~.

B. It shall be unlawful because of race, color, religion, sex, disability, familial status, elderliness, national origin, source of funds, sexual orientation, gender identity, or military status ~~as a veteran~~ to engage in any conduct relating to the provision of housing or of services and facilities in connection therewith that otherwise makes unavailable or denies dwellings to persons.

Prohibited activities relating to dwellings sales and rental practices under this subsection include ~~but are not limited to~~:

1. Discharging or taking other adverse action against an employee, broker, or agent because he refused to participate in a discriminatory housing practice.

2. Employing codes or other devices to segregate or reject applicants, purchasers, or renters, refusing to take or to show listings of dwellings in certain areas because of race, color, religion, sex, disability, familial status, elderliness, national origin, source of funds, sexual orientation, gender identity, or military status ~~as a veteran~~ or refusing to deal with certain brokers or agents because they or one or more of their clients are of a particular race, color, religion, sex, disability, familial status, elderliness, national origin, source of funds, sexual orientation, gender identity, or military status ~~as a veteran~~.

3. Denying or delaying the processing of an application made by a purchaser or renter or refusing to approve such a person for occupancy in a cooperative or condominium dwelling because of race, color, religion, sex, disability, familial status, elderliness, national origin, source of funds, sexual orientation, gender identity, or military status ~~as a veteran~~.

4. Refusing to provide municipal services or property or hazard insurance for a dwelling or providing such services or insurance differently because of race, color, religion, sex, disability, familial status, elderliness, national origin, source of funds, sexual orientation, gender identity, or military status ~~as a veteran~~.

18VAC135-50-110. Discriminatory advertisements, statements and notices.

A. It shall be unlawful to make, print, or publish, or cause to be made, printed, or published any notice, statement, or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination because of race, color, religion, sex, disability, familial status, elderliness, national origin, source of funds, sexual orientation, gender identity, or military status ~~as a veteran~~ or an intention to make any such preference, limitation, or discrimination.

B. The prohibitions in this section shall apply to all written or oral notices or statements by a person engaged in the sale or rental of a dwelling. Written notices and statements include any applications, flyers, brochures, deeds, signs, banners, posters, billboards, or any documents used with respect to the sale or rental of a dwelling.

C. Discriminatory notices, statements, and advertisements include ~~but are not limited to~~:

1. Using words, phrases, photographs, illustrations, symbols, or forms that convey that dwellings are available or not available to a particular group of persons because of race, color, religion, sex, disability, familial status, elderliness, national origin, source of funds, sexual orientation, gender identity, or military status ~~as a veteran~~.

2. Expressing to agents, brokers, employees, prospective sellers, renters, or any other persons a preference for or limitation on any purchaser or renter because of race, color, religion, sex, disability, familial status, elderliness, national origin, source of funds, sexual orientation, gender identity, or military status ~~as a veteran~~ of such person.

3. Selecting media or locations for advertising the sale or rental of a dwelling that deny particular segments of the housing market information about housing opportunities because of race, color, religion, sex, disability, familial status, elderliness, national origin, source of funds, sexual orientation, gender identity, or military status ~~as a veteran~~.

4. Refusing to publish advertising for the sale or rental of dwellings or requiring different charges or terms for such advertising because of race, color, religion, sex, disability, familial status, elderliness, national origin, source of funds, sexual orientation, gender identity, or military status ~~as a veteran~~.

D. Publishers' notice. All publishers shall publish at the beginning of the real estate advertising section a notice such as that appearing in this subsection. The notice shall include a statement regarding the coverage of any Virginia and federal fair housing laws prohibiting discrimination in the sale, rental, or financing of dwellings:

"All real estate advertised herein is subject to the Virginia and federal fair housing laws, which make it illegal to advertise "any preference, limitation, or discrimination because of race, color, religion, sex, disability, familial status, national origin, elderliness, source of funds, sexual orientation, gender identity, or military status ~~as a veteran~~ or intention to make any such preference, limitation, or discrimination."

We will not knowingly accept any advertising for real estate which is in violation of the law. All persons are hereby informed that all dwellings advertised are available on an equal opportunity basis. (Table III, Appendix I to 24 CFR Part 109, Ch. 1 (4/1/2000 edition))."

E. Fair housing poster requirements.

1. Persons subject to § 36-96.3 of the Virginia Fair Housing Law shall post and maintain a HUD approved fair housing poster as follows:

a. With respect to a single-family dwelling (not being offered for sale or rental in conjunction with the sale or rental of other dwellings) offered for sale or rental through a real estate broker, agent, salesman, or person in the business of selling or renting dwellings, such person shall post and maintain a fair housing poster at any place of business where the dwelling is offered for sale or rental.

b. With respect to all other dwellings covered by the Virginia Fair Housing Law: (i) a fair housing poster shall be posted and maintained at any place of business where the dwelling is offered for sale or rental, and (ii) a fair housing poster shall be posted and maintained at the dwelling, except that with respect to a single-family dwelling being offered for sale or rental in conjunction with the sale or rental of other dwellings, the fair housing poster may be posted and maintained at the model dwellings or at a conspicuous location instead of at each of the individual dwellings.

c. With respect to those dwellings to which subdivision 1 b of this subsection applies, the fair housing poster must be posted at the beginning of construction and maintained throughout the period of construction and sale or rental.

2. The poster requirement does not apply to vacant land~~,~~ or any single-family dwelling, unless such dwelling (i) is being offered for sale or rental in conjunction with the sale or rental of other dwellings in which circumstances a fair housing poster shall be posted and maintained as specified in subdivision 1 b (ii) of this subsection, or (ii) is being offered for sale or rental through a real estate broker, agent, salesman, or person in the business of selling or renting dwellings in which circumstances a fair housing poster shall be posted and maintained as specified in subdivision 1 a of this subsection.

3. All persons subject to § 36-96.4 of the Virginia Fair Housing Law, Discrimination in Residential Real Estate-Related Transactions, shall post and maintain a fair housing poster at all their places of business which participate in the covered activities.

4. All persons subject to 18VAC135-50-140, Discrimination in the Provision of Brokerage Services, shall post and maintain a fair housing poster at all their places of business.

5. Location of posters. All fair housing posters shall be prominently displayed so as to be readily apparent to all persons seeking housing accommodations or seeking to engage in residential real estate-related transactions or brokerage services.

6. Availability of posters. All persons subject to this part may obtain fair housing posters from the Virginia Department of Professional and Occupational Regulation. A facsimile may be used if the poster and the lettering are equivalent in size and legibility to the poster available from the Department of Professional and Occupational Regulation. Any person who claims to have been injured by a discriminatory housing practice may file a complaint with the administrator pursuant to Part III (18VAC135-50-300 et seq.) of this chapter.

18VAC135-50-120. Discriminatory representations on the availability of dwellings.

A. It shall be unlawful, because of race, color, religion, sex, disability, familial status, elderliness, national origin, source of funds, sexual orientation, gender identity, or military status ~~as a veteran~~, to provide inaccurate or untrue information about the availability of dwelling for sale or rental.

B. Prohibited actions under this section include:

1. Indicating through words or conduct that a dwelling that is available for inspection, sale, or rental has been sold or rented because of race, color, religion, sex, disability, familial status, elderliness, national origin, source of funds, sexual orientation, gender identity, or military status ~~as a veteran~~.

2. Representing that covenants or other deed, trust, or lease provisions that purport to restrict the sale or rental of dwellings because of race, color, religion, sex, disability, familial status, elderliness, national origin, source of funds, sexual orientation, gender identity, or military status ~~as a veteran~~ preclude the sale or rental of a dwelling to a person.

3. Enforcing covenants or other deed, trust, or lease provisions that preclude the sale or rental of a dwelling to any person because of race, color, religion, sex, disability, familial status, elderliness, national origin, source of funds, sexual orientation, gender identity, or military status ~~as a veteran~~.

4. Limiting information by word or conduct regarding suitably priced dwellings available for inspection, sale, or rental because of race, color, religion, sex, disability, familial status, elderliness, national origin, source of funds, sexual orientation, gender identity, or military status ~~as a veteran~~.

5. Providing false or inaccurate information regarding the availability of a dwelling for sale or rental to any person, including testers, regardless of whether such person is actually seeking housing because of race, color, religion, sex, disability, familial status, elderliness, national origin, source of funds, sexual orientation, gender identity, or military status ~~as a veteran~~.

18VAC135-50-130. Blockbusting.

A. It shall be unlawful to induce or attempt to induce a person to sell or rent a dwelling by representations regarding the entry or prospective entry into the neighborhood of a person of a

particular race, color, religion, sex, familial status, elderliness, national origin, source of funds, sexual orientation, gender identity, or military status ~~as a veteran~~ or with a disability.

B. Prohibited actions under this section include:

1. Engaging in conduct (including uninvited solicitations for listing) that conveys to a person that a neighborhood is undergoing or is about to undergo a change in the race, color, religion, sex, disability, familial status, elderliness, national origin, source of funds, sexual orientation, gender identity, or military status ~~as a veteran~~ of persons residing in it in order to encourage the person to offer a dwelling for sale or rental.

2. Encouraging any person to sell or rent a dwelling through assertions that the entry or prospective entry of persons of a particular race, color, religion, sex, familial status, elderliness, national origin, source of funds, sexual orientation, gender identity, or military status ~~as a veteran~~ or with disabilities can or will result in undesirable consequences for the project, neighborhood, or community, such as a lowering of property values, an increase in criminal or antisocial behavior, or a decline in the quality of schools or other services or facilities.

18VAC135-50-140. Discrimination in the provision of brokerage services.

Prohibited actions under this section include:

1. Setting different fees for access to or membership in a multiple listing service based on race, color, religion, sex, disability, familial status, elderliness, national origin, source of funds, sexual orientation, gender identity, or military status ~~as a veteran~~.

2. Denying or limiting benefits accruing to members in a real estate brokers' organization because of race, color, religion, sex, disability, familial status, elderliness, national origin, source of funds, sexual orientation, gender identity, or military status ~~as a veteran~~.

3. Imposing different standards or criteria for membership in a real estate sales, rental, or exchange organization because of race, color, religion, sex, disability, familial status, elderliness, national origin, source of funds, sexual orientation, gender identity, or military status ~~as a veteran~~.

