VIRGINIA REGISTER OF REGULATIONS

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THE VIRGINIA REGISTER INFORMATION PAGE

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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 https://register.dls.virginia.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).

May 2025 through June 2026

Volume: Issue	Material Submitted By Noon*	Will Be Published On
41:20	April 30, 2025	May 19, 2025
41:21	May 14, 2025	June 2, 2025
41:22	May 28, 2025	June 16, 2025
41:23	June 11, 2025	June 30, 2025
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41:25	July 9, 2025	July 28, 2025
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42:7	October 29, 2025	November 17, 2025
42:8	November 10, 2025 **(Monday)**	December 1, 2025
42:9	November 24, 2025 **(Monday)**	December 15, 2025
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42:11	December 22, 2025 **(Monday)**	January 12, 2026
42:12	January 6, 2026 **(Tuesday)**	January 26, 2026
42:13	January 21, 2026	February 9, 2026
42:14	February 4, 2026	February 23, 2026
42:15	February 18, 2026	March 9, 2026
42:16	March 4, 2026	March 23, 2026
42:17	March 18, 2026	April 6, 2026
42:18	April 1, 2026	April 20, 2026
42:19	April 15, 2026	May 4, 2026
42:20	April 29, 2026	May 18, 2026
42:21	May 13, 2026	June 1, 2026

*Filing deadlines are Wednesdays unless otherwise specified.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Initial Agency Notice

Title of Regulation: **12VAC5. None specified.**

Statutory Authority: §§ 32.1-2 and 32.1-12 of the Code of Virginia.

Names of Petitioners: Réka György, Lily Mullens, Carter Satterfield.

Nature of Petitioner's Request: Pursuant to § 2.2-4007 of the Code of Virginia, the petitioners, who are all female athletes in Virginia who have been directly harmed by males competing in female collegiate sports, formally request that the State Board of Health add or amend regulations within 12VAC5 to prevent biological males from participating in organized female-only athletic teams and competitions in Virginia and to prevent biological males from using designated female spaces where females are likely to be in any state of undress. The public health of Virginians, particularly of women and girls, demands that the Virginia Department of Health take action to prevent further harm, both physical and psychological, from males claiming or pretending to be females and gaining access to female-only athletic competitions and private spaces. The State Board of Health has authority to promulgate such regulations pursuant to §§ 32.1-2 and 32.1-12 of the Code of Virginia. Specifically:

"§ 32.1-2. Finding and purpose.

The General Assembly finds that the protection, improvement and preservation of the public health…are essential to the general welfare of the citizens of the Commonwealth. For this reason, the State Board of Health…shall administer and provide a comprehensive program of preventive…health services, … and abate hazards and nuisances to the health…, both emergency and otherwise, thereby improving the quality of life in the Commonwealth.

This comprehensive program of preventive…health services shall include prevention…focused on women's health, including, but not limited to…conditions unique to or more prevalent among women."; and

"§ 32.1-12. Regulations, variances and exemptions.

The Board may make, adopt, promulgate and enforce such regulations…as may be necessary to carry out the provisions of this title and other laws of the Commonwealth administered by it, the Commissioner or the Department."

Agency Plan for Disposition of Request: The petition for rulemaking will be published in the Virginia Register of Regulations on May 5, 2025. The petition will also be published on the Virginia Regulatory Town Hall at www.townhall.virginia.gov to receive public comment, which opens May 5, 2025, and closes May 26, 2025. Following receipt of public comment and within 90 days of the end of the public comment period, the board will issue a written decision to grant or deny the petition.

Public Comment Deadline: May 26, 2025.

Agency Contact: Joe Hilbert, Director of Governmental and Regulatory Affairs, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7006, or email joe.hilbert@vdh.virginia.gov.

VA.R. Doc. No. PFR25-432; Filed April 10, 2025, 5:00 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF OPTOMETRY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Optometry intends to consider amending **18VAC105-20, Regulations Governing the Practice of Optometry**. The purpose of the proposed action is to add the requirement that each licensure by endorsement application include a National Practitioner Data Bank (DPDB) report. The NPDB records all actions taken in other jurisdictions against a health care licensee and is a standard requirement on applications for licensure and licensure by endorsement for many other professions.

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

Statutory Authority: §§ 54.1-2400 and 54.1-3223 of the Code of Virginia.

Public Comment Deadline: June 4, 2025.

Agency Contact: Kelli Moss, Executive Director, Board of Optometry, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, telephone (804) 597-4077, FAX (804) 793-9145, or email kelli.moss@dhp.virginia.gov.

VA.R. Doc. No. R25-8047; Filed April 2, 2025, 7:23 p.m.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

BOARD OF WILDLIFE RESOURCES

Proposed Regulation

REGISTRAR'S NOTICE: The Board of Wildlife Resources is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 3 of the Code of Virginia when promulgating regulations regarding the management of wildlife.

Title of Regulation: **4VAC15-20. Definitions and Miscellaneous: In General (amending 4VAC15-20-50, 4VAC15-20-65, 4VAC15-20-130, 4VAC15-20-155; repealing 4VAC15-20-120).**

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Public Comment Deadline: June 3, 2025.

Agency Contact: Aaron Proctor, Policy Manager, Department of Wildlife Resources, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 801-8199, or email aaron.proctor@dwr.virginia.gov.

Summary:

The proposed amendments (i) remove the requirement that a written mandate must be obtained every five years for domesticated red foxes and European rabbits; (ii) add a resident three-day trip license to hunt and resident and nonresident elk hunt lottery applications; (iii) repeal 4VAC15-20-120 as cash-only license consignment agents are no longer utilized by the department; (iv) designate an eastern tiger salamander experimental population in Sussex County as a listed state endangered species to assist with population status recovery; and (v) clarify locations where camping is allowed in wildlife management areas and other department-owned and department-managed lands.

4VAC15-20-50. Definitions; "wild animal," "native animal," "naturalized animal," "nonnative (exotic) animal," and "domestic animal".

A. In accordance with § 29.1-100 of the Code of Virginia, the following terms shall have the meanings ascribed to them by this section when used in regulations of the board:

"Native animal" means those species and subspecies of animals naturally occurring in Virginia, as included in the department's 2024 "List of Native and Naturalized Fauna of Virginia," with copies available in the headquarters and regional offices of the department.

"Naturalized animal" means those species and subspecies of animals not originally native to Virginia that have established wild, self-sustaining populations, as included in the department's 2024 "List of Native and Naturalized Fauna of Virginia," with copies available in the headquarters and regional offices of the department.

"Nonnative (exotic) animal" means those species and subspecies of animals not naturally occurring in Virginia, excluding domestic and naturalized species.

The following animals are defined as domestic animals:

Domestic dog (Canis familiaris), including wolf hybrids.

Domestic cat (Felis catus), including hybrids with wild felines.

Domestic horse (Equus caballus), including hybrids with Equus asinus.

Domestic ass, burro, and donkey (Equus asinus).

Domestic cattle (Bos taurus and Bos indicus).

Domestic sheep (Ovis aries), including hybrids with wild sheep.

Domestic goat (Capra hircus).

Domestic swine (Sus scrofa), including pot-bellied pig and excluding any swine that are wild or for which no claim of ownership can be made.

Llama (Lama glama).

Alpaca (Lama pacos).

Camels (Camelus bactrianus and Camelus dromedarius).

Domesticated races of hamsters (Mesocricetus spp.).

Domesticated races of mink (Mustela vison) where adults are heavier than 1.15 kilograms or their coat color can be distinguished from wild mink.

Domesticated races of guinea pigs (Cavia porcellus).

Domesticated races of gerbils (Meriones unguiculatus).

Domesticated races of chinchillas (Chinchilla laniger).

Domesticated races of rats (Rattus norvegicus and Rattus rattus).

Domesticated races of mice (Mus musculus).

Domesticated breeds of European rabbit (Oryctolagus cuniculus) recognized by the American Rabbit Breeders Association, Inc. and any lineage resulting from crossbreeding recognized breeds. A list of recognized rabbit breeds is available on the department's website.

Domesticated races of chickens (Gallus).

Domesticated races of turkeys (Meleagris gallopavo).

Domesticated races of ducks and geese distinguishable morphologically from wild birds.

Feral pigeons (Columba domestica and Columba livia) and domesticated races of pigeons.

Domesticated races of guinea fowl (Numida meleagris).

Domesticated races of peafowl (Pavo cristatus).

Domesticated morphs of red cornsnake (Pantherophis guttatus) visibly distinguishable from native red cornsnakes based on their unique colors and patterns.

"Wild animal" means any member of the animal kingdom, except domestic animals, including any native, naturalized, or nonnative (exotic) mammal, fish, bird, amphibian, reptile, mollusk, crustacean, arthropod, or other invertebrate and any hybrid of these animals, except as otherwise specified in regulations of the board, or part, product, egg, or offspring of them, or the dead body or parts thereof.

B. Exception for red foxes and European rabbits. Domesticated red foxes (Vulpes vulpes) having coat colors distinguishable from wild red foxes and wild European rabbits possessed in captivity on July 1, 2017, may be maintained in captivity until the animal dies, but the animal may not be bred or sold without a permit from the department. Persons possessing domesticated red foxes or European rabbits without a permit from the department must declare such possession in writing to the department by January 1, 2018. This written declaration must include the number of individual animals in possession and date acquired, sex, estimated age, coloration, and a photograph of each fox or European rabbit. This written declaration (i) shall serve as a permit for possession only~~,~~ and (ii) is not transferable~~, and (iii) must be renewed every five years~~.

4VAC15-20-65. Hunting, trapping, and fishing license and permit fees.