4. Establishing geographic boundaries or office location or residence requirements for access to or membership or participation in any multiple listing service, real estate brokers' organization, or other service, organization, or facility relating to the business of selling or renting dwellings because of race, color, religion, sex, disability, familial status, elderliness, national origin, source of funds, sexual orientation, gender identity, or military status ~~as a veteran~~.

18VAC135-50-160. Discrimination in the making of loans and in the provision of other financial assistance.

A. It shall be unlawful for any person or entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available loans or other financial assistance for a dwelling or that is or is to be secured by a dwelling because of race, color, religion, sex, disability, familial status, elderliness, national origin, sexual identity, gender identity, or military status ~~as a veteran~~.

B. Prohibited practices under this section include ~~but are not limited to,~~ failing or refusing to provide to any person, in connection with a residential real estate-related transaction, information regarding the availability of loans or other financial assistance, application requirements, or procedures or standards for the review and approval of loans or financial assistance or providing information that is inaccurate or different from that provided others because of race, color, religion, sex, disability, familial status, elderliness, national origin, sexual orientation, gender identity, or military status ~~as a veteran~~.

18VAC135-50-170. Discrimination in the purchasing of loans.

A. It shall be unlawful for any person or entity engaged in the purchasing of loans or other debts or securities that support the purchase, construction, improvement, repair, or maintenance of a dwelling or that are secured by residential real estate to refuse to purchase such loans, debts, or securities, or to impose different terms or conditions for such purchases, because of race, color, religion, sex, disability, familial status, elderliness, national origin, sexual orientation, gender identity, or military status ~~as a veteran~~.

B. Unlawful conduct under this section includes ~~but is not limited to~~:

1. Purchasing loans or other debts or securities that relate to or are secured by dwellings in certain communities or neighborhoods but not in others because of the race, color, religion, sex, disability, familial status, elderliness, national origin, sexual orientation, gender identity, or military status ~~as a veteran~~ of persons in such neighborhoods or communities.

2. Pooling or packaging loans or other debts or securities that relate to or are secured by dwellings differently because of race, color, religion, sex, disability, familial status, elderliness, national origin, sexual orientation, gender identity, or military status ~~as a veteran~~.

3. Imposing or using different terms or conditions on the marketing or sale of securities issued on the basis of loans or other debts or securities that relate to or are secured by dwellings because of race, color, religion, sex, disability, familial status, elderliness, national origin, sexual orientation, gender identity, or military status ~~as a veteran~~.

C. This section does not prevent consideration, in the purchasing of loans, of factors justified by business necessity, including requirements of federal law~~,~~ relating to a transaction's financial security, or to protection against default or reduction of the value of the security. Thus, this provision would not preclude considerations employed in normal and prudent transactions, provided that no such factor may in any way relate to race, color, religion, sex, disability, familial status, elderliness, national origin, sexual orientation, gender identity, or military status ~~as a veteran~~.

18VAC135-50-180. Discrimination in the terms and conditions for making available loans or other financial assistance.

A. It shall be unlawful for any person or entity engaged in the making of loans or in the provision of other financial assistance relating to the purchase, construction, improvement, repair or maintenance of dwellings or which are secured by residential real estate to impose different terms or conditions for the availability of such loans or other financial assistance because of race, color, religion, sex, disability, familial status, elderliness, national origin, sexual orientation, gender identity, or military status ~~as a veteran~~.

B. Unlawful conduct under this section includes:

1. Using different policies, practices, or procedures in evaluating or in determining credit worthiness of any person in connection with the provision of any loan or other financial assistance for a dwelling or for any loan or other financial assistance that is secured by residential real estate because of race, color, religion, sex, disability, familial status, elderliness, national origin, sexual orientation, gender identity, or military status ~~as a veteran~~.

2. Determining the type of loan or other financial assistance to be provided with respect to a dwelling or fixing the amount, interest rate, duration, or other terms for a loan or other financial assistance for a dwelling which that is secured by residential real estate because of race, color, religion, sex, disability, familial status, elderliness, national origin, sexual orientation, gender identity, or military status ~~as a veteran~~.

18VAC135-50-190. Unlawful practices in the selling, brokering, or appraising of residential real property.

A. It shall be unlawful for any person or other entity whose business includes engaging in the selling, brokering or appraising of residential real property to discriminate against any person in making available such services, or in the performance of such services, because of race, color, religion, sex, disability, familial status, elderliness, national origin, sexual orientation, gender identity, or military status ~~as a veteran~~.

B. For the purposes of this section the term "appraisal" means an estimate or opinion of the value of a specified residential real property made in a business context in connection with the sale, rental, financing, or refinancing of a dwelling or in connection with any activity that otherwise affects the availability of a residential real estate-related transaction, whether the appraisal is oral or written, or transmitted formally or informally. The appraisal includes all written comments and other documents submitted as support for the estimate or opinion of value.

C. Practices that are unlawful under this section include using an appraisal of residential real property in connection with the sale, rental, or financing of any dwelling where the person knows or reasonably should know that the appraisal improperly takes into consideration race, color, religion, sex, disability, familial status, elderliness, national origin, sexual orientation, gender identity, or military status ~~as a veteran~~.

18VAC135-50-200. General prohibitions against discrimination because of handicap disability.

A. Definitions. As used in this section, the following words and terms shall have the following meanings, unless a different meaning is plainly required by the context:

"Accessible," when used with respect to the public and common use areas of a building containing covered multi-family dwellings, means that the public or common use areas of the building can be approached, entered, and used by individuals with physical disabilities. The phrase "readily accessible to and usable by" is synonymous with "accessible." A public or common use area that complies with the appropriate requirements of ANSI A117.1-1986 or with any other standards adopted as part of regulations promulgated by HUD at 24 CFR Part 100 providing accessibility and usability for physically disabled people is accessible within the meaning of this section.

"Accessible route" means a continuous unobstructed path connecting accessible elements and spaces in a building or within a site that can be negotiated by a person with a severe disability using a wheelchair and that is also safe for and usable by people with other disabilities. Interior accessible routes may include corridors, floors, ramps, elevators, and lifts. Exterior accessible routes may include parking access aisles, curb ramps, walks, ramps, and lifts. A route that complies with the appropriate requirements of ANSI A117.1-1986, or with any other standards adopted as part of regulations promulgated by HUD at 24 CFR Part 100, is an "accessible route."

"ANSI A117.1" means ANSI A117.1-1986, the American National Standard for buildings and facilities providing accessibility and usability for physically disabled people, or an equivalent or stricter standard. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 USC § 552(a) and 1 CFR Part 51. Copies may be obtained from Global Engineering Documents, 15 Inverness Way East, Englewood, Colorado 90112.

"Building" means a structure, facility, or portion thereof that contains or serves one or more dwelling units.

"Building entrance on an accessible route" means an accessible entrance to a building that is connected by an accessible route to public transportation stops, to accessible parking and passenger loading zones, or to public streets or sidewalks, if available. A building entrance that complies with ANSI A117.1 or a comparable standard complies with the requirements of this paragraph.

"Common use areas" shall include rooms, spaces, or elements inside or outside of a building that are not part of the dwelling unit and that are made available for the use of residents of a building or the guests thereof. These areas include hallways, lounges, lobbies, laundry rooms, refuse rooms, mailrooms, recreational areas, and passageways among and between buildings.

"Controlled substance" means any drug or other substance as defined in Virginia or federal law.

The following terms, as used in the definition of "disability" contained in § 36-96.1:1 of the Code of Virginia, shall mean:

1. "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

2. "Is regarded as having an impairment" means:

a. Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by another person as constituting such a limitation;

b. Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of other toward such impairment; or

c. Has none of the impairments defined in "physical or mental impairment" but is treated by another person as having such an impairment.

3. "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

4. "Physical or mental impairment" includes:

a. Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or

b. Any mental or psychological disorder, such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus infection, intellectual disability, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance), and alcoholism.

"Dwelling unit" means a single unit of residence for a family or one or more persons. Examples of dwelling units include: a single family home; an apartment unit within an apartment building; and in other types of dwellings in which sleeping accommodations are provided but toileting or cooking facilities are shared by occupants of more than one room or portion of the dwelling, rooms in which people sleep. Examples of the latter include dormitory rooms and sleeping accommodations in shelters intended for occupancy as a residence for homeless persons.

"Entrance" means any access point to a building or portion of a building used by residents for the purpose of entering.

"Exterior" means all areas of the premises outside of an individual dwelling unit.

"First occupancy" means a building that has never before been used for any purpose.

"Ground floor" means a floor of a building with a building entrance on an accessible route. A building may have more than one ground floor.

"Interior" means the spaces, parts, components, or elements of an individual dwelling unit.

"Modification" means any change to the public or common use areas of a building or any change to a dwelling unit.

"Premises" means the interior or exterior spaces, parts, components, or elements of a building, including individual dwelling units and the public and common use areas of a building.

"Public use areas" means interior or exterior rooms or spaces of a building that are made available to the general public. Public use may be provided at a building that is privately or publicly owned.

"Site" means a parcel of land bounded by a property line or a designated portion of a public right of way.

B. General prohibitions against discrimination because of disability. It shall be unlawful to make an inquiry to determine whether an applicant for a dwelling; a person intending to reside in that dwelling after it is so sold, rented, or made available; or any person associated with that person has a disability or to make inquiry as to the nature or severity of a disability of such a person. However, this subsection does not prohibit the following inquiries, provided these inquiries are made of all applicants, whether or not they have disabilities:

1. Inquiry into an applicant's ability to meet the requirements of ownership or tenancy;

2. Inquiry to determine whether an applicant is qualified for a dwelling available only to persons with disabilities or to persons with a particular type of disability;

3. Inquiry to determine whether an applicant for a dwelling is qualified for a priority available to persons with disabilities or to persons with a particular type of disability;

4. Inquiring whether an applicant for a dwelling is a current illegal abuser or addict of a controlled substance; or

5. Inquiring whether an applicant has been convicted of the illegal manufacture or distribution of a controlled substance.

C. Reasonable modifications of existing premises.

1. It shall be unlawful for any person to refuse to permit, at the expense of a disabled person, reasonable modifications of existing premises, occupied or to be occupied by a disabled person, if the proposed modifications may be necessary to afford the disabled person full enjoyment of the premises of a dwelling. In the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted. The landlord may not increase for disabled persons any customarily required security deposit. However, where it is necessary in order to ensure with reasonable certainty that funds will be available to pay for the restorations at the end of the tenancy, the landlord may negotiate as part of such a restoration agreement a provision requiring that the tenant pay into an interest bearing escrow account, over a reasonable period, a reasonable amount of money not to exceed the cost of the restorations. The interest in any such account shall accrue to the benefit of the tenant.

2. A landlord may condition permission for a modification on the renter providing a reasonable description of the proposed modifications as well as reasonable assurances that the work will be done in a workmanlike manner and that any required building permits will be obtained.

3. Except as otherwise provided, the Joint Statement of the Department of Housing and Urban Development and the Department of Justice "Reasonable Modifications under the Fair Housing Act" dated March 5, 2008, is hereby incorporated by reference to provide guidance regarding the rights and obligations of persons with disabilities and housing providers relating to reasonable modifications. A copy of the joint statement may be obtained from the Virginia Fair Housing Office.

D. Reasonable accommodations.

1. It shall be unlawful for any person to refuse to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a disabled person equal opportunity to use and enjoy a dwelling unit, including public and common use areas.

2. A request for accessible parking to accommodate a disability must be treated as a request for reasonable accommodation.

3. Except as otherwise provided, the Joint Statement of the Department of Housing and Urban Development and the Department of Justice "Reasonable Accommodations under the Fair Housing Act" dated May 17, 2004, is hereby incorporated by reference to provide guidance regarding the rights and obligations of persons with disabilities and housing providers relating to reasonable accommodations. A copy of this joint statement may also be obtained from the Virginia Fair Housing Office.

E. Design and construction requirements. Covered multi-family dwellings for first occupancy after March 13, 1991, shall be designed and constructed to have at least one building entrance on an accessible route unless it is impractical to do so because of the terrain or unusual characteristics of the site. The burden of establishing impracticality because of terrain or unusual site characteristics is on the person who designed or constructed the housing facility.

18VAC135-50-220. Interference, coercion, or intimidation.

A. This section provides the board's interpretation of the conduct that is unlawful under § 36-96.5 of the Virginia Fair Housing Law.

B. It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of that person having exercised or enjoyed, or on account of that person having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by the Virginia Fair Housing Law and these regulations.

C. Conduct made unlawful under this section includes the following:

1. Coercing a person, either orally, in writing, or by other means, to deny or limit the benefits provided that person in connection with the sale or rental of a dwelling or in connection with a residential real estate-related transaction because of race, color, religion, sex, disability, familial status, elderliness, national origin, source of funds, sexual orientation, gender identity, or military status ~~as a veteran~~.

2. Threatening, intimidating, or interfering with persons in their enjoyment of a dwelling because of the race, color, religion, sex, disability, familial status, elderliness, national origin, source of funds, sexual orientation, gender identity, or military status ~~as a veteran~~, of such persons or of visitors or associates of such persons.

3. Threatening an employee or agent with dismissal or an adverse employment action, or taking such adverse employment action, for any effort to assist a person seeking access to the sale or rental of a dwelling or seeking access to any residential real estate-related transaction because of the race, color, religion, sex, disability, familial status, elderliness, national origin, source of funds, sexual orientation, gender identity, or military status ~~as a veteran~~ of that person or of any person associated with that person.

4. Intimidating or threatening any person because that person is engaging in activities designed to make other persons aware of, or encouraging such other persons to exercise, rights granted or protected by this part.

5. Retaliating against any person because that person has made a complaint, testified, assisted, or participated in any manner in a proceeding under the fair housing law.

18VAC135-50-270. Use of words, phrases, symbols and visual aids.

The following words, phrases, symbols, and forms typify those most often used in residential real estate advertising to convey either overt or tacit discriminatory preferences or limitations. In considering a complaint under the fair housing law, the board will consider the use of these and comparable words, phrases, symbols, and forms to determine a possible violation of the law and to establish a need for further proceedings on the complaint, if it is apparent from the context of the usage that discrimination within the meaning of the law is likely to result.

1. Words descriptive of dwelling, landlord, and tenants. White private home, Colored home, Jewish home, Hispanic residence, adult building.

2. Words indicative of race, color, religion, sex, disability, familial status, elderliness, national origin, source of funds, sexual orientation, gender identity, or military status ~~as a veteran~~, including:

a. Race: African-American, Negro, Black, White, Caucasian, Oriental, Asian, American Indian, Native American, Arab.

b. Color: White, Black, Colored.

c. Religion: Protestant, Christian, Catholic, Jewish, Muslim, Islamic.

d. National origin: Mexican American, Puerto Rican, Philippine, Polish, Hungarian, Irish, Italian, Chicano, African, Hispanic, Chinese, Indian, Latino.

e. Sex: The exclusive use of words in advertisements, including those involving the rental of separate units in a single or multi-family dwelling, stating or intending to imply that the housing being advertised is available to persons of only one sex and not the other, except where the sharing of living areas is involved. Nothing in this section restricts advertisements of dwellings used exclusively for dormitory facilities by educational institutions.

f. Disability: crippled, blind, deaf, mentally ill, retarded, impaired, handicapped, physically fit. Nothing in this section restricts the inclusion of information about the availability of accessible housing in advertising of dwellings.

g. Familial status: adults, children, singles, mature persons. Nothing in this section restricts advertisements of dwellings that are intended and operated for occupancy by older persons and that constitute "housing for older persons" as defined in 18VAC135-50-210.

h. Elderliness: elderly, senior citizens, young, old, active, available to those between 25 and 55.

i. Sexual orientation: lesbian, gay, bisexual, queer, same-sex couples.

j. Gender identity: transgender, trans.

k. Source of funds: voucher, ~~section~~ Section 8, social security, disability income, government benefits.

3. Catch words. Words and phrases used in a discriminatory context should be avoided, e.g., "restricted," "exclusive," "private," "integrated," "traditional," "board approval," "membership approval."

4. Symbols or logotypes. Symbols or logotypes that imply or suggest race, color, religion, sex, disability, familial status, elderliness, national origin, source of funds, sexual orientation, gender identity, or military status ~~as a veteran~~.

5. Colloquialisms. Words or phrases used regionally or locally that imply or suggest race, color, religion, sex, disability, familial status, elderliness, national origin, source of funds, sexual orientation, gender identity, or military status ~~as a veteran~~.

6. Directions to real estate for sale or rent (use of maps or written instructions). Directions can imply a discriminatory preference, limitation, or exclusion. For example, references to real estate location made in terms of racial or national origin significant landmarks, such as an existing black development (signal to blacks) or an existing development known for its exclusion of minorities (signal to whites). Specific directions which make reference to a racial or national origin significant area may indicate a preference.

7. Area (location) description. Names of facilities which cater to a particular racial, national origin, or religious group, such as country club or private school designations, or names of facilities ~~which~~ that are used exclusively by one sex may indicate a preference.

18VAC135-50-290. Fair housing policy and practices.

In the investigation of complaints, the board will consider the implementation of fair housing policies and practices provided in

this section as evidence of compliance with the prohibitions against discrimination in advertising under the fair housing law.

1. Use of equal housing opportunity logotype, statement, or slogan. All advertising of residential real estate for sale, rent, or financing should contain an equal housing opportunity logotype, statement, or slogan as a means of educating the homeseeking public that the property is available to all persons regardless of race, color, religion, sex, disability, familial status, elderliness, national origin, source of funds, sexual orientation, gender identity, or military status ~~as a veteran~~. The choice of logotype, statement, or slogan will depend on the type of media used (visual or auditory) and, in space advertising, on the size of the advertisement. See Appendix I to 24 CFR Part 109, Ch. 1 (4/1/2000 edition) for suggested use of the logotype, statement, or slogan and size of logotype and copies of the suggested equal housing opportunity logotype, statement and slogan. A copy of Appendix I to 24 CFR Part 109, Ch. 1 (4/1/2000 edition) is posted on the Fair Housing Office's website or may be obtained by contacting the Fair Housing Office.

2. Use of human models. Human models in photographs, drawings, or other graphic techniques may not be used to indicate exclusiveness because of race, color, religion, sex, disability, familial status, elderliness, national origin, source of funds, sexual orientation, gender identity, or military status ~~as a veteran~~. If models are used in display advertising campaigns, the models should be clearly definable as reasonably representing majority and minority groups in the metropolitan area, both sexes and, when appropriate, families with children. Models, if used, should portray persons in an equal social setting and indicate to the general public that the housing is open to all without regard to race, color, religion, sex, disability, familial status, elderliness, national origin, source of funds, sexual orientation, gender identity, or military status ~~as a veteran,~~ and is not for the exclusive use of one such group. Human models include any depiction of a human being, paid or unpaid, resident or nonresident.

VA.R. Doc. No. R22-6906; Filed October 4, 2021, 12:29 p.m.

BOARD FOR WASTE MANAGEMENT FACILITY OPERATORS

Final Regulation

REGISTRAR'S NOTICE: The Board for Waste Management Facility Operators 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 board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **18VAC155-20. Waste Management Facility Operators Regulations (amending 18VAC155-20-120).**

Statutory Authority: §§ 54.1-201 and 54.1-2211 of the Code of Virginia.

Effective Date: December 1, 2021.

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

Summary:

Pursuant to Chapters 500 and 501 of the 2021 Acts of Assembly, Special Session I, the amendments conform regulations concerning qualifications for licensure to the requirements of § 19.2-389.3 of the Code of Virginia and remove requirements for reporting by applicants or licensees of misdemeanor marijuana convictions.

18VAC155-20-120. Qualifications for licensure.

A. Every applicant to the Board for Waste Management Facility Operators for licensure shall meet the requirements and have the qualifications provided in this subsection.

1. The applicant shall be at least 18 years of age.

2. Unless otherwise exempt, the applicant shall have successfully completed a basic training course approved by the board. Additionally, an applicant for a Class II, III, or IV license shall complete a training course approved by the board specific to the license for which he applies.

3. Unless exempt, the applicant shall have passed the applicable examination provided by the board or by a testing organization acting on behalf of the board.

4. Each applicant shall document a minimum of one year of verified operational experience with a waste management facility of the same class for which he applies. Experience claimed on the application for licensure shall be verified by the individual's supervisor or personnel officer. Individuals who are under contract with a facility owner may obtain a letter from the facility owner to verify experience.