In accordance with the authority of the board under subdivision 16 of § 29.1-103 of the Code of Virginia, the following fees are established for hunting, trapping, and fishing licenses and permits:

Virginia Resident Licenses to Hunt	
Type license	Fee
One-year Resident License to Hunt, for licensees 16 years of age or older	$22.00
Two-year Resident License to Hunt, for licensees 16 years of age or older	$43.00
Three-year Resident License to Hunt, for licensees 16 years of age or older	$64.00
Four-year Resident License to Hunt, for licensees 16 years of age or older	$85.00
Resident Three-Day Trip License to Hunt	$11.00
County or City Resident License to Hunt in County or City of Residence Only, for licensees 16 years of age or older	$15.00
Resident Senior Citizen Annual License to Hunt, for licensees 65 years of age or older	$8.00
Resident Junior License to Hunt, for licensees 12 through 15 years of age, optional for licensees younger than 12 years of age	$7.50
Resident Youth Combination License to Hunt, and to hunt bear, deer, and turkey, to hunt with archery equipment during archery hunting season, and to hunt with muzzleloading guns during muzzleloading hunting season, for licensees younger than 16 years of age	$15.00
Resident Sportsman License to Hunt and Freshwater Fish, and to hunt bear, deer, and turkey, to hunt with archery equipment during archery hunting season, to hunt with muzzleloading guns during muzzleloading hunting season, to fish in designated stocked trout waters (also listed under Virginia Resident Licenses to Fish)	$99.00
Resident Hunting License for Partially Disabled Veterans	$11.00
Resident Infant Lifetime License to Hunt	$130.00
Resident Junior Lifetime License to Hunt, for licensees younger than 12 years of age at the time of purchase	$260.00

Resident Lifetime License to Hunt, for licensees at the time of purchase:	
through 44 years of age	$265.00
45 through 50 years of age	$215.00
51 through 55 years of age	$165.00
56 through 60 years of age	$115.00
61 through 64 years of age	$65.00
65 years of age and older	$25.00
Totally and Permanently Disabled Resident Special Lifetime License to Hunt	$15.00
Service-Connected Totally and Permanently Disabled Veteran Resident Lifetime License to Hunt or Freshwater Fish (also listed under Virginia Resident Licenses to Fish)	no fee

Virginia Resident Licenses for Additional Hunting Privileges	
Type license or permit	Fee
Resident Deer and Turkey Hunting License, for licensees 16 years of age or older	$22.00
Resident Junior Deer and Turkey Hunting License, for licensees younger than 16 years of age	$7.50
Resident Archery License to Hunt with archery equipment during archery hunting season	$17.00
Resident Bear Hunting License	$20.00
Resident Muzzleloading License to Hunt during muzzleloading hunting season	$17.00
Resident Bonus Deer Permit	$17.00
Resident Fox Hunting License to hunt foxes on horseback with hounds without firearms (not required of an individual holding a general License to Hunt)	$22.00
Resident Elk Hunt Lottery Application	$15.00
Resident Special Elk Hunting License (not required outside of the Elk Management Zone and only awarded to individuals through a department elk license program)	$40.00

Virginia Nonresident Licenses to Hunt	
Type license	Fee
Nonresident License to Hunt, for licensees 16 years of age or older	$110.00
Nonresident Three-Day Trip License to Hunt	$59.00
Nonresident Youth License to Hunt, for licensees:	
younger than 12 years of age	$12.00
12 through 15 years of age	$15.00
Nonresident Youth Combination License to Hunt, and to hunt bear, deer, and turkey, to hunt with archery equipment during archery hunting season, and to hunt with muzzleloading guns during muzzleloading hunting season, for licensees younger than 16 years of age	$30.00
Nonresident Annual Hunting License for Partially Disabled Veterans	$55.00
Nonresident Annual Hunting License for Totally and Permanently Disabled Veterans	$27.50
Nonresident Infant Lifetime License to Hunt	$275.00
Nonresident Lifetime License to Hunt	$580.00
Virginia Nonresident Licenses for Additional Hunting Privileges	

Type license or permit	Fee
Nonresident Deer and Turkey Hunting License, for licensees:	
16 years of age or older	$85.00
12 through 15 years of age	$15.00
younger than 12 years of age	$12.00
Nonresident Bear Hunting License	$150.00
Nonresident Archery License to Hunt with archery equipment during archery hunting season	$30.00
Nonresident Muzzleloading License to Hunt during muzzleloading hunting season	$30.00
Nonresident Shooting Preserve License to Hunt within the boundaries of a licensed shooting preserve	$22.00
Nonresident Bonus Deer Permit	$30.00
Nonresident Fox Hunting License to hunt foxes on horseback with hounds without firearms (not required of an individual holding a general License to Hunt)	$110.00
Nonresident Elk Hunt Lottery Application	$20.00
Nonresident Special Elk Hunting License (not required outside of the Elk Management Zone and only awarded to individuals through a department elk license program)	$400.00

Miscellaneous Licenses or Permits to Hunt	
Type license or permit	Fee
Waterfowl Hunting Stationary Blind in Public Waters License	$22.50
Waterfowl Hunting Floating Blind in Public Waters License	$40.00
Foxhound Training Preserve License	$17.00
Public Access Lands for Sportsmen Permit to Hunt, Trap, or Fish on Designated Lands (also listed under Miscellaneous Licenses or Permits to Fish)	$17.00

Virginia Resident and Nonresident Licenses to Trap	
Type license	Fee
One-year Resident License to Trap, for licensees 16 years of age or older	$45.00
Two-year Resident License to Trap, for licensees 16 years of age or older	$89.00
Three-year Resident License to Trap, for licensees 16 years of age or older	$133.00
Four-year Resident License to Trap, for licensees 16 years of age or older	$177.00
County or City Resident License to Trap in County or City of Residence Only	$20.00
Resident Junior License to Trap, for licensees younger than 16 years of age	$10.00
Resident Senior Citizen License to Trap, for licensees 65 years of age or older	$8.00
Resident Senior Citizen Lifetime License to Trap, for licensees 65 years of age or older	$25.00
Totally and Permanently Disabled Resident Special Lifetime License to Trap	$15.00
Service-Connected Totally and Permanently Disabled Veteran Resident Lifetime License to Trap	$15.00
Nonresident License to Trap	$205.00

Virginia Resident Licenses to Fish	
Type license	Fee

One-year Resident License to Freshwater Fish	$22.00
Two-year Resident License to Freshwater Fish	$43.00
Three-year Resident License to Freshwater Fish	$64.00
Four-year Resident License to Freshwater Fish	$85.00
County or City Resident License to Freshwater Fish in County or City of Residence Only	$15.00
Resident License to Freshwater Fish, for licensees 65 years of age or older	$8.00
Resident License to Fish in Designated Stocked Trout Waters	$22.00
Resident License to Freshwater and Saltwater Fish	$38.50
Resident License to Freshwater Fish for Five Consecutive Days	$13.00
Resident License to Freshwater and Saltwater Fish for Five Consecutive Days	$23.00
Resident Sportsman License to Hunt and Freshwater Fish, and to hunt bear, deer, and turkey, to hunt with archery equipment during archery hunting season, to hunt with muzzleloading guns during muzzleloading hunting season, to fish in designated stocked trout waters (also listed under Virginia Resident Licenses to Hunt)	$99.00
Resident Fishing License for Partially Disabled Veterans	$11.00
Resident Infant Lifetime License to Fish	$130.00
Resident Special Lifetime License to Freshwater Fish, for licensees at the time of purchase:	
through 44 years of age	$265.00
45 through 50 years of age	$215.00
51 through 55 years of age	$165.00
56 through 60 years of age	$115.00
61 through 64 years of age	$65.00
65 years of age and older	$25.00
Resident Special Lifetime License to Fish in Designated Stocked Trout Waters, for licensees at the time of purchase:	
through 44 years of age	$265.00
45 through 50 years of age	$215.00
51 through 55 years of age	$165.00
56 through 60 years of age	$115.00
61 through 64 years of age	$65.00
65 years of age and older	$25.00
Totally and Permanently Disabled Resident Special Lifetime License to Freshwater Fish	$15.00
Service-Connected Totally and Permanently Disabled Veteran Resident Lifetime License to Hunt and Freshwater Fish (also listed under Virginia Resident Licenses to Hunt)	no fee

Virginia Nonresident Licenses to Fish	
Type license	Fee
Nonresident License to Freshwater Fish	$46.00

Nonresident License to Freshwater Fish in Designated Stocked Trout Waters	$22.00
Nonresident License to Freshwater and Saltwater Fish	$70.00
Nonresident Fishing License for Partially Disabled Veterans	$23.00
Nonresident Annual Fishing License for Totally and Permanently Disabled Veterans	$11.50
Nonresident License to Freshwater Fish for One Day	$7.00
Nonresident License to Freshwater Fish for Five Consecutive Days	$20.00
Nonresident License to Freshwater and Saltwater Fish for Five Consecutive Days	$30.00
Nonresident Infant Lifetime License to Fish	$275.00
Nonresident Special Lifetime License to Freshwater Fish	$580.00
Nonresident Special Lifetime License to in Fish in Designated Stocked Trout Waters	$580.00

Miscellaneous Licenses or Permits to Fish	
Type license or permit	Fee
Permit to Fish for One Day at Board-Designated Stocked Trout Fishing Areas with Daily Use Fees	$7.00
Public Access Lands for Sportsmen Permit to Hunt, Trap, or Fish on Designated Lands (also listed under Miscellaneous Licenses or Permits to Hunt)	$17.00
Special Guest Fishing License	$60.00

4VAC15-20-120. ~~Appointment of new consignment agents for sale of hunting and fishing licenses.~~ (Repealed.)

~~A. Except as provided below, no person shall be appointed as a consignment agent for the sale of hunting and fishing licenses unless he first sells licenses on a cash basis for at least one year. In addition, the dollar volume of actual or projected sales must equal at least 90% of the average hunting and fishing license sales of consignment agents in the locality.~~

~~B. If the cash agent sells the required number of licenses, he may be appointed as a consignment agent, provided he is approved for a surety bond by the board's bonding company.~~

~~C. This chapter is applicable to new appointments and not to transfers of existing appointments; provided, that the director may appoint consignment agents as needed to provide for a minimum of two consignment agents within a locality. In addition, the director may appoint consignment agents on state-owned or state-leased facilities.~~

4VAC15-20-130. Endangered and threatened species; adoption of federal list; additional species enumerated.

A. The board hereby adopts the Federal Endangered and Threatened Species List, Endangered Species Act of December 28, 1973 (16 USC §§ ~~1531-1543~~ 1531 through 1543), as amended as of October 10, 2024, and declares all species listed thereon to be endangered or threatened species in the Commonwealth. Pursuant to subdivision 12 of § 29.1-103 of the Code of Virginia, the director is hereby delegated authority to propose adoption of modifications and amendments to the Federal Endangered and Threatened Species List in accordance with the procedures of §§ 29.1-501 and 29.1-502 of the Code of Virginia.

B. In addition to the provisions of subsection A of this section, the following species are declared endangered or threatened in the Commonwealth and are afforded the protection provided by Article 6 (§ 29.1-563 et seq.) of Chapter 5 of Title 29.1 of the Code of Virginia:

1. Fish:	
Endangered:	
Dace, Clinch	Chrosomus sp. cf. saylori

Dace, Tennessee	Phoxinus tennesseensis
Darter, sharphead	Etheostoma acuticeps
Darter, variegate	Etheostoma variatum
Sunfish, blackbanded	Enneacanthus chaetodon
Threatened:	
Darter, Carolina	Etheostoma collis
Darter, golden	Etheostoma denoncourti
Darter, greenfin	Etheostoma chlorobranchium
Darter, western sand	Ammocrypta clara
Madtom, orangefin	Noturus gilberti
Paddlefish	Polyodon spathula
Shiner, emerald	Notropis atherinoides
Shiner, steelcolor	Cyprinella whipplei
Shiner, whitemouth	Notropis alborus
2. Amphibians:	
Endangered:	
Salamander, eastern tiger	Ambystoma tigrinum
Threatened:	
Salamander, Mabee's	Ambystoma mabeei
3. Reptiles:	
Endangered:	
Rattlesnake, canebrake (Coastal Plain population of timber rattlesnake)	Crotalus horridus
Turtle, bog	Glyptemys muhlenbergii
Turtle, eastern chicken	Deirochelys reticularia
Threatened:	
Lizard, eastern glass	Ophisaurus ventralis
Turtle, wood	Glyptemys insculpta
4. Birds:	
Endangered:	

Plover, Wilson's	Charadrius wilsonia
Rail, black	Laterallus jamaicensis
Woodpecker, red-cockaded	Dryobates borealis
Wren, Bewick's	Thryomanes bewickii
Threatened:	
Falcon, peregrine	Falco peregrinus
Shrike, loggerhead	Lanius ludovicianus
Sparrow, Bachman's	Aimophila aestivalis
Sparrow, Henslow's	Ammodramus henslowii
Tern, gull-billed	Sterna nilotica
5. Mammals:	
Endangered:	
Bat, Rafinesque's eastern big-eared	Corynorhinus rafinesquii macrotis
Bat, little brown	Myotis lucifugus
Bat, tri-colored	Perimyotis subflavus
Hare, snowshoe	Lepus americanus
Shrew, American water	Sorex palustris
Vole, rock	Microtus chrotorrhinus
6. Mollusks:	
Endangered:	
Coil, rubble	Helicodiscus lirellus
Coil, shaggy	Helicodiscus diadema
Deertoe	Truncilla truncate
Elephantear	Elliptio crassidens
Elimia, spider	Elimia arachnoidea
Floater, brook	Alasmidonta varicose
Ghostsnail, thankless	Holsingeria unthanksensis
Heelsplitter, Tennessee	Lasmigona holstonia
Lilliput, purple	Toxolasma lividus

Mussel, slippershell	Alasmidonta viridis
Pigtoe, Ohio	Pleurobema cordatum
Pigtoe, pyramid	Pleurobema rubrum
Springsnail, Appalachian	Fontigens bottimeri
Springsnail (no common name)	Fontigens morrisoni
Supercoil, spirit	Paravitrea hera
Threatened:	
Floater, green	Lasmigona subviridis
Papershell, fragile	Leptodea fragilis
Pimpleback	Quadrula pustulosa
Pistolgrip	Tritogonia verrucosa
Riversnail, spiny	Iofluvialis
Sandshell, black	Ligumia recta
Supercoil, brown	Paravitrea septadens
7. Arthropods:	
Threatened:	
Amphipod, Madison Cave	Stygobromus stegerorum
Pseudotremia, Ellett Valley	Pseudotremia cavernarum
Xystodesmid, Laurel Creek	Sigmoria whiteheadi

C. It shall be unlawful to take, transport, process, sell, or offer for sale within the Commonwealth any threatened or endangered species of fish or wildlife except as authorized by law.

D. The incidental take of certain species may occur in certain circumstances and with the implementation of certain conservation practices as described in this subsection:

Species	Location	Allowable Circumstances	Required Conservation Measures	Expected Incidental Take
Little brown bat, Tri-colored bat	Statewide	Human health risk – need for removal of individual animals from human-habited structures.	Between May 15 and August 31, no exclusion of bats from maternity colonies, except for human health concerns. Department-permitted nuisance wildlife control operator with department-recognized certification in techniques associated with removal of bats. Use of exclusion devices that allow individual animals to escape. Manual collection of individual animals incapable of sustaining themselves; transport to a willing and appropriately permitted wildlife rehabilitator.	Little to no direct lethal taking expected.

		Public safety or property damage risk – need for tree removal, application of prescribed fire, or other land management actions affecting known roosts; removal of animals from known roosts.	Hibernacula: no tree removal, use of prescribed fire, or other land management action within a 250-foot radius buffer area from December 1 through April 30. Between September 1 and November 30, increase the buffer to a 1/4-mile radius with the following conditions: for timber harvests greater than 20 acres, retain snags and wolf trees (if not presenting public safety or property risk) and small tree groups up to 15 trees of 3-inch diameter at breast height (dbh) or greater, one tree group per 20 acres. Otherwise, document the need (public safety, property damage risk) for tree removal during this period and verify that no known roost trees exist in the buffer area. Tree removal and prescribed fire are permitted outside of these dates. Known roost trees: no tree removal, use of prescribed fire, or other land management action within a 150-foot radius buffer area from June 1 through July 31, if possible. Otherwise, document public safety or property damage risk. Department-permitted nuisance wildlife control operator with department-recognized certification in techniques associated with removal of bats. Use of exclusion devices that allow individual animals to escape. Manual collection of individual animals incapable of sustaining themselves; transport to a willing and appropriately permitted wildlife rehabilitator.	Little to no direct lethal taking expected.

E. Experimental populations of certain species are described in the table in this subsection, consistent with the identification of these species in state conservation plans. These populations are geographically distinct from naturally occurring populations and are not subject to the penalties and prohibitions authorized under § 29.1-568 of the Code of Virginia.

Species	Designated Location of Experimental Population	County or City	Take Exemptions
Eastern tiger salamander (Ambystoma tigrinum)	Lands located within the 2025 boundaries of the department's Big Woods Wildlife Management Area and The Nature Conservancy's Piney Grove Preserve	Sussex County	Take is authorized unless otherwise prohibited by other Virginia laws or regulations

4VAC15-20-155. Camping on Wildlife Management Areas and other department-owned or department-managed lands.

A. Temporary dispersed camping, with no amenities provided, may only be performed on Wildlife Management Areas (WMAs) and other department-owned or managed lands when occupants are engaged in authorized activities and in strict compliance with established terms and conditions, including those listed in this section. Camping may be prohibited on certain portions or entire parcels of department-owned or managed lands, including certain WMAs.

B. Authorization. It shall be unlawful to camp without written authorization from the department. Written authorization to camp is required in addition to any and all other licenses, permits, or authorizations that may otherwise be required. Written authorization is obtained by completing and submitting a Camping Authorization Form. Only an individual 18 years of age or older who is a member of and accepts responsibility for the camp and camping group may be issued a camping authorization.

C. Camping periods. Unless otherwise posted or authorized, it shall be unlawful to camp for more than 14 consecutive nights, or more than 14 nights in a 28-day period on department-owned or controlled lands. At the end of the authorized camping period, all personal property and any refuse must be removed.

D. ~~Prohibited~~ Allowed and prohibited locations. ~~Camping~~ Back country camping is allowed. Adjacent to roadways, camping is allowed only ~~at~~ in previously cleared ~~and established sites~~ areas. No vegetation may be cut, damaged, or

removed to establish a camp site. Enclosed camping trailers or camping vehicles are allowed if they do not occupy the entire available parking area in that location. It shall be unlawful to camp within 300 feet of any department-owned lake, boat ramp, or other facility. It shall be unlawful to camp at other specific locations as posted. This section shall not prohibit active angling at night along shorelines where permitted.

E. Removal of personal property and refuse. Any person who establishes or occupies a camp shall be responsible for the complete removal of all personal property and refuse when the camping authorization has expired. Any personal property or refuse that remains after the camping authorization has expired shall be considered litter and punishable pursuant to § 33.2-802 of the Code of Virginia.

F. It shall be unlawful when camping on department-owned or managed lands to store or leave unattended any food (including food for pets and livestock), refuse, bear attractant, or other wildlife attractant unless it is (i) in a bear-resistant container; (ii) in a trunk of a vehicle or in a closed, locked, hard-sided motor vehicle with a solid top; (iii) in a closed, locked, hard-body trailer; or (iv) suspended at least 10 feet clear of the ground at all points and at least four feet horizontally from the supporting tree or pole and any other tree or pole. It shall be unlawful to discard, bury, or abandon any food, refuse, bear attractant, or other wildlife attractant unless it is disposed of by placing it inside an animal-resistant trash receptacle provided by the department.