5. Applicants certified or licensed as waste management facility operators by governing bodies outside of the Commonwealth of Virginia shall be considered to be in compliance with this chapter if the board or its designee has determined the certifying system to be substantially equivalent to the Virginia system.

6. In accordance with § 54.1-204 of the Code of Virginia, each applicant shall disclose a conviction, in any jurisdiction, of any non-marijuana misdemeanor or felony. Any plea of nolo contendere shall be considered a conviction for the purpose of this subdivision. The record of conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt. The board, at its

discretion, may deny licensure to any applicant in accordance with § 54.1-204 of the Code of Virginia.

7. The applicant shall report suspensions, revocations, or surrendering of a certificate or license in connection with a disciplinary action. The applicant shall report if a license has been the subject of discipline in any jurisdiction prior to applying for licensure in Virginia. The board, at its discretion, may deny licensure to any applicant based on prior suspensions, revocations, or surrender of certifications or licenses based on disciplinary action by any jurisdiction.

B. The board may make further inquiries and investigations with respect to the qualifications of the applicant.

VA.R. Doc. No. R22-6977; Filed September 29, 2021, 9:12 a.m.

GUIDANCE DOCUMENTS

PUBLIC COMMENT OPPORTUNITY

Pursuant to § 2.2-4002.1 of the Code of Virginia, a certified guidance document is subject to a 30-day public comment period after publication in the Virginia Register of Regulations and prior to the guidance document's effective date. During the public comment period, comments may be made through the Virginia Regulatory Town Hall website (http://www.townhall.virginia.gov) or sent to the agency contact. Under subsection C of § 2.2-4002.1, the effective date of the guidance document may be delayed for an additional period. The guidance document may also be withdrawn.

The following guidance documents have been submitted for publication by the listed agencies for a public comment period. Online users of this issue of the Virginia Register of Regulations may click on the name of a guidance document to access it. Guidance documents are also available on the Virginia Regulatory Town Hall (http://www.townhall.virginia.gov) or from the agency contact or may be viewed at the Office of the Registrar of Regulations, 900 East Main Street, Richmond, Virginia 23219.

STATE AIR POLLUTION CONTROL BOARD

DEPARTMENT OF ENVIRONMENTAL QUALITY

STATE WATER CONTROL BOARD

VIRGINIA WASTE MANAGEMENT BOARD

Titles of Documents: Civil Enforcement Manual - Chapter 2 - General Enforcement Procedures.

Civil Enforcement Manual - Chapter 3 - Appropriate, Consistent, and Timely Enforcement.

Civil Enforcement Manual - Chapter 4 - Civil Charges and Civil Penalties.

Civil Enforcement Manual - Chapter 6 - APA Adversarial Proceedings.

E-Signature Guidance.

Public Comment Deadline: November 24, 2021.

Effective Date: December 1, 2021.

Agency Contact: Lee M. Crowell, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4450, or email lee.crowell@deq.virginia.gov.

STATE AIR POLLUTION CONTROL BOARD

DEPARTMENT OF ENVIRONMENTAL QUALITY

STATE WATER CONTROL BOARD

VIRGINIA WASTE MANAGEMENT BOARD

Titles of Documents: Manual for Processing Requests Pursuant to the Virginia Freedom of Information Act.

Public Comment Deadline: November 24, 2021.

Effective Date: December 1, 2021.

Agency Contact: Natalie Womack, FOIA Officer, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4085, or email natalie.womack@deq.virginia.gov.

STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Title of Document: DBHDS DD Support Coordination Case Management Manual.

Public Comment Deadline: November 24, 2021.

Effective Date: November 25, 2021.

Agency Contact: Eric Williams, Department of Behavioral Health and Developmental Services, P.O. Box 1797, Richmond, VA 23218-1797, email eric.williams@dbhds.virginia.gov.

COMMON INTEREST COMMUNITY BOARD

Title of Document: Common Interest Community Association Registration – Interpretive Guidance for 18VAC48-60-60.

Public Comment Deadline: November 24, 2021.

Effective Date: November 25, 2021.

Agency Contact: Joseph C. Haughwout, Jr., Board Administrator, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8510, or email cic@dpor.virginia.gov.

STATE BOARD OF EDUCATION

Title of Document: Guidance Document Governing Certain Provisions of the Regulations Establishing Standards for Accrediting Public Schools in Virginia.

Public Comment Deadline: November 24, 2021.

Effective Date: November 25, 2021.

Agency Contact: Michael Bolling, Assistant Superintendent for Learning and Innovation, Department of Education, 101

North 14th Street, Richmond, VA 23238, telephone (804) 225-2034, or email michael.bolling@doe.virginia.gov.

* * *

Title of Document: Diabetes Management in Schools: Manual for Unlicensed Personnel.

Public Comment Deadline: November 24, 2021.

Effective Date: November 25, 2021.

Agency Contact: Maribel Saimre, Director of the Office of Student Services, Department of Education, James Monroe Building, 101 North 14th Street, Richmond, VA 23219, telephone (804) 225-2818, or email maribel.saimre@doe.virginia.gov.

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT

Title of Document: Virginia Small Business Resiliency Fund-Program Guidelines and Instruction Manual.

Public Comment Deadline: November 24, 2021.

Effective Date: November 25, 2021.

Agency Contact: Kyle Flanders, Senior Policy Analyst, Department of Housing and Community Development, Main Street Centre, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 786-6761, or email kyle.flanders@dhcd.virginia.gov.

DEPARTMENT OF MOTOR VEHICLES

Title of Document: Obtención de una Tarjeta de Privilegio de Conductor en Virginia.

Public Comment Deadline: November 24, 2021.

Effective Date: November 25, 2021.

Agency Contact: Melissa K. Velazquez, Legislative Director, Department of Motor Vehicles, 2300 West Broad Street, Richmond, VA 23220, telephone (804) 367-1844, or email melissa.velazquez@dmv.virginia.gov.

BOARD OF PHARMACY

Titles of Documents: Categories of Facility Licensure.

Instructions and Forms for Reporting of Thefts or Losses of Drugs.

Pharmacy Inspection Deficiency Monetary Penalty Guide.

Drugs within Animal Shelters.

Approved Capture Drugs and Drug Administering Equipment, Directive from the State Veterinarian.

Manufacturer and Wholesale Distributor License.

Protocol for the Prescribing and Dispensing of Naloxone.

Criminal Background Checks of Material Owners for Pharmaceutical Processors or Cannabis Dispensing Facilities.

Use of Automated Dispensing Devices in Certain Facilities.

Guidance on Emergency Medical Services Drug Kits.

Public Comment Deadline: November 24, 2021.

Effective Date: November 25, 2021.

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

DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION

Titles of Documents: Rail Industrial Access Program Application Guidance and Procedures.

Rail Preservation Fund Guidance and Procedures.

Transit and Commuter Assistance Grant Application Manual.

Public Comment Deadline: November 24, 2021.

Effective Date: December 1, 2021.

Agency Contact: Andrew Wright, Senior Legislative and Policy Specialist, Department of Rail and Public Transportation, 600 East Main Street, Suite 2102, Richmond, VA 23219, telephone (804) 241-0301, or email andrew.wright@drpt.virginia.gov.

DEPARTMENT OF TAXATION

Title of Document: Guidelines for the Classification of Workers.

Public Comment Deadline: November 24, 2021.

Effective Date: November 25, 2021.

Agency Contact: Joe Mayer, Lead Tax Policy Analyst, Department of Taxation, P.O. Box 27185, Richmond, VA 23261-7185, telephone (804) 371-2299, or email joseph.mayer@tax.virginia.gov.

STATE WATER CONTROL BOARD

Title of Document: Use of Stormwater Proprietary Best Management Practices to Meet Virginia Stormwater Management Program Technical Criteria for Water Quality Compliance.

Public Comment Deadline: November 24, 2021.

Effective Date: November 29, 2021.

Agency Contact: Robert E. Cooper, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4033, or email robert.cooper@deq.virginia.gov.

STATE CORPORATION COMMISSION

AT RICHMOND, SEPTEMBER 30, 2021

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUR-2021-00064

Ex Parte: In the matter of registering and retiring Virginia-eligible renewable energy certificates

ORDER REVISING BUSINESS RULES

On April 9, 2021, the State Corporation Commission ("Commission") established this docket and entered an Order for Comment ("Order") therein concerning the registration and retirement of Virginia-eligible renewable energy certificates ("RECs") in the PJM-EIS[1] Generation Attribute Tracking System ("GATS").[2] At that time, the Commission had recently updated PJM's GATS[3] Business Rules for Virginia RECs ("Business Rules") to reflect the categories of eligible generation sources for Virginia-qualified RECs in 2021-2024 ("GATS Update" or "Update").[4] The Update responded to the Virginia General Assembly's adoption of a mandatory RPS program for certain IOUs[5] in Code § 56-585.5 ("RPS Statute" or "Statute") enacted as part of the VCEA.[6]

During the 2021-2024 compliance period, the Statute permits the IOUs to use RECs from any renewable energy facility as defined in Code § 56-576[7] (provided that the facilities are located within the Commonwealth or within the PJM region), with the caveat that:

at no time during this period or thereafter may any Phase I or Phase II Utility use RECs from (i) renewable thermal energy, (ii) renewable thermal energy equivalent, (iii) biomass-fired facilities that are outside the Commonwealth, or (iv) biomass-fired facilities operating in the Commonwealth as of January 1, 2020, that supply 10 percent or more of their annual net electrical generation to the electric grid or more than 15 percent of their annual total useful energy to any entity other than the manufacturing facility to which the generating source is interconnected.[8]

During the 2025 compliance year and thereafter, the IOUs may only use RECs from the specific RPS eligible sources identified in Code § 56-585.5 C.[9]

Through its Order, the Commission permitted interested persons to file comments on the GATS Update on or before May 7, 2021.[10] The Commission timely received comments from: the Southern Environmental Law Center along with Appalachian Voices, the Piedmont Environmental Council, the Chesapeake Climate Action Network, the Virginia Conservation Network, Virginia Advanced Energy Economy, Chesapeake Solar & Storage Association (formerly MDV-SEIA), the Virginia League of Conservation Voters, Clean Virginia, Virginia Grassroots Coalition, Climate Action Alliance of the Valley, and the Virginia Chapter of the Sierra Club ("Environmental Respondents"); Maryland-DC-Virginia Solar Energy Industries Association ("MDV-SEIA"); Direct Energy Business, LLC and Direct Energy Services, LLC (collectively, "Direct Energy"); Virginia, Maryland, and Delaware Association of Electric Cooperatives; APCo, and Dominion. The Commission Staff submitted comments on May 28, 2021, summarizing and responding to comments submitted by interested persons.

The comments submitted focused principally on REC registration eligibility (during the period 2021-2024) for biomass, waste heat, falling water, and distributed generation.[11] Additionally, comments addressed REC price recordation, compliance year reporting, REC calculation for co-located renewable generation and storage resources and generator output metering.[12]

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that the revised Business Rules attached hereto as Attachment A should be approved effective for the 2021 compliance year, as discussed herein. In developing these revisions, we have reviewed the initial Update to these rules and have considered and weighed the comments presented in this matter in support of each participant's proposals or suggestions, including those provided by the Staff. The Commission expresses appreciation to all those who submitted written comments.

Biomass Eligibility

The Environmental Respondents assert that Code § 56-585.5 C limits the IOUs' use of RECs from biomass facilities to satisfy Virginia RPS requirements.[13] The Statute caps the total amount of RECs that can be sold by an RPS eligible source using biomass to the number of megawatt-hours produced by that facility in 2019.[14] Further, the Statute bars RPS eligible sources using biomass from selling RECs in a given year in excess of the actual megawatt-hours of electricity generated by such facility that year.[15]

To ensure that GATS only registers Virginia-eligible biomass RECs, the Environmental Respondents have proposed that the Commission (i) conduct an inventory of biomass-fired facilities to determine their eligibility under the Statute; and (ii) suspend any use of biomass RECs for Virginia RPS compliance "until it is clear that PJM has the requisite detail and capability to properly certify biomass RECs."[16] Relatedly, the Environmental Respondents have also recommended that the proposed Commission inventory of biomass-fired facilities "quantify the maximum number of RPS-compliant RECs that each facility can generate in a given year."[17] The Environmental Respondents assert that this quantification would help ensure that the number of megawatt-hours of electricity produced by that facility and the associated RECs

that exceed the 2019 baseline are not improperly certified as RPS-compliant.[18]

The Staff has proposed another approach, suggesting that no biomass facility automatically be accepted and registered in GATS for Virginia RPS compliance. Instead, the Staff recommends that any potential registrants of biomass RECs for Virginia RPS compliance furnish an affidavit[19] to GATS attesting that the biomass facility producing the RECs meets the Statute's criteria (for biomass RECs) and simultaneously provide such an affidavit to the Staff.[20] The biomass facility's RECs could then be considered eligible for GATS registration unless otherwise directed by the Staff upon its review of the affidavit included with the proposed registration.[21]

The Commission will adopt the Staff's recommendations in this regard, and, at the Commission's direction, the Staff has prepared an affidavit form for use by PJM-EIS in registering Virginia-compliant biomass generation facilities in the GATS system. The form is attached to the Business Rules revisions we approve in this Order Revising Business Rules. The IOUs will certify, in their annual REC retirement reporting required by Business Rule 4, that any biomass RECs retired during any compliance year meet the requirements of the RPS Statute.

Waste Heat Eligibility

The VCEA amended the definition of "renewable energy" in Code § 56-576 to exclude waste heat from fossil-fired facilities,[22] thereby eliminating it as an RPS eligible source in the RPS Statute. The Environmental Respondents proposed that the Business Rules include a new fuel type code for waste heat derived from facilities that do not use fossil fuel to prevent PJM's inadvertent REC certification of waste heat from fossil-fired facilities.[23] The Staff has suggested in lieu of implementing a new fuel type code, that no waste heat facility be automatically accepted and registered in GATS for Virginia RPS compliance.[24] The Staff recommends that potential registrants of waste heat facility RECs for Virginia RPS compliance furnish an affidavit[25] to GATS attesting that the facility meets the Statute's criteria and simultaneously providing such an affidavit to the Staff. The facility would then be considered eligible for GATS registration unless otherwise directed by the Staff upon its review of the proposed registration. The Staff further stated its view that the existing fuel type code within GATS for waste heat is sufficient to reflect those facilities eligible for Virginia RPS compliance.[26]

The Commission will adopt the Staff's recommendations in this regard, and, at the Commission's direction, the Staff has prepared an affidavit form for use by PJM-EIS in registering Virginia-compliant waste heat facilities in the GATS system. The form is attached to the Business Rules revisions we approve in this Order Revising Business Rules. The IOUs will certify, in their annual REC retirement reporting required by Business Rule 4, that any waste heat RECs retired during any compliance year meet the requirements of the RPS Statute.

Falling Water Eligibility

Direct Energy asserts that RECs derived by run-of-river generation from a combined hydro pumped storage and run-of-river facility are RPS eligible under the VCEA's revisions to the definition of "renewable energy" in § 56-576 of the Code. Direct Energy states that the GATS Update does not sufficiently identify this combination's eligibility as an RPS eligible source under the Statute.[27] The Staff stated in its comments that the existing WAT fuel type code in GATS is sufficient to reflect such run-of-river generation from a combined facility or a conventional facility.[28] The Staff advises that it has nonetheless consulted with PJM-EIS concerning this issue and now recommends changing the WAT fuel type code's description from "Hydro-Conventional" to simply "Hydro." As a result, the WAT fuel type would encompass both conventional hydro as well as run-of-river generation in combination with a pumped storage facility. The Commission agrees that this change should provide sufficient direction to GATS in registering Virginia-eligible RECs produced by run-of-river generation from these combined facilities. The table following Business Rule 1 has been revised to incorporate that revision.

Distributed Generation Carve-Out

Dominion and MDV-SEIA addressed a more specific delineation of distributed generation resources in the Business Rules, not only by fuel type but also by size.[29] The Statute directs Dominion to meet one percent of the RPS Program's requirements in any given compliance year with solar, wind, or anaerobic digestion resources of one megawatt ("MW") or less located in the Commonwealth.[30] Both Dominion and MDV-SEIA offered suggestions on how to accomplish this further delineation.[31] The Staff agreed that delineation could be helpful and stated that it would work with PJM-EIS to develop appropriate codes to add to the Business Rules.[32]

Following up, the Staff advises that it has consulted with PJM-EIS, who indicated that for small distributed facilities (<1 MW), GATS can add the suffix "-D" after the appropriate "fueltype" to appear as "VA-#####-fueltype-D." Owners of resources seeking to qualify as small distributed resources (<1 MW) must self-certify to GATS that such facilities meet the small-scale eligibility requirements of Code § 56-585.5 C and provide such supplemental or technical information as may be required by GATS. The Commission adopts this approach, now included in the revisions to Business Rule 2.

REC Prices

APCo and Dominion expressed concern about updated Business Rule 5's requirement to include and record prices for retired RECs.[33] APCo generally asserted that recording and publishing the price or value of a REC at the point of its retirement is not useful information and can be misleading.[34] Dominion noted that providing price data through GATS would be administratively burdensome due to the manual

nature of the process involving the retirement of potentially millions of RECs each year.[35] The Staff agreed in its comments that using GATS as a source of REC prices could be problematic and cumbersome. The Staff further commented such information could be provided as part of the IOUs' annual RPS proceedings required by the Statute and suggested that the Commission eliminate updated Business Rule 5.[36] The Commission agrees that references to utility recordation of REC prices and values at retirement should be removed from the Business Rules. The Commission revises Business Rule 5 to reflect this change. Instead, the IOUs' REC prices will be available as part of the IOUs' annual RPS filings.

Compliance Years

Dominion suggested clarifying the wording of updated Business Rule 4 to reflect the mechanics of retiring RECs for RPS compliance.[37] As noted by the Staff, the IOUs expect to retire RECs all at one time on a calendar year basis, also referred to as the "compliance year."[38] The Staff also pointed out the potential for administrative lag associated with GATS registering RECs in January for generation that occurred in the prior December.[39] The Staff has recommended that the Commission direct Dominion and APCo to report their respective RPS-related REC retirements "to the Commission by April 30th for the prior calendar, or compliance year."[40] Such REC retirement reports, per the Staff, could be posted to the Commission's website.[41] We so direct the IOUs to provide their REC retirements in an annual REC retirement report submitted to the Director of the Commission's Division of Public Utility Regulation by April 30th of each year. The Commission agrees that clarifications are needed and has adopted the Staff's recommendations to Business Rule 4.

Energy Storage

Dominion's comments suggested a new business rule addressing what it characterized as an emerging trend to pair renewable energy resources with storage resources.[42] Dominion proposes that RECs from renewable energy resources be created based on the energy actually generated, even when paired with storage resources.[43] Per Dominion, this would help ensure that renewable energy-only resources and renewable energy sources paired with storage are able to create RECs equitably.[44] The Staff stated in its comments that it does not take a position on the proper treatment of RECs from paired facilities at this time.[45] The Staff suggested that this issue could be taken up as part of the Energy Storage Task Force's[46] activities.[47]

The Commission first notes that while this very technical issue does generally relate to REC registration, it is outside this proceeding's limited scope established in the Commission's Order; i.e., the sufficiency of the Update's conformity to the RPS Statute.[48] The issue was not identified in the Order as one that would be considered in this docket or upon which comment would be received. Further, the Commission expects that this issue is one of broad interest, such that its consideration requires the technical and economic input of certain interested persons and stakeholders, who may not have participated in this docket. Consequently, while the Commission will not undertake its consideration at this time, the Commission expects to do so when practicable. However, language added to Business Rule 3, at the advisement of the Staff, provides for issues such as this to be addressed in GATS on an "exception basis" in the meantime.

Reporting Accuracy

Dominion suggested a new business rule to clarify that all generators that are eligible for Virginia RPS compliance, regardless of size, should be required to measure generator output with a revenue-grade meter.[49] The Staff noted in its comments that the GATS Operating Rules require a revenue-quality meter that meets the ANSI C-12 standard. The Staff does not believe a new rule is necessary but suggests the Commission may wish to clarify that it expects the same level of accuracy from all generators.[50] The Commission concurs. The Commission expects the same metering quality from all generators, as now reflected in revisions to Business Rule 5.