G. Any violation of this section or other posted rules shall be punishable as a Class III misdemeanor, and the camping permit shall become null and void. The permittee shall be required to immediately vacate the property upon summons or notification. A second or subsequent offense may result in the loss of camping privileges on department-owned or managed properties.

VA.R. Doc. No. R25-8246; Filed April 9, 2025, 2:36 p.m.

REGISTRAR'S NOTICE: The Board of Wildlife Resources is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 3 of the Code of Virginia when promulgating regulations regarding the management of wildlife.

Title of Regulation: **4VAC15-30. Definitions and Miscellaneous: Importation, Possession, Sale, etc., of Animals (amending 4VAC15-30-40).**

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Public Comment Deadline: June 3, 2025.

Agency Contact: Aaron Proctor, Policy Manager, Department of Wildlife Resources, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 801-8199, or email aaron.proctor@dwr.virginia.gov.

Summary:

The proposed amendments (i) remove a requirement to report harvested northern snakehead fish, (ii) remove exemptions from the permit requirement on the import, possession, or sale of prairie dogs in the Commonwealth, and (iii) clarify an outdated provision regarding permit exemptions.

4VAC15-30-40. Importation requirements, possession, and sale of nonnative (exotic) animals.

A. Permit required. A special permit is required and may be issued by the department, if consistent with the department's fish and wildlife management program, to import, possess, or sell those nonnative (exotic) animals listed in the following table and in 4VAC15-20-210 that the board finds and declares to be predatory or undesirable within the meaning and intent of § 29.1-542 of the Code of Virginia, in that their introduction into the Commonwealth will be detrimental to the native fish and wildlife resources of Virginia.

Proposed Regulation

AMPHIBIANS			
Order	Family	Genus/Species	Common Name
Anura	Bufonidae	Rhinella marina	Cane toad*
	Pipidae	Hymenochirus spp. Pseudohymenochiris merlini	African dwarf frog
		Xenopus spp.	Tongueless or African clawed frog
Caudata	Ambystomatidae	All species, except Ambystoma mexicanum	All mole salamanders, except Mexican axolotl
BIRDS			
Order	Family	Genus/Species	Common Name
Psittaciformes	Psittacidae	Myiopsitta monachus	Monk parakeet*

Anseriformes	Anatidae	Cygnus olor	Mute swan
FISH			
Order	Family	Genus/Species	Common Name
Cypriniformes	Catostomidae	Catostomus microps	Modoc sucker
		Catostomus santaanae	Santa Ana sucker
		Catostomus warnerensis	Warner sucker
		Ictiobus bubalus	Smallmouth* buffalo
		I. cyprinellus	Bigmouth* buffalo
		I. niger	Black buffalo*
	Characidae	Pygopristis spp. Pygocentrus spp. Rooseveltiella spp. Serrasalmo spp. Serrasalmus spp. Taddyella spp.	Piranhas
	Cobitidae	Misgurnus anguillicaudatus	Oriental weatherfish
	Cyprinidae	Aristichyhys nobilis	Bighead carp*
		Chrosomus saylori	Laurel dace
		Ctenopharyngodon idella	Grass carp or white amur
		Cyprinella caerulea	Blue shiner
		Cyprinella formosa	Beautiful shiner
		Cyprinella lutrensis	Red shiner
		Hypophthalmichthys molitrix	Silver carp*
		Mylopharyngodom piceus	Black carp*
		Notropis albizonatus	Palezone shiner
		Notropis cahabae	Cahaba shiner
		Notropis girardi	Arkansas River shiner
		Notropis mekistocholas	Cape Fear shiner
		Notropis simus pecosensis	Pecos bluntnose shiner
		Notropis topeka (= tristis)	Topeka shiner
		Phoxinus cumberlandensis	Blackside dace
		Rhinichthys osculus lethoporus	Independence Valley speckled dace
		Rhinichthys osculus nevadensis	Ash Meadows speckled dace
		Rhinichthys osculus oligoporus	Clover Valley speckled dace
		Rhinichthys osculus ssp.	Foskett speckled dace
		Rhinichthys osculus thermalis	Kendall Warm Springs dace

		Scardinius erythrophthalmus	Rudd
		Tinca tinca	Tench*
Cyprinodontiformes	Poeciliidae	Gambusia gaigei	Big Bend gambusia
		Gambusia georgei	San Marcos gambusia
		Gambusia heterochir	Clear Creek gambusia
		Gambusia nobilis	Pecos gambusia
		Peociliopsis occidentalis	Gila topminnow
Gasterosteiformes	Gasterosteidae	Gasterosteus aculeatus williamsoni	Unarmored threespine stickleback
Gobiesociformes	Gobiidae	Proterorhinus marmoratus	Tubenose goby
		Neogobius melanostomus	Round goby
Perciformes	Centrarchidae	Micropterus henshalli	Alabama bass
	Channidae	Channa spp. Parachanna spp.	Snakeheads
	Cichlidae	Tilapia spp.	Tilapia
		Gymnocephalus cernuum	Ruffe*
	Elassomatidae	Elassoma alabamae	Spring pygmy sunfish
	Percidae	Crystallaria cincotta	Diamond darter
		Etheostoma chermocki	Vermilion darter
		Etheostoma boschungi	Slackwater darter
		Etheostoma chienense	Relict darter
		Etheostoma etowahae	Etowah darter
		Etheostoma fonticola	Fountain darter
		Etheostoma moorei	Yellowcheek darter
		Etheostoma nianguae	Niangua darter
		Etheostoma nuchale	Watercress darter
		Etheostoma okaloosae	Okaloosa darter
		Etheostoma phytophilum	Rush darter
		Etheostoma rubrum	Bayou darter
		Etheostoma scotti	Cherokee darter
		Etheostoma sp.	Bluemask (= jewel) darter
		Etheostoma susanae	Cumberland darter
		Etheostoma wapiti	Boulder darter
		Percina antesella	Amber darter
		Percina aurolineata	Goldline darter

		Percina jenkinsi	Conasauga logperch
		Percina pantherina	Leopard darter
		Percina tanasi	Snail darter
Scorpaeniformes	Cottidae	Cottus sp.	Grotto sculpin
		Cottus paulus (= pygmaeus)	Pygmy sculpin
Siluriformes	Clariidae	All species	Air-breathing catfish
	Ictaluridae	Noturus baileyi	Smoky madtom
		Noturus crypticus	Chucky madtom
		Noturus placidus	Neosho madtom
		Noturus stanauli	Pygmy madtom
		Noturus trautmani	Scioto madtom
Synbranchiformes	Synbranchidae	Monopterus albus	Swamp eel
MAMMALS			
Order	Family	Genus/Species	Common Name
Artiodactyla	Suidae	All Species	Pigs or Hogs*
	Cervidae	All Species	Deer*
Carnivora	Canidae	All Species	Wild Dogs,* Wolves, Coyotes or Coyote hybrids, Jackals and Foxes
	Ursidae	All Species	Bears*
	Procyonidae	All Species	Raccoons and* Relatives
	Mustelidae	All Species	Weasels, Badgers,* Skunks and Otters
		(except Mustela putorius furo)	Ferret
	Viverridae	All Species	Civets, Genets,* Lingsangs, Mongooses, and Fossas
	Herpestidae	All Species	Mongooses*
	Hyaenidae	All Species	Hyenas and Aardwolves*
	Felidae	All Species	Cats*
Chiroptera		All Species	Bats*
Lagomorpha	Lepridae	Brachylagus idahoensis	Pygmy rabbit
		Lepus europeaeous	European hare
		Oryctolagus cuniculus	European rabbit
		Sylvilagus bachmani riparius	Riparian brush rabbit
		Sylvilagus palustris hefneri	Lower Keys marsh rabbit
Rodentia		All species native to Africa	All species native to Africa
	Dipodidae	Zapus hudsonius preblei	Preble's meadow jumping mouse

	Muridae	Microtus californicus scirpensis	Amargosa vole
		Microtus mexicanus hualpaiensis	Hualapai Mexican vole
		Microtus pennsylvanicus dukecampbelli	Florida salt marsh vole
		Neotoma floridana smalli	Key Largo woodrat
		Neotoma fuscipes riparia	Riparian (= San Joaquin Valley) woodrat
		Oryzomys palustris natator	Rice rat
		Peromyscus gossypinus allapaticola	Key Largo cotton mouse
		Peromyscus polionotus allophrys	Choctawhatchee beach mouse
		Peromyscus polionotus ammobates	Alabama beach mouse
		Peromyscus polionotus niveiventris	Southeastern beach mouse
		Peromyscus polionotus peninsularis	St. Andrew beach mouse
		Peromyscus polionotus phasma	Anastasia Island beach mouse
		Peromyscus polionotus trissyllepsis	Perdido Key beach mouse
		Reithrodontomys raviventris	Salt marsh harvest mouse
	Heteromyidae	Dipodomys heermanni morroensis	Morro Bay kangaroo rat
		Dipodomys ingens	Giant kangaroo rat
		Dipodomys merriami parvus	San Bernadino Merriam's kangaroo rat
		Dipodomys nitratoides exilis	Fresno kangaroo rat
		Dipodomys nitratoides nitratoides	Tipton kangaroo rat
		Dipodomys stephensi (including D. cascus)	Stephens' kangaroo rat
		Perognathus longimembris pacificus	Pacific pocket mouse
	Sciuridae	Cynomys spp.	Prairie dogs
		Spermophilus brunneus brunneus	Northern Idaho ground squirrel
		Tamiasciurus hudsonicus grahamensis	Mount Graham red squirrel
Soricomorpha	Soricidae	Sorex ornatus relictus	Buena Vista Lake ornate shrew
MOLLUSKS			

Order	Family	Genus/Species	Common Name
Neotaenioglossa	Hydrobiidae	Potamopyrgus antipodarum	New Zealand mudsnail
Veneroida	Dreissenidae	Dreissena bugensis	Quagga mussel
		Dreissena bugensis	Quagga mussel
REPTILES			
Order	Family	Genus/Species	Common Name
Crocodilia	Alligatoridae	All species	Alligators, caimans*
	Crocodylidae	All species	Crocodiles*
	Gavialidae	All species	Gavials*
Squamata	Colubridae	Boiga irregularis	Brown tree snake*
CRUSTACEANS			
Order	Family	Genus/Species	Common Name
Decapoda	Cambaridae	Cambarus aculabrum	Cave crayfish
		Cambarus zophonastes	Cave crayfish
		Orconectes rusticus	Rusty crayfish
		Orconectes shoupi	Nashville crayfish
		Pacifastacus fortis	Shasta crayfish
		Procambarus sp.	Marbled crayfish
	Parastacidae	Cherax spp.	Australian crayfish
	Varunidea	Eriocheir sinensis	Chinese mitten crab

B. Temporary possession permit for certain animals. Notwithstanding the permitting requirements of subsection A of this section, a person, company, or corporation possessing any nonnative (exotic) animal, designated with an asterisk (*) in subsection A of this section, prior to July 1, 1992, must ~~declare such possession~~ have proof that the animal was declared to the department in writing to the department ~~by~~ prior to January 1, 1993. This written declaration shall serve as a permit for possession only, is not transferable, and must be renewed every five years. This written declaration must include species name, common name, number of individuals, date or dates acquired, sex (if possible), estimated age, height or length, and other characteristics such as bands and band numbers, tattoos, registration numbers, coloration, and specific markings. Possession transfer will require a new permit according to the requirements of this subsection.