Low Income Qualifying Projects

Code § 56-585.5 C requires, if available, a certain amount of Dominion's RPS Program requirements to be satisfied by "low-income qualifying projects." Low-income qualifying projects are defined under Code § 56-585.5 A as "a project that provides a minimum of 50 percent of the respective electric output to low-income utility customers as that term is defined in § 56-576." As set forth in the Update, Business Rule 3 states: "Low-income qualifying projects are not currently available until such time as further determination is made as to what constitutes such projects." As such, Business Rule 3 currently does not enable low-income qualifying projects to be registered in GATS as a type of renewable generation source.[51]

The Commission, in its 2020 RPS Final Order, directed Dominion to use a reasonable stakeholder process to further address the questions related to low-income qualifying projects and such related issues as needed. The Commission also directed Dominion to report on its progress toward satisfying the low-income qualifying project requirements in the RPS Program in its 2021 RPS filing.[52] In its 2021 RPS filing, Dominion provided an update in response to the Commission's direction, indicating, among other things, that the stakeholder process is ongoing.[53] The identification of low-income projects and related questions are still being determined in the 2021 RPS docket.

In its comments, MDV-SEIA recommended adding "-LMI" to the end of distributed energy certificates associated with low-income qualifying projects for purposes of GATS.[54] Given the open questions related to low-income qualifying projects before the Commission, we find such designation premature at this time. Notwithstanding, we adopt the following clarification to Business Rule 3: "Low-income qualifying

projects as defined in § 56-585.5 A and addressed in § 56-585.5 C are not separately designated in GATS at this time." Such change clarifies that RECs associated with low-income qualifying projects could become available in the future for purposes of RPS compliance, but will not be identified separately in GATS at this time.

Finally, to the extent that a requested revision by any participant in this proceeding is not specifically addressed above, such omission herein does not preclude participants from recommending the same or similar changes in future proceedings.

Accordingly, IT IS ORDERED THAT:

(1) The Business Rules, as revised, are hereby approved with such revisions effective for compliance year 2021.

(2) A copy of this Order Revising Business Rules and the attached Business Rules forthwith shall be posted on the website of the Commission's Division of Public Utility Regulation.

(3) Within five (5) business days of the date of this Order Revising Business Rules, the Commission's Division of Public Utility Regulation shall electronically transmit copies of this Order Revising Business Rules to those persons and entities previously identified by the Staff at the commencement of this docket as potentially having an interest in this matter, and to all those who commented in this matter if not otherwise transmitted a copy of the Order Revising Business Rules by the Staff.

(4) This case is dismissed.

A COPY hereof shall be sent electronically by the Clerk of the Commission to all persons on the official Service List in this matter. The Service List is available from the Clerk of the Commission. A copy hereof also shall be sent to the Commission's Office of General Counsel and Divisions of Public Utility Regulation and Utility Accounting and Finance.

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[1]PJM Environmental Information Services, Inc. ("PJM-EIS"), is a subsidiary of PJM Interconnection, L.L.C. ("PJM"). PJM is a regional transmission organization that coordinates the movement of wholesale electricity in all or parts of 13 states and the District of Columbia. Two of Virginia's investor-owned utilities ("IOUs") are members of PJM: Virginia Electric and Power Company ("Dominion") and Appalachian Power Company ("APCo").

[2]GATS provides a mechanism to buy and sell RECs — each REC representing the renewable attributes associated with one megawatt-hour of electricity produced. Per PJM, GATS provides environmental and emissions attributes reporting and tracking services to its subscribers in support of renewable energy portfolio standards ("RPS") and other information disclosure requirements that may be implemented by government agencies. PJM-EIS owns and administers GATS.

[3]The Update was accomplished by correspondence dated April 5, 2021, from the Staff of the Commission ("Staff") to PJM-EIS, prepared and sent at the Commission's direction.

[4]The Business Rules were established administratively in 2013 by PJM in coordination with the Commission to facilitate the registration, transfer and retirement of Virginia-eligible RECs under Virginia's former voluntary renewable energy portfolio standard (established under § 56-585.2 of the Code of Virginia ("Code"), now repealed by the Virginia Clean Economy Act ("VCEA"), Chapters 1193 (HB 1526) and 1194 (SB 851) of the 2020 Virginia Acts of Assembly). The Business Rules are not regulatory rules of the Commission.

[5]The IOUs subject to the mandatory RPS program are "Phase I" and "Phase II" utilities (which refer to APCo and Dominion, respectively).

[6]Code § 56-585.5 C requires that "[t]o comply with the RPS Program, each Phase I and Phase II Utility shall procure and retire" RECs "from any renewable energy facility" as further defined in Code § 56-576 and within the RPS Statute itself. The RPS Statute establishes Virginia-eligible RECs for two separate periods: (i) RECs from renewable generation qualifying as "RPS eligible sources" in 2021-2024; and (ii) RECs from renewable generation qualifying as "RPS eligible sources" in 2025 and all years after. As also noted in the Order, the GATS Update addressed the 2021-2024 period, only; the Commission anticipates updating GATS for the period of 2025 and thereafter at a later time but well in advance of 2025. Order at 2.

[7]As defined in Code § 56-576:

"Renewable energy" means energy derived from sunlight, wind, falling water, biomass, sustainable or otherwise, (the definitions of which shall be liberally construed), energy from waste, landfill gas, municipal solid waste, wave motion, tides, and geothermal power, and does not include energy derived from coal, oil, natural gas, or nuclear power. "Renewable energy" also includes the proportion of the thermal or electric energy from a facility that results from the co-firing of biomass. "Renewable energy" does not include waste heat from fossil-fired facilities or electricity generated from pumped storage but includes run-of-river generation from a combined pumped-storage and run-of-river facility.

[8]Code § 56-585.5 C.

[9]Code § 56-585.5 C provides, in pertinent part, that:

"From compliance year 2025 and all years after, each Phase I and Phase II Utility may only use RECs from RPS eligible sources for compliance with the RPS Program.

In order to qualify as RPS eligible sources, such sources must be (a) electric-generating resources that generate electric energy derived from solar or wind located in the Commonwealth or off the Commonwealth's Atlantic shoreline or in federal waters and interconnected directly into the Commonwealth or physically located within the PJM region; (b) falling water resources located in the Commonwealth or physically located within the PJM region that were in operation as of January 1, 2020, that are owned by a Phase I or Phase II Utility or for which a Phase I or Phase II Utility has entered into a contract prior to January 1, 2020, to purchase the energy, capacity, and renewable attributes of such falling water resources; (c) non-utility-owned resources from falling water that (1) are less than 65 megawatts, (2) began commercial operation after December 31, 1979, or (3) added incremental generation representing greater than 50 percent of the original nameplate capacity after December 31, 1979, provided that such resources are located in the Commonwealth or are physically located within the PJM region; (d) waste-to-energy or landfill gas-fired generating resources located in the Commonwealth and in operation as of January 1, 2020, provided that such resources do not use waste heat from fossil fuel combustion or forest or woody biomass as fuel; or (e) biomass-fired facilities in operation in the Commonwealth and in operation as of January 1, 2020, that supply no more than 10 percent of their annual net electrical generation to the electric grid or no more than 15 percent of their annual total useful energy to any entity other than the manufacturing facility to which the generating source is interconnected. … Regardless of any future maintenance, expansion, or refurbishment activities, the total amount of RECs that may be sold by any RPS eligible source using biomass in any year shall be no more than the number of megawatt hours of electricity produced by that facility in 2019; however, in no year may any RPS eligible source using biomass sell RECs in excess of the actual megawatt-hours of electricity generated by such facility that year. In order to comply with the RPS Program, each Phase I and Phase II Utility may use and retire the environmental

attributes associated with any existing owned or contracted solar, wind, or falling water electric generating resources in operation, or proposed for operation, in the Commonwealth or physically located within the PJM region, with such resource qualifying as a Commonwealth-located resource for purposes of this subsection, as of January 1, 2020, provided such renewable attributes are verified as RECs consistent with the PJM-EIS Generation Attribute Tracking System."

[10]The Order noted that comments from utilities and interested persons were to be directed to the sufficiency of the attached Update's conformity to the RPS Statute, only, and for the period 2021-2024, only. The Order further stated that the RPS Statute does not vest the Commission with discretion to modify eligible generation source categories. See Order at 4.

[11]See, e.g., Environmental Respondents Comments at 1-5; Direct Energy Comments at 1-2; MDV-SEIA Comments at 1.

[12]See, e.g., Dominion Comments at 3-7; APCo Comments at 1-2.

[13]Environmental Respondents Comments at 1-4.

[14]Code § 56-585.5 C provides, "Regardless of any future maintenance, expansion, or refurbishment activities, the total amount of RECs that may be sold by any RPS eligible source using biomass in any year shall be no more than the number of megawatt hours of electricity produced by that facility in 2019; however, in no year may any RPS eligible source using biomass sell RECs in excess of the actual megawatt-hours of electricity generated by such facility that year."

[15]Id.

[16]Environmental Respondents Comments at 4.

[17]Id.

[18]Id.

[19]Staff Comments at 4. Per the Staff, such affidavit could contain, at a minimum: (1) the name of the applicant and facility; (2) the location and fuel source of the facility; (3) the actual 2019 generation from the facility; and (4) a sworn statement signed by a legal officer of the applicant attesting to the facility's adherence to the legislative requirements of Code § 56-585.5 C. Id. at n.3.

[20]The Staff further noted in its comments that, according to information provided by PJM-EIS, monitoring and tracking a maximum limit on biomass RECs applicable to Virginia's RPS Program would be problematic and not workable for GATS. Under the Staff's recommendations, the affidavit furnished by a biomass facility would state the 2019 level of generation for the facility. The Staff also noted the responsibility of APCo and Dominion to adhere to the requirements of the RPS Statute to satisfy the utilities' respective RPS target levels. Id. at n.4.

[21]Staff Comments at 4.

[22]Environmental Respondents Comments at 4.

[23]Id. at 4-5.

[24]Staff Comments at 5.

[25]Id. Per the Staff, such an affidavit should contain at a minimum: (1) the name of the applicant and facility; (2) the location and fuel source of the facility; and (3) a sworn statement signed by a legal officer of the applicant attesting to the facility's adherence to the legislative requirements of Code § 56-585.5 C. Id.

[26]Id.

[27]Direct Energy Comments at 2.

[28]Staff Comments at 5.

[29]Dominion Comments at 2, 3; MDV-SEIA Comments at 1.

[30]Code § 56-585.5 C.