C. Exception for certain monk parakeets. ~~A~~ No permit is ~~not~~ required for monk parakeets (quakers) that have been captive bred and are closed-banded with a seamless band.

D. Exception for parts or products. ~~A~~ No permit is ~~not~~ required for parts or products of those nonnative (exotic) animals listed in subsection A of this section that may be used for personal use, in the manufacture of products, or ~~used~~ in scientific research, provided that such parts or products ~~be~~ are packaged outside the Commonwealth by any person, company, or corporation duly licensed by the state in which the parts originate. Such packages may be transported into the Commonwealth, consistent with other state laws and regulations, so long as the original package remains unbroken, unopened, and intact until its point of destination is reached. ~~Documentation~~ The person, business, or institution ordering such nonnative (exotic) animal parts shall keep documentation concerning the type and cost of the animal parts ordered, the purpose and date of the order, point and date of shipping, and date of receiving ~~shall be kept by the person, business, or institution ordering such nonnative (exotic) animal parts~~. Such documentation shall be open to inspection by a representative of the Department of Wildlife Resources.

~~E. Exception for prairie dogs. The effective date of listing of prairie dogs under subsection A of this section shall be January~~

~~1, 1998. Prairie dogs possessed in captivity in Virginia on December 31, 1997, may be maintained in captivity until the animals' deaths, but they may not be sold on or after January 1, 1998, without a permit.~~

~~F.~~ E. Exception for snakehead fish. Anglers may legally harvest snakehead fish of the family Channidae, provided that they immediately kill such fish ~~and that they notify the department, as soon as practicable, of such actions~~.

~~G.~~ F. Exception for feral hogs. Anyone may legally trap feral hogs with written permission of the landowner, provided that any trapped hogs are not removed from the trap site alive and are killed immediately.

~~H.~~ G. Exception for grass carp. Anglers may legally harvest grass carp of the family Cyprinidae only from public waters of the Commonwealth. It is unlawful to harvest grass carp from any public inland lake or reservoir. Anglers taking grass carp must ensure that harvested grass carp are dead.

~~I.~~ H. Exception for Alabama bass. Anglers may possess live Alabama bass of the family Centrarchidae only on the body of water from which the fish were captured, provided that the angler does not live transport these fish outside of the body of water from which the fish were captured. Anglers may only release live Alabama bass back into the body of water from which the fish were captured. Anglers may legally harvest Alabama bass, provided that the anglers ensure all harvested Alabama bass are dead.

~~J.~~ I. All other nonnative (exotic) animals. All other nonnative (exotic) animals not listed in subsection A of this section may be possessed, purchased, and sold~~;~~, provided~~,~~ that such animals shall be subject to all applicable local, state, and federal laws and regulations, including those that apply to ~~threatened/endangered~~ threatened and endangered species, and ~~further provided,~~ that no such animals shall ~~not~~ be liberated within the Commonwealth.

VA.R. Doc. No. R25-8247; Filed April 9, 2025, 2:37 p.m.

Proposed Regulation

REGISTRAR'S NOTICE: The Board of Wildlife Resources is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 3 of the Code of Virginia when promulgating regulations regarding the management of wildlife.

Title of Regulation: **4VAC15-40. Game: In General (amending 4VAC15-40-70, 4VAC15-40-282; adding 4VAC15-40-61, 4VAC15-40-62, 4VAC15-40-310; repealing 4VAC15-40-60).**

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Public Comment Deadline: June 3, 2025.

Agency Contact: Aaron Proctor, Policy Manager, Department of Wildlife Resources, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 801-8199, or email aaron.proctor@dwr.virginia.gov.

Summary:

The proposed amendments (i) separate provisions regarding hunting with dogs and those regarding possession of certain weapons into separate sections to clarify when weapons may be possessed while hunting; (ii) establish provisions outlining the period during which hunting and trapping may occur on national forest lands, state forest lands, and department-owned and department-managed lands while maintaining the current timeframe for hunting and trapping on these lands; (iii) clarify lawful shooting activities on department-owned and department-managed lands; (iv) clarify provisions regarding the possession of firearms while training dogs; (v) remove the requirement that a person be notified by department personnel that they are purposefully or inadvertently feeding bears prior to being found in violation of the regulation; and (vi) establish provisions for department staff or designees of department staff to authorize citizens to dispatch severely injured or diseased game, fur-bearing animals, and nonmigratory game birds for animal welfare purposes.

4VAC15-40-60. ~~Hunting with dogs or possession of weapons in certain locations during closed season.~~ (Repealed.)

~~A. Department-owned and national forest lands statewide. It shall be unlawful to have in possession a firearm or any hunting weapon that is not unloaded and cased or dismantled on all national forest lands statewide and on department-owned lands and on other lands managed by the department under cooperative agreement except during the period when it is lawful to take bear, deer, grouse, pheasant, quail, rabbit, raccoon, squirrel, turkey, waterfowl, or migratory gamebirds on these lands.~~

~~B. Certain counties. Except as otherwise provided in 4VAC15-40-70, it shall be unlawful to have either a shotgun or a rifle in one's possession when accompanied by a dog in the daytime in the fields, forests or waters of the Counties of Augusta, Clarke, Frederick, Page, Shenandoah, and Warren, and in the counties east of the Blue Ridge Mountains, except Patrick, at any time except the periods prescribed by law to hunt game birds and animals.~~

~~C. Shooting ranges and authorized activities. The provisions of this section shall not prohibit the conduct of any activities authorized by the board or the establishment and operation of archery and shooting ranges on the lands described in subsections A and B of this section. The use of firearms or any hunting weapon in such ranges during the closed season period will be restricted to the area within the established range boundaries. Such weapons shall be required to be unloaded and cased or dismantled in all areas other than the range boundaries. The use of firearms or any hunting weapon during the closed hunting period in such ranges shall be restricted to target shooting only, and no birds or animals shall be molested.~~

~~D. It shall be unlawful to chase with a dog or train dogs on national forest lands or department-owned lands except during authorized hunting, chase, or training seasons that specifically permit these activities on these lands or during raccoon hound field trials on these lands between September 1 and March 31, both dates inclusive, that are sanctioned by bona fide national kennel clubs and authorized by permits issued by the department or the U.S. Forest Service.~~

~~E. It shall be unlawful to possess or transport any loaded firearm or loaded hunting weapon in or on any vehicle at any time on national forest lands or department-owned lands.~~

~~F. The provisions of this section shall not prohibit the possession, transport, and use of loaded firearms by employees of the Department of Wildlife Resources while engaged in the performance of their authorized and official duties, nor shall it prohibit possession and transport of loaded concealed handguns where the individual possesses a concealed handgun permit as defined in § 18.2-308 of the Code of Virginia.~~

~~G. Meaning of "possession" of any hunting weapon and definition of "loaded crossbow," "loaded arrowgun," "loaded muzzleloader," and "loaded firearm." For the purpose of this section, the word "possession" shall include having any firearm or weapon used for hunting in or on one's person, vehicle, or conveyance. For the purpose of this section, a "loaded firearm" means a firearm in which ammunition is chambered or loaded in the magazine or clip when such magazine or clip is engaged or partially engaged in a firearm. The definition of a "loaded muzzleloader" will include a muzzleloading rifle, pistol, or shotgun that is capped, has a charged pan, or has a primer or battery installed in the muzzleloader. A "loaded crossbow" means a crossbow that is cocked and has either a bolt or arrow engaged or partially engaged on the shooting rail or track of the crossbow, or with a "trackless crossbow" when the crossbow is cocked and a bolt or arrow is nocked. "Loaded arrowgun" means an arrowgun that has an arrow or bolt inserted on the arrow rest or in the barrel. "Hunting weapon" means any weapon allowable for hunting as defined in § 29.1-519 of the Code of Virginia.~~

4VAC15-40-61. Hunting and trapping on national forest, state forest, and department-owned or department-managed lands.

A. Except as provided in subsection B of this section, it shall be unlawful to hunt or trap, as defined in § 29.1-100 of the Code of Virginia, on all national forest lands and state forest lands statewide and on department-owned and department-managed lands, except during the period when it is lawful to take bear, deer, grouse, pheasant, quail, rabbit, raccoon, squirrel, turkey, waterfowl, or migratory game birds on these lands.

B. It shall be lawful to chase with a dog or train dogs on national forest lands, state forest lands, or department-owned and department-managed lands during authorized hunting, chase, or training seasons that specifically permit these activities on these lands or during raccoon hound field trials on these lands between September 1 and March 31, both dates inclusive, that are sanctioned by bona fide national kennel clubs and authorized by permits issued by the department or the U.S. Forest Service. Otherwise, such activities on these lands shall be unlawful.