[31]Dominion Comments at 2, 3; MDV-SEIA Comments at 1.

[32]Staff Comments at 5-6.

[33]APCo Comments at 1-2; Dominion Comments at 5.

[34]APCo Comments at 2.

[35]Dominion Comments at 5.

[36]Staff Comments at 6.

[37]Dominion Comments at 3, 4.

[38]Staff Comments at 6.

[39]Id.

[40]Id.

[41]Id.

[42]Dominion Comments at 6-7.

[43]Id. Specifically, Dominion suggests that the Commission add the following rule to clarify the treatment of paired facilities: "'If generators that are eligible for RPS Program compliance in Virginia are paired with energy storage resources, the energy generation eligible to create RECs will be measured based on energy generated by the eligible generator, not based on energy discharged by the storage resource.'" Id. at 7.

[44]Id. at 6. According to Dominion, "[S]torage resources inherently experience round-trip efficiency losses, meaning that the energy discharged by the storage resource is less than the energy consumed during charging." Id.

[45]Staff Comments at 8.

[46]This task force was established pursuant to Chapter 863 (HB 1183) of the 2020 Acts of Assembly.

[47]Staff Comments at 8.

[48]See supra n.10.

[49]Dominion Comments at 7.

[50]Staff Comments at 8.

[51]Per Code § 56-585.5 C, "renewable generation sources for low-income qualifying projects" are identified as solar, wind, and anaerobic digestion resources.

[52]Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: Establishing 2020 RPS Proceeding for Virginia Electric and Power Company, Case No. PUR-2020-00134, Doc. Con. Cen. No. 210440236, Final Order at 10-11 (Apr. 30, 2021).

[53]See, e.g., Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: Establishing 2020 RPS Proceeding for Virginia Electric and Power Company, Case No. PUR-2021-00146, Doc. Con. Cen. No. 210930080, 2021 RPS Plan at Attachment 8 (Sept. 15, 2021).

[54]MDV-SEIA Comments at 1.

ATTACHMENT A

Revised Business Rules for Issuing VA-Approved Renewable Energy Certificates ("RECs") pursuant to 2020 Virginia Clean Economy Act ("VCEA")

1. For compliance years 2021-2024, GATS can automatically certify as eligible for use toward the VA RPS all renewable energy (as defined in § 56-576) from facilities located in Virginia and in the PJM Region, as similarly done today. However, effective January 1, 2021, the VCEA expressly

prohibits the use of RECs from (i) renewable thermal energy, (ii) renewable thermal energy equivalent, (iii) biomass-fired facilities that are outside the Commonwealth, and (iv) biomass-fired facilities operating in the Commonwealth as of January 1, 2021, that supply 10 percent or more of their annual net electrical generation to the electric grid or more than 15 percent of their annual total useful energy to any entity other than the manufacturing facility to which the generating source is interconnected. Additionally, the definition of renewable energy does not include waste heat from fossil-fired facilities. To ensure that any RECs from a biomass or waste heat facility meet the legislative criteria in § 56-585.5 C, such a request to register with GATS will not be automatically accepted and must be accompanied by an affidavit provided to GATS, with a copy simultaneously furnished to the Commission Staff, attesting to such eligibility as shown on Appendix 1 or Appendix 2 of these business rules. The following table reflects the VA-Eligible fuel types that may be used to produce RECs to comply with the VCEA and satisfy the Virginia RPS requirements for compliance years 2021-2024:

VA-Eligible Fuel Types: 2021-2024	Non-Eligible Fuel Types
• LFG Captured Methane - Landfill Gas	• CMG Captured Methane - Coal Mine Gas
• FCR Fuel Cell - Renewable Fuel	• BIT Coal - Bituminous and Anthracite
• GEO Geothermal	• LIG Coal - Lignite
• WAT Hydro	• SC Coal - Coal-based Synfuel
• OC1 Ocean	• SUB Coal - Sub-Bituminous
• AB Biomass - Agriculture Crops in VA	• WC Coal - Waste/Other
• OBG Biomass - Other Biomass Gases in VA	• EE Energy Efficiency
• OBL Biomass - Other Biomass Liquids in VA	• DSR Demand-Side Response
• OBS Biomass - Other Biomass Solids in VA	• FCN Fuel Cell - Non-Renewable Fuel
• PW Biomass - Poultry Waste in VA	• BFG Gas - Blast-Furnace Gas
• SLW Biomass - Sludge Waste in VA	• NG Gas - Natural Gas
• SW Biomass – Swine Waste in VA	• OG Gas - Other
• SUN Solar - Photovoltaic	• PG Gas - Propane
• STH Solar - Thermal	• NUC Nuclear
• MSW Solid Waste - Municipal Solid Waste	• DFO Oil - Distillate Fuel Oil
• WH Waste Heat	• JF Oil - Jet Fuel
• WND Wind	• KER Oil - Kerosene
	• PC Oil - Petroleum Coke
	• RFO Oil - Residual Fuel Oil
	• WO Oil - Waste/Other Oil
	• OTH Other
	• HPS Pumped Storage
	• TDF Solid Waste – Tire Derived Fuel
	• WDS Wood – Wood/Wood Waste Solids

2. For generators that are eligible to satisfy RPS in VA pursuant to Va. Code § 56-585.5 C, GATS will apply a unique state certification number to the certificates created for that generator using a format to be determined by the SCC. For example, VA-#####-fueltype, where '#####' is a unique number and fuel type is one of the codes from the table above. For small distributed facilities (<1 MW), GATS will add the suffix "-D" after the appropriate fuel type, e.g., VA-#####-fueltype-D. Owners of resources seeking to qualify as small distributed resources (<1 MW) must self-certify that the facility meets the small-scale eligibility requirements of Va.

Code § 56-585.5 C and provide such supplemental or technical information as may be required by GATS.

3. If it is not possible for PJM EIS to determine if a facility is eligible in VA, any other VA certifications will be applied by the GATS Administrators on an exception basis as directed by the VA SCC. Additional requirements of VA regarding eligibility:

• RECs associated with capacity or energy generated by a public utility serving the Commonwealth must be from facilities located within VA or within the PJM interconnection region.

• Low-income qualifying projects as defined in § 56-585.5 A and addressed in § 56-585.5 C are not separately designated in GATS at this time.

• RECs from biomass-fired and waste heat facilities are limited to that meeting the criteria of Va. Code § 56-585.5 C and accompanied by the appropriate affidavit.

• Further market, technology or regulatory developments in Virginia not currently addressed by these Business Rules may be applied on an exception basis by GATS as directed by the VA SCC or presented to the Commission for consideration in further revision of these Business Rules.

4. RPS compliance in VA will be on a calendar-year basis. RECs meeting the criteria set forth in Va. Code § 56-585.5 C can be used for RPS compliance for the calendar year in which the generation occurred or, for RECs created in 2016 and thereafter, within the subsequent five calendar years. Electric investor-owned utilities should retire RECs to meet their respective annual RPS requirements for the prior calendar, or compliance year, and report such information to the Director of the Commission's Division of Public Utility Regulation by April 30th of each year.

5. It is understood and expected that all generators will utilize a revenue-quality meter that meets the ANSI C-12 standard to measure and report associated generation and corresponding REC values.

6. For the period 2025 and beyond, further revisions to GATS will be addressed at a later time to reflect the VCEA (RPS Eligible Resources as defined in § 56-585.5 C) and any subsequent amendments in advance of the year 2025.

APPENDIX 1
Eligible Biomass Self-Certification Affidavit

I (officer name and title) of (applicant name) certify on this (date), that the information provided below is true and complete and that the biomass facility called (facility name) located in Virginia hereby meets the eligibility requirements of Va. Code § 56-585.5 C to provide renewable energy certificates to help satisfy Virginia's RPS compliance for an electric investor-owned utility.

_____

Signature

Biomass requirements:

- Physically located at _____

- Yes or no _____ in operation as of January 1, 2020

- Facility fuel source _____

- Yes or no _____ supplies no more than 10% of annual net generation to the electric grid

- Yes or no _____ supplies no more than 15% of annual total useful energy to any entity other than the manufacturing facility to which the generating source is interconnected

- Facility's 2019 annual net generation was _____MWh

Date completed affidavit sent simultaneously to GATS and Commission Staff _____.

APPENDIX 2
Eligible Waste Heat Self-Certification Affidavit

I (officer name and title) of (applicant name) certify on this (date), that the information provided below is true and complete and that the waste heat facility called (facility name) located in Virginia hereby meets the eligibility requirements of Va. Code § 56-585.5 C to provide renewable energy certificates to help satisfy Virginia's RPS compliance for an electric investor-owned utility.

_____

Signature

Waste Heat requirements:

- Physically located at _____

- Yes or no _____ in operation as of January 1, 2020

- Facility fuel source _____

- Yes or no _____ the above-identified fuel source does not include fossil fuel combustion or forest or woody biomass

- Facility's 2019 annual net generation was _____MWh

Date completed affidavit sent simultaneously to GATS and Commission Staff: _____.

Contact Information: Kenneth J. Schrad, Director, Division of Information Resources, State Corporation Commission, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9858, or email ken.schrad@scc.virginia.gov.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Birchwood Renewables LLC Notice of Intent for Small Renewable Energy Project (Solar) - King George County

Birchwood Renewables 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 King George County. Birchwood Renewables LLC will be located in the town of Sealston, on the existing Birchwood power plant site and nearby leased parcels and interconnect with Virginia Electric Power Company through the existing Birchwood substation. The estimated project area will be 640 acres and the maximum generating capacity of the project in alternating current will be 55 megawatts. The solar facility will consist of approximately 120,000 solar panels installed on single-axis tilting frames.

Contact Information: Cindy Berndt, Regulatory Coordinator, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4378, FAX (804) 698-4178.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Contact Information for the following Department of Medical Assistance Services general notices is provided at the end of the notices.

Draft Development Disabilities Waivers (Building Independence, Family and Individual Supports, Community Living) Services Provider Manual

The draft Development Disabilities Waivers (BI, FIS, CL) Services Provider Manual (Chapters II, IV, VI, and Appendix B) is now available on the Department of Medical Assistance Services website at https://www.dmas.virginia.gov/for-providers/general-information/medicaid-provider-manual-drafts for public comment until November 4, 2021.

Draft Hospital Provider Manual

The draft Hospital Provider Manual (Appendix D) is now available on the Department of Medical Assistance Services website at https://www.dmas.virginia.gov/for-providers/general-information/medicaid-provider-manual-drafts for public comment until November 4, 2021.

Draft Hospital Provider Manual

The draft Hospital Provider Manual (Chapter II) is now available to view on the Department of Medical Assistance Services website at https://www.dmas.virginia.gov/for-providers/general-information/medicaid-provider-manual-drafts.

Draft Physician Practitioner Provider Manual

The draft Physician/Practitioner Provider Manual (Chapter IV) is now available on the Department of Medical Assistance Services website at https://www.dmas.virginia.gov/for-providers/general-information/medicaid-provider-manual-drafts for public comment until November 4, 2021.

Draft Provider Manual Chapter 1

The draft Provider Manual (Chapter 1 of all manuals) is now available on the Department of Medical Assistance Services website at https://www.dmas.virginia.gov/for-providers/general-information/medicaid-provider-manual-drafts for public comment until November 4, 2021.

Contact Information: Emily McClellan, Regulatory Manager, Division of Policy and Research, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680.

BOARD OF PHARMACY

Amendments to Pharmaceutical Processor Regulations

In accordance with § 54.1-3442.6 N of the Code of Virginia, the Board of Pharmacy is providing an opportunity to comment on a draft of proposed regulations for pharmaceutical processors that will be considered for adoption as an exempt action.

The proposed regulations as drafted make technical corrections to regulations that became effective on September 1, 2021.

The 2021 legislation requires posting of a notice 60 days in advance of submittals for public comment. The Board of Pharmacy is scheduled to meet on December 7, 2021, with the intent of adopting amendments to 18VAC110-60 (Regulations Governing Pharmaceutical Processors) by exempt action.

The board will receive public comment from September 27, 2021, to November 26, 2021. Commenters are strongly encouraged to submit comments by November 22, 2021, in order to have them included in the board's agenda package and adequately considered for the December meeting.

Comments may be sent to Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Henrico, VA 23233, telephone (804) 367-4688, or email elaine.yeatts@dhp.virginia.gov.

Proposed amendments to 18VAC110-60: Regulations Governing Pharmaceutical Processors

18VAC110-60-10. Definitions.

"Electronic tracking system" means an electronic radio-frequency identification (RFID) seed-to-sale tracking system that tracks the Cannabis from either the seed or immature plant stage until the cannabis ~~oil~~ product is sold to a registered patient, parent, legal guardian, or registered agent or until the Cannabis, including the seeds, parts of plants, and extracts, are destroyed. The electronic tracking system shall include, at a minimum, a central inventory management system and standard and ad hoc reporting functions as required by the board and shall be capable of otherwise satisfying required recordkeeping.

"Perpetual inventory" means an ongoing system for recording quantities of cannabis ~~oil~~ product received, dispensed, or otherwise distributed by a cannabis dispensing facility.

18VAC110-60-160. Grounds for action against a pharmaceutical processor permit or a cannabis dispensing facility.

In addition to the bases enumerated in § 54.1-3316 of the Code of Virginia, the board may suspend, revoke, or refuse to grant or renew a permit issued; place such permit on probation; place conditions on such permit; or take other actions permitted by statute or regulation on the following grounds:

6. Failure to cooperate or give information to the board on any matter arising out of conduct at a pharmaceutical processor or cannabis dispensing facility; or

18VAC110-60-190. Pharmacy technicians; ratio; supervision and responsibility.

A. The ratio of pharmacy technicians to pharmacists on duty in the areas of a pharmaceutical processor ~~a cannabis dispensing facility~~ designated for production or dispensing or in a cannabis dispensing facility shall not exceed six pharmacy technicians to one pharmacist.

18VAC110-60-230. Inventory requirements.

D. The record of all cannabis products sold, dispensed, or otherwise disposed of shall show the date of sale or disposition; the name of the pharmaceutical processor or cannabis dispensing facility; the name and address of the registered patient, parent, legal guardian, or registered agent to whom the cannabis product was sold; the kind and quantity of cannabis product sold or disposed of; and the method of disposal.

18VAC110-60-300. Laboratory requirements; testing.

B. After processing and before dispensing the cannabis oil product, a pharmaceutical processor shall make a sample available from each homogenized batch of product for a laboratory to (i) test for microbiological contaminants, mycotoxins, heavy metals, residual solvents, and pesticide chemical residue~~, and, for botanical cannabis, the water activity and moisture content~~; and (ii) conduct an active ingredient analysis and terpenes profile. Each laboratory shall determine a valid sample size for testing, which may vary due to sample matrix, analytical method, and laboratory-specific procedures. A minimum sample size of 0.5% of individual units for dispensing or distribution from each homogenized batch of cannabis oil is required to achieve a representative sample for analysis.

G. If a sample of cannabis oil product does not pass the microbiological, mycotoxin, heavy metal, pesticide chemical residue, or residual solvent test based on the standards set forth in this subsection, the batch may be remediated with further processing. After further processing, the batch shall be retested for microbiological, mycotoxin, heavy metal, pesticide chemical residue, and residual solvent, and an active ingredient analysis and terpenes profile shall be conducted.

5. For purposes of the active ingredient analysis, a sample of the cannabis oil product shall be tested for:

a. Tetrahydrocannabinol (THC);

b. Tetrahydrocannabinol acid (THC-A);

c. Cannabidiols (CBD); and

d. Cannabidiolic acid (CBDA).

~~For botanical cannabis products, only the total cannabidiol (CBD) and total tetrahydrocannabinol (THC) are required.~~

Note on stricken text:

In regards to the change in 18VAC110-60-300 B, striking "and, for botanical cannabis, the water activity and moisture content,"; water activity and moisture content are currently included in clause (i) of subsection C of 18VAC110-60-300.

In regards to the change in 18VAC110-60-300 G 5, striking "For botanical cannabis products, only the total cannabidiol (CBD) and total tetrahydrocannabinol (THC) are required."; that text is currently in subdivision H 5 of 18VAC110-60-300.

Contact Information: Caroline Juran, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4456, FAX (804) 527-4472.

STATE WATER CONTROL BOARD

Proposed Enforcement Action for Hopson, LLC

The State Water Control Board proposes to issue a consent special order to Hopson LLC for alleged violation of the State Water Control Law at the Walnut Creek project off Walnut Tree Lane, Powhatan County, Virginia. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. The staff contact will accept comments by email or postal mail from October 25, 2021, to November 25, 2021.

Contact Information: Matt Richardson, Department of Environmental Quality, Piedmont Regional Office (Enforcement), 4949-A Cox Road, Glen Allen, VA 23060, or email matthew.richardson@deq.virginia.gov.

Proposed Enforcement Action for Super Concrete Co. Inc.

An enforcement action has been proposed for Super Concrete Co. Inc. for violations of the State Water Control Law and regulations and applicable Virginia Pollutant Discharge Elimination System Permit at the Super Concrete Facility located in Manassas Park, Virginia. The State Water Control Board proposes to issue a consent order to resolve the subject violations. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov/permits-regulations/public-notices/enforcement-orders. The staff contact listed will accept comments by email or postal mail from October 26, 2021, through November 25, 2021.

Contact Information: Jim Datko, Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, or email james.datko@deq.virginia.gov.

Proposed Enforcement Action for Three B's Inc.

An enforcement action has been proposed for Three B's Inc. for violations at the Gainesboro Market located at 4780 North Frederick Pike, Frederick County, Virginia. The State Water Control Board proposes to issue a consent order with penalty and injunctive relief to Three B's Inc. to address noncompliance with State Water Control Law. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. The staff contact will accept comments by email, fax, or postal mail from October 25, 2021, to November 24, 2021.

Contact Information: Eric Millard, Enforcement Specialist, Department of Environmental Quality, Valley Regional Office, 4411 Early Road, P.O. Box 3000, Harrisonburg, VA 22801, FAX (804) 698-4178, or email eric.millard@deq.virginia.gov.

Proposed Enforcement Action for the Town of Mount Jackson

An enforcement action has been proposed for the Town of Mount Jackson for violations at the Mount Jackson sewage treatment plant in Shenandoah County, Virginia. The State Water Control Board proposes to issue a consent order with penalty and injunctive relief to the Town of Mount Jackson to address noncompliance with State Water Control Law. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. The staff contact will accept comments by email, fax, or postal mail from October 25, 2021, to November 24, 2021.

Contact Information: Eric Millard, Enforcement Specialist, Department of Environmental Quality, Valley Regional Office, 4411 Early Road, P.O. Box 3000, Harrisonburg, VA 22801, FAX (804) 698-4178, or email eric.millard@deq.virginia.gov.

Proposed Enforcement Action for VPGC LLC

An enforcement action has been proposed for VPGC LLC for violations at VPGC LLC - Hinton in Rockingham County, Virginia. The State Water Control Board proposes to issue a consent order with penalty and injunctive relief to VPGC LLC to address noncompliance with State Water Control Law. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. The staff contact will accept comments by email, fax, or postal mail from October 25, 2021, to November 24, 2021.

Contact Information: Celeste Horton, Enforcement Specialist, Department of Environmental Quality, Valley Regional Office, 4411 Early Road, P.O. Box 3000, Harrisonburg, VA

22801, FAX (804) 698-4178, or email celeste.horton@deq.virginia.gov.

Proposed Consent Special Order for Waste Management of Virginia Inc.

The State Water Control Board proposes to issue a consent special order to Waste Management of Virginia Inc. for alleged violations of the State Water Control Law at Maplewood Landfill located at 20221 Maplewood Road, Jetersville, Virginia. A description of the proposed action is available at the Department of Environmental Quality office listed or online at www.deq.virginia.gov. Frank Lupini will accept comments by email at frank.lupini@deq.virginia.gov or postal mail at Department of Environmental Quality, P.O. Box1105, Richmond, VA, 23218 from October 25, 2021, to November 25, 2021.

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.

BOARD OF PHARMACY

Title of Regulation: **18VAC110-60. Regulations Governing Pharmaceutical Processors.**

Publication: 38:4 VA.R. 467 October 11, 2021.

Correction to Forms:

Page 467, after "FORMS (18VAC110-60)" insert "Registration of Cannabis Products (rev. 9/2021)"

VA.R. Doc. No. R22-6967; Filed October 7, 2021, 5:09 p.m.