4VAC15-40-62. Shooting ranges on department-owned and managed lands.

A. It shall be unlawful to use or discharge a weapon, as described in § 29.1-519 of the Code of Virginia, on department-owned and department-managed lands other than to take legal wildlife while hunting or trapping during open seasons, as defined in 4VAC15-40-61.

B. Discharge of a firearm or hunting weapon for target shooting is prohibited on department-owned and department-managed lands, except on designated shooting ranges designed for specific firearms and hunting weapons on posted days and hours during which the range is open for operation.

4VAC15-40-70. Open dog training season.

A. Private lands and certain military areas. It shall be lawful to train dogs during daylight hours on squirrels and nonmigratory game birds on private lands, and on rabbits and nonmigratory game birds on Fort A. P. Hill, Fort Pickett, and Quantico Marine Reservation. Participants in this dog training season shall not ~~have~~ use any weapons other than starter pistols ~~in their possession~~ to train dogs, must comply with all regulations and laws pertaining to hunting, and no game shall be taken; provided, however, that weapons may be ~~in possession~~ used on private lands when training dogs on captive raised and properly marked mallards and pigeons so that they may be immediately shot or recovered.

B. It shall be lawful to train dogs on rabbits on private lands from 1/2 hour before sunrise to midnight.

C. Designated portions of certain department-owned lands. It shall be lawful to train dogs on quail on designated portions of the Amelia Wildlife Management Area, Cavalier Wildlife Management Area, Chester F. Phelps Wildlife Management Area, Chickahominy Wildlife Management Area, Dick Cross Wildlife Management Area, Mattaponi Wildlife Management Area, and White Oak Mountain Wildlife Management Area from September 1 to the day prior to the opening date of the quail hunting season, both dates inclusive. Participants in this dog training season shall not ~~have~~ use any weapons other than starter pistols ~~in their possession~~ to train dogs, shall not release pen-raised birds, must comply with all regulations and laws pertaining to hunting, and no game shall be taken.

D. Designated department-owned lands. It shall be lawful to train dogs during daylight hours on rabbits and nonmigratory game birds on the Weston Wildlife Management Area from September 1 to March 31, both dates inclusive. Participants in this dog training season shall not ~~have~~ use any weapons other

than starter pistols ~~in their possession~~ to train dogs, shall not release pen-raised birds, must comply with all regulations and laws pertaining to hunting, and no game shall be taken.

4VAC15-40-282. Unauthorized feeding of bear.

It shall be unlawful for any person, as defined in § 1-230 of the Code of Virginia, to place, distribute, or allow the placement of food, minerals, carrion, trash, or similar substances to feed or attract bear. ~~Nor, upon notification by department personnel,~~ No person shall ~~any person~~ continue to place, distribute, or allow the placement of any food, mineral, carrion, trash, or similar substances for any purpose if the placement of these materials results in the presence of bear. ~~After such notification, such person shall be in violation of this section if the placing, distribution, or presence of such food, minerals, carrion, trash, or similar substances continues. This~~ Nothing in this section shall ~~not~~ apply to wildlife management activities conducted or authorized by the department.

4VAC15-40-310. Dispatch of game or furbearers by authorized persons.

A. The director or the director's designee may, at the director's discretion, authorize a person to dispatch any nonmigratory game bird, fur-bearing animal, or game animal, except elk, as those animals are defined in § 29.1-100 of the Code of Virginia, provided that the authorizing official is satisfied that the animal is actively exhibiting clear signs of severe injury or disease.

B. The authorizing official may award the carcass of such animal or bird to any person, along with a call for service or report number, provided that no part of any animal dispatched pursuant to this section shall be used for the purposes of taxidermy, mounts, contests, or any public display, unless authorized by the director or the director's designee.

C. Where a deer is the animal authorized to be dispatched, the carcass or parts of it may not be removed from a disease management area, except according to the provisions of 4VAC15-90-293.

VA.R. Doc. No. R25-8248; Filed April 16, 2025, 11:09 a.m.

Proposed Regulation

REGISTRAR'S NOTICE: The Board of Wildlife Resources is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 3 of the Code of Virginia when promulgating regulations regarding the management of wildlife.

Title of Regulation: **4VAC15-50. Game: Bear (amending 4VAC15-50-11, 4VAC15-50-70, 4VAC15-50-71, 4VAC15-50-120).**

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Public Comment Deadline: June 3, 2025.

Agency Contact: Aaron Proctor, Policy Manager, Department of Wildlife Resources, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 801-8199, or email aaron.proctor@dwr.virginia.gov.

Summary:

The proposed amendments include (i) changes to archery, muzzleloading, and general firearms seasons for bears in various localities to meet population objectives; (ii) clarification of weapons possession by persons who are lawfully hunting bear; and (iii) increases of bear hound chase seasons in certain localities.

4VAC15-50-11. Open season; generally.

A. It shall be lawful to hunt bears in the following localities, including the cities and towns therein, during the following seasons:

Location	Season
Accomack County	Closed
Albemarle County	~~The~~ Friday following the fourth Monday in November ~~through~~ and for two consecutive days following, and 12 days immediately prior to and including the first Saturday in January~~, both dates inclusive~~.
Alleghany County	~~The~~ Friday following the fourth Monday in November ~~through~~ and for two consecutive days following, and 12 days immediately prior to and including the first Saturday in January~~, both dates inclusive~~.
Amelia County	Monday nearest December 2 through the first Saturday in January, both dates inclusive.
Amherst County	~~The~~ Friday following the fourth Monday in November ~~through~~ and for two consecutive days following, and 12 days immediately prior to and including the first Saturday in January~~, both dates inclusive~~.
Appomattox County	Friday following the fourth Monday ~~nearest December 2 through~~ in November and for two consecutive days following, and 12 days immediately prior to and including the first Saturday in January~~, both dates inclusive~~.
Arlington County	The fourth Monday in November through the first Saturday in January, both dates inclusive.
Augusta County	~~The~~ Friday following the fourth Monday in November ~~through~~ and for two consecutive days following, and 12 days immediately prior to and including the first Saturday in January~~, both dates inclusive~~.
Bath County	~~The~~ Friday following the fourth Monday in November ~~through~~ and for two consecutive days following, and 12 days immediately prior to and including the first Saturday in January~~, both dates inclusive~~.
Bedford County	~~The~~ Friday following the fourth Monday in November ~~through~~ and for two consecutive days following, and 12 days immediately prior to and including the first Saturday in January~~, both dates inclusive~~.
Bland County	Monday following the last Saturday in September and for two days following; and the fourth Monday in November through the first Saturday in January, both dates inclusive.
Botetourt County	~~The~~ Friday following the fourth Monday in November ~~through~~ and for two consecutive days following, and 12 days immediately prior to and including the first Saturday in January~~, both dates inclusive~~.
Brunswick County	Monday nearest December 2 through the first Saturday in January, both dates inclusive.
Buchanan County	Monday following the last Saturday in September and for two days following; and the fourth Monday in November through the first Saturday in January, both dates inclusive.
Buckingham County	Friday following the fourth Monday ~~nearest December 2 through~~ in November and for two consecutive days following, and 12 days immediately prior to and including the first Saturday in January~~, both dates inclusive~~.
Campbell County	Monday nearest December 2 through the first Saturday in January, both dates inclusive.
Caroline County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Carroll County	Monday nearest December 2 through the first Saturday in January, both dates inclusive.
Charles City County	Monday nearest December 2 through the first Saturday in January, both dates inclusive.

Charlotte County	~~Monday nearest December 2~~ Fourth Monday in November through the first Saturday in January, both dates inclusive.
Chesapeake (City of)	October 1 through the first Saturday in January, both dates inclusive.
Chesterfield County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Clarke County	~~The~~ Friday following the fourth Monday in November ~~through~~ and for two consecutive days following, and 12 days immediately prior to and including the first Saturday in January~~, both dates inclusive~~.
Craig County	Monday following the last Saturday in September and for two days following; and the fourth Monday in November through the first Saturday in January, both dates inclusive.
Culpeper County	~~Fourth~~ Friday following the fourth Monday in November ~~through~~ and for two consecutive days following, and 12 days immediately prior to and including the first Saturday in January~~, both dates inclusive~~.
Cumberland County	Monday nearest December 2 through the first Saturday in January, both dates inclusive.
Dickenson County	Monday following the last Saturday in September and for two days following; and the fourth Monday in November through the first Saturday in January, both dates inclusive.
Dinwiddie County	Monday nearest December 2 through the first Saturday in January, both dates inclusive.
Essex County	Monday nearest December 2 through the first Saturday in January, both dates inclusive.
Fairfax County	The fourth Monday in November through the first Saturday in January, both dates inclusive.
Fauquier County	~~The~~ Friday following the fourth Monday in November ~~through~~ and for two consecutive days following, and 12 days immediately prior to and including the first Saturday in January~~, both dates inclusive~~.
Floyd County	Monday nearest December 2 through the first Saturday in January, both dates inclusive.
Fluvanna County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Franklin County	Monday nearest December 2 through the first Saturday in January, both dates inclusive.
Frederick County	~~The~~ Friday following the fourth Monday in November ~~through~~ and for two consecutive days following, and 12 days immediately prior to and including the first Saturday in January~~, both dates inclusive~~.
Giles County	Monday following the last Saturday in September and for two days following; and the fourth Monday in November through the first Saturday in January, both dates inclusive.
Gloucester County	Monday nearest December 2 through the first Saturday in January, both dates inclusive.
Goochland County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Grayson County	Monday nearest December 2 through the first Saturday in January, both dates inclusive.
Greene County	~~The~~ Friday following the fourth Monday in November ~~through~~ and for two consecutive days following, and 12 days immediately prior to and including the first Saturday in January~~, both dates inclusive~~.
Greensville County	Monday nearest December 2 through the first Saturday in January, both dates inclusive.
Halifax County	~~Monday nearest December 2~~ Fourth Monday in November through the first Saturday in January, both dates inclusive.
Hanover County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Henrico County	Fourth Monday in November through the first Saturday in January, both dates inclusive.

Henry County	Monday nearest December 2 through the first Saturday in January, both dates inclusive.
Highland County	~~The~~ Friday following the fourth Monday in November ~~through~~ and for two consecutive days following, and 12 days immediately prior to and including the first Saturday in January~~, both dates inclusive~~.
Isle of Wight County	Monday nearest December 2 through the first Saturday in January, both dates inclusive.
James City County	Monday nearest December 2 through the first Saturday in January, both dates inclusive.
King and Queen County	Monday nearest December 2 through the first Saturday in January, both dates inclusive.
King George County	Monday nearest December 2 through the first Saturday in January, both dates inclusive.
King William County	Monday nearest December 2 through the first Saturday in January, both dates inclusive.
Lancaster County	Monday nearest December 2 through the first Saturday in January, both dates inclusive.
Lee County	Monday following the last Saturday in September and for two days following; and the fourth Monday in November through the first Saturday in January, both dates inclusive.
Loudoun County	~~The~~ Friday following the fourth Monday in November ~~through~~ and for two consecutive days following, and 12 days immediately prior to and including the first Saturday in January~~, both dates inclusive~~.
Louisa County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Lunenburg County	Monday nearest December 2 through the first Saturday in January, both dates inclusive.
Madison County	~~The~~ Friday following the fourth Monday in November ~~through~~ and for two consecutive days following, and 12 days immediately prior to and including the first Saturday in January~~, both dates inclusive~~.
Mathews County	Monday nearest December 2 through the first Saturday in January, both dates inclusive.
Mecklenburg County	~~Monday nearest December 2~~ Fourth Monday in November through the first Saturday in January, both dates inclusive.
Middlesex County	Monday nearest December 2 through the first Saturday in January, both dates inclusive.
~~Montgomery County (southeast of I-81)~~	~~Monday nearest December 2 through the first Saturday in January, both dates inclusive.~~
Montgomery County ~~(northwest of I-81)~~	Monday following the last Saturday in September and for two days following; and the fourth Monday in November through the first Saturday in January, both dates inclusive.
Nelson County	~~The~~ Friday following the fourth Monday in November ~~through~~ and for two consecutive days following, and 12 days immediately prior to and including the first Saturday in January~~, both dates inclusive~~.
New Kent County	Monday nearest December 2 through the first Saturday in January, both dates inclusive.
Northampton County	Closed
Northumberland County	Monday nearest December 2 through the first Saturday in January, both dates inclusive.
Nottoway County	Monday nearest December 2 through the first Saturday in January, both dates inclusive.
Orange County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Page County	~~The~~ Friday following the fourth Monday in November ~~through~~ and for two consecutive days following, and 12 days immediately prior to and including the first Saturday in January~~, both dates inclusive~~.
Patrick County	Monday nearest December 2 through the first Saturday in January, both dates inclusive.

Pittsylvania County	Monday nearest December 2 through the first Saturday in January, both dates inclusive.
Powhatan County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Prince Edward County	~~Monday nearest December 2~~ Fourth Monday in November through the first Saturday in January, both dates inclusive.
Prince George County	Monday nearest December 2 through the first Saturday in January, both dates inclusive.
Prince William County	The fourth Monday in November through the first Saturday in January, both dates inclusive.
~~Pulaski County (southeast of I-81)~~	~~Monday nearest December 2 through the first Saturday in January, both dates inclusive.~~
Pulaski County ~~(northwest of I-81)~~	Monday following the last Saturday in September and for two days following; and the fourth Monday in November through the first Saturday in January, both dates inclusive.
Rappahannock County	~~The~~ Friday following the fourth Monday in November ~~through~~ and for two consecutive days following, and 12 days immediately prior to and including the first Saturday in January~~, both dates inclusive~~.
Richmond County	Monday nearest December 2 through the first Saturday in January, both dates inclusive.
Roanoke County	Monday following the last Saturday in September and for two days following; and the fourth Monday in November through the first Saturday in January, both dates inclusive.
Rockbridge County	~~The~~ Friday following the fourth Monday in November ~~through~~ and for two consecutive days following, and 12 days immediately prior to and including the first Saturday in January~~, both dates inclusive~~.
Rockingham County	~~The~~ Friday following the fourth Monday in November ~~through~~ and for two consecutive days following, and 12 days immediately prior to and including the first Saturday in January~~, both dates inclusive~~.
Russell County	Monday following the last Saturday in September and for two days following; and the fourth Monday in November through the first Saturday in January, both dates inclusive.
Scott County	Monday following the last Saturday in September and for two days following; and the fourth Monday in November through the first Saturday in January, both dates inclusive.
Shenandoah County	~~The~~ Friday following the fourth Monday in November ~~through~~ and for two consecutive days following, and 12 days immediately prior to and including the first Saturday in January~~, both dates inclusive~~.
~~Smyth County (southeast of I-81)~~	~~Monday nearest December 2 through the first Saturday in January, both dates inclusive.~~
Smyth County ~~(northwest of I-81)~~	Monday following the last Saturday in September and for two days following~~;~~, and the fourth Monday in November through the first Saturday in January, both dates inclusive.
Southampton County	Monday nearest December 2 through the first Saturday in January, both dates inclusive.
Spotsylvania County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Stafford County	The fourth Monday in November through the first Saturday in January, both dates inclusive.
Suffolk (City of)	October 1 through the first Saturday in January, both dates inclusive.
Surry County	Monday nearest December 2 through the first Saturday in January, both dates inclusive.
Sussex County	Monday nearest December 2 through the first Saturday in January, both dates inclusive.

Tazewell County	Monday following the last Saturday in September and for two days following~~;~~, and the fourth Monday in November through the first Saturday in January, both dates inclusive.
Virginia Beach (City of)	October 1 through the first Saturday in January, both dates inclusive.
Warren County	~~The~~ Friday following the fourth Monday in November ~~through~~ and for two consecutive days following, and 12 days immediately prior to and including the first Saturday in January~~, both dates inclusive~~.
~~Washington County (southeast of I-81)~~	~~Monday nearest December 2 through the first Saturday in January, both dates inclusive.~~
Washington County ~~(northwest of I-81)~~	Monday following the last Saturday in September and for two days following~~;~~, and the fourth Monday in November through the first Saturday in January, both dates inclusive.
Westmoreland County	Monday nearest December 2 through the first Saturday in January, both dates inclusive.
Wise County	Monday following the last Saturday in September and for two days following~~;~~, and the fourth Monday in November through the first Saturday in January, both dates inclusive.
~~Wythe County (southeast of I-81)~~	~~Monday nearest December 2 through the first Saturday in January, both dates inclusive.~~
Wythe County ~~(northwest of I-81)~~	Monday following the last Saturday in September and for two days following~~;~~, and the fourth Monday in November through the first Saturday in January, both dates inclusive.
York County	Monday nearest December 2 through the first Saturday in January, both dates inclusive.

B. Notwithstanding provisions of subsection A of this section, bears may be hunted from the first Saturday in October through the first Saturday in January, both dates inclusive, within the incorporated limits of any town or city that allows bear hunting.

4VAC15-50-70. Archery hunting.

A. It shall be lawful to hunt bear during the special archery season with archery equipment from the first Saturday in October through the Friday prior to the third Monday in November, both dates inclusive, except in the localities listed in subsection B of this section.

B. It shall be lawful to hunt bear during the special archery season with archery equipment from the third Saturday in October through the Friday prior to the third Monday in November, both dates inclusive, in the following counties, including the cities and towns within: Albemarle, Alleghany, Amherst, Appomattox, Augusta, Bath, Bedford, Botetourt, Buckingham, Clarke, Culpeper, Fauquier, Frederick, Greene, Highland, Loudoun, Madison, Nelson, Page, Rappahannock, Rockbridge, Rockingham, Shenandoah, and Warren.

C. It shall be unlawful to ~~carry~~ use firearms to hunt any game species while hunting with archery equipment during the special archery seasons, except that hunters 15 years of age and under and apprentice hunters may ~~be in possession of~~ use firearms to hunt for bear while hunting on youth and apprentice hunter bear hunting weekend as authorized by 4VAC15-50-12 and except that a muzzleloading gun, as defined in 4VAC15-50-71, may be ~~in the possession of~~ used by a properly licensed muzzleloading gun hunter when and where the early special archery bear season overlaps the early special muzzleloading bear season.

~~C.~~ D. It shall be unlawful to use dogs when hunting with archery equipment during the special archery season, except that hounds may be used by hunters participating in the youth and apprentice hunter bear hunting weekend in areas as defined in 4VAC15-50-12, and that tracking dogs as described in § 29.1-516.1 of the Code of Virginia may be used.

4VAC15-50-71. Muzzleloading gun hunting.

A. It shall be lawful to hunt bears during the special muzzleloading season with muzzleloading guns from the Saturday prior to the second Monday in November through the Friday prior to the third Monday in November, both dates inclusive, except in the Cities of Chesapeake, Suffolk, and Virginia Beach, except in the localities listed in subsection B of this section.

B. It shall be lawful to hunt bear during the special muzzleloading season with muzzleloading guns from the Tuesday following the second Monday in November through the Friday prior to the third Monday in November, both dates inclusive, in the following counties, including the cities and towns within: Albemarle, Alleghany, Amherst, Appomattox, Augusta, Bath, Bedford, Botetourt, Buckingham, Clarke, Culpeper, Fauquier, Frederick, Greene, Highland, Loudoun,

Madison, Nelson, Page, Rappahannock, Rockbridge, Rockingham, Shenandoah, and Warren.

C. It shall be unlawful to hunt bear with dogs during any special season for hunting with muzzleloading guns, except that tracking dogs as defined in § 29.1-516.1 of the Code of Virginia may be used.

~~C.~~ D. Muzzleloading guns, for the purpose of this section, include:

1. ~~Single shot muzzleloading rifles.40~~ Muzzleloading rifles (one or more barrels) .40 caliber or larger, firing a single projectile or sabot (with a .35 caliber or larger projectile) where the projectile is loaded from the muzzle;

2. Muzzleloading shotguns (one or more barrels) not larger than 10 gauge where the projectiles are loaded from the muzzle;

3. Muzzleloading pistols ~~(one or more barrels).45~~ (one or more barrels) .44 caliber or larger, firing a single projectile or sabot (with a .35 caliber or larger projectile) per barrel where the propellant and projectile are loaded from the muzzle; and

4. Muzzleloading revolvers .45 caliber or larger, firing a single projectile or sabot (with a .35 caliber or larger projectile) per cylinder where the propellant and projectile are loaded from the forward end of the cylinder.

~~D.~~ E. It shall be unlawful to ~~have in immediate possession~~ hunt bear with any firearm other than a muzzleloading gun ~~while hunting with a muzzleloading gun in a~~ during the special muzzleloading bear season.

4VAC15-50-120. Bear hound training season.

A. It shall be lawful to chase black bear with dogs, without capturing or taking, from August 1 through the last Saturday in September, both dates inclusive, in the Counties of Albemarle, Alleghany, Amherst, Augusta, Bath, Bedford, Bland, Botetourt, Brunswick, Buchanan, Carroll, Charlotte, Craig, Culpeper, Dickenson, Floyd, Franklin, Giles, Grayson (east of Route 16), Greene, Greensville, Highland, Lee, Lunenburg, Madison, Mecklenburg, Montgomery, Nelson, Page, Pulaski, Rappahannock, Roanoke (west of I-81), Rockbridge, Rockingham, Russell, Scott, Shenandoah, Smyth (except for the part southeast of I-81 and west of State Route 16), Tazewell, Warren, Washington (northwest of I-81), Wise, and Wythe and in the Cities of Chesapeake, Suffolk, and Virginia Beach.

B. It shall be lawful to chase black bear with dogs, without capturing or taking, from the Saturday prior to the third Monday in November and for 14 days following, both dates inclusive, in the Counties of Amelia, ~~Appomattox, Buckingham,~~ Brunswick, Campbell (east of the Norfolk Southern Railroad), Charles City, Charlotte, Cumberland, Dinwiddie, Essex, Gloucester, Greensville, Halifax, Isle of Wight, James City, King and Queen, King George, King William, Lancaster, Lunenburg, Mathews, Mecklenburg, Middlesex, New Kent, Northumberland, Nottoway, Pittsylvania (east of the Norfolk Southern Railroad), Prince Edward, Prince George, Richmond, Southampton, Surry, Sussex, Westmoreland, and York.

C. It shall be lawful to chase black bear with dogs, without capturing or taking, from the Saturday prior to the third Monday in November and for 12 days following, both dates inclusive, in the Counties of Appomattox and Buckingham.

D. It shall be lawful to chase black bear with dogs, without capturing or taking, from the first Monday of December and for 19 days following, excluding Sundays, in the Counties of Albemarle, Alleghany, Amherst, Appomattox, Augusta, Bath, Bedford, Botetourt, Buckingham, Clarke, Culpeper, Fauquier, Frederick, Greene, Highland, Madison, Nelson, Page, Rappahannock, Rockbridge, Rockingham, Shenandoah, and Warren.

E. It shall be unlawful to ~~have in possession a~~ use any firearm, bow, crossbow, or any weapon ~~capable of~~ legally permissible for taking a black bear for the specific purpose of harvesting or killing a black bear while participating in the bear hound training season. ~~The meaning of "possession" for the purpose of this section shall include having a firearm, bow, crossbow, or any weapon capable of taking a black bear in or on one's person, vehicle, or conveyance.~~

VA.R. Doc. No. R25-8259; Filed April 9, 2025, 2:44 p.m.

Proposed Regulation

REGISTRAR'S NOTICE: The Board of Wildlife Resources is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 3 of the Code of Virginia when promulgating regulations regarding the management of wildlife.

Title of Regulation: **4VAC15-70. Game: Bobcat (amending 4VAC15-70-60).**

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Public Comment Deadline: June 3, 2025.

Agency Contact: Aaron Proctor, Policy Manager, Department of Wildlife Resources, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 801-8199, or email aaron.proctor@dwr.virginia.gov.

Summary:

The proposed amendments clarify language regarding the possession of a firearm during the bobcat archery season.

4VAC15-70-60. Archery hunting with bow and arrow, crossbow, or slingbow.

A. Season. It shall be lawful to hunt bobcats with bow and arrow, crossbow, or slingbow from the first Saturday in October through October 31, both dates inclusive.

B. ~~Carrying~~ Using firearms to hunt prohibited. It shall be unlawful to ~~carry~~ use firearms to hunt any game species while hunting with bow and arrow, crossbow, or slingbow during the special archery seasons.

C. Use of dogs prohibited during the special archery season. It shall be unlawful to use dogs when hunting with bow and arrow, crossbow, or slingbow during any special archery season.

VA.R. Doc. No. R25-8255; Filed April 9, 2025, 2:45 p.m.

Proposed Regulation

REGISTRAR'S NOTICE: The Board of Wildlife Resources is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 3 of the Code of Virginia when promulgating regulations regarding the management of wildlife.

Title of Regulation: **4VAC15-90. Game: Deer (amending 4VAC15-90-10, 4VAC15-90-70, 4VAC15-90-80, 4VAC15-90-89, 4VAC15-90-91, 4VAC15-90-530, 4VAC15-90-540, 4VAC15-90-550).**

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Public Comment Deadline: June 3, 2025.

Agency Contact: Aaron Proctor, Policy Manager, Department of Wildlife Resources, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 801-8199, or email aaron.proctor@dwr.virginia.gov.

Summary:

The proposed amendments (i) update deer hunting general firearm seasons, deer hunting archery seasons, and deer hunting muzzleloader seasons by management unit; (ii) clarify firearm possession and use terms in accordance with Second Amendment provisions; (iii) address which deer management units are part of the Earn A Buck program used to accomplish female deer harvest objectives to meet overall deer population harvest goals; (iv) update deer hunting either-sex days as part of overall deer seasons by management unit; (v) simplify language and remove unnecessary mandates; and (vi) allow the department the appropriate flexibility to take into account wildlife violations for those drawn in the elk lottery and landowner lottery.

4VAC15-90-10. Open season; generally.

A. It shall be lawful to hunt deer in the following localities, including the cities and towns therein, during the following seasons, all dates inclusive.

Locality	**Season**
Accomack County	Saturday prior to the third Monday in November through the first Saturday in January
Albemarle County	Saturday prior to the third Monday in November through the first Saturday in January
Alleghany County (except on national forest lands)	Saturday prior to the third Monday in November and for 28 consecutive days following
Alleghany County (national forest lands)	Saturday prior to the third Monday in November and for 14 consecutive days following
Amelia County	Saturday prior to the third Monday in November through the first Saturday in January
Amherst County (~~west of Business U.S. 29 from the James River to its intersection with U.S. 29 just south of the Town of Amherst continuing north on U.S. 29 to the Tye River,~~ except on national forest lands)	Saturday prior to the third Monday in November ~~and for 28 consecutive days following~~ through the first Saturday in January
Amherst County (national forest lands)	Saturday prior to the third Monday in November and for 14 consecutive days following
~~Amherst County (east of Business U.S. 29, as defined above)~~	~~Saturday prior to the third Monday in November through the first Saturday in January~~
Appomattox County	Saturday prior to the third Monday in November through the first Saturday in January
Arlington County	Saturday prior to the third Monday in November through the first Saturday in January

Arlington County (antlerless deer only)	First Saturday in September through the Friday prior to the first Saturday in October and the Sunday following the first Saturday in January through the last Sunday in March
Augusta County (except on national forest and department-owned lands)	Saturday prior to the third Monday in November and for 28 consecutive days following
Augusta County (national forest and department-owned lands)	Saturday prior to the third Monday in November and for 14 consecutive days following
Bath County (except on national forest and department-owned lands)	Saturday prior to the third Monday in November and for 28 consecutive days following
Bath County (national forest and department-owned lands)	Saturday prior to the third Monday in November and for 14 consecutive days following
Bedford County (except on national forest lands)	Saturday prior to the third Monday in November ~~and for 28 consecutive days following~~ through the first Saturday in January
Bedford County (national forest lands)	Saturday prior to the third Monday in November and for 14 consecutive days following
Bedford County (private lands and antlerless deer only)	First Saturday in September through the Friday prior to the first Saturday in October and the Sunday following the first Saturday in January through January 31
Bland County (except on national forest lands)	Saturday prior to the third Monday in November and for 28 consecutive days following
Bland County (national forest lands)	Saturday prior to the third Monday in November and for 14 consecutive days following
Botetourt County (except on national forest and department-owned lands)	Saturday prior to the third Monday in November and for 28 consecutive days following
Botetourt County (national forest and department-owned lands)	Saturday prior to the third Monday in November and for 14 consecutive days following
Brunswick County	Saturday prior to the third Monday in November through the first Saturday in January
Buchanan County	Saturday prior to the third Monday in November and for ~~14~~ 28 consecutive days following
Buckingham County	Saturday prior to the third Monday in November through the first Saturday in January
Campbell County	Saturday prior to the third Monday in November through the first Saturday in January
Caroline County	Saturday prior to the third Monday in November through the first Saturday in January
Carroll County (~~private~~ except on national forest and department-owned lands)	Saturday prior to the third Monday in November ~~and for 28 consecutive days following~~ through the first Saturday in January
Carroll County (~~public~~ national forest and department-owned lands)	Saturday prior to the third Monday in November and for 14 consecutive days following

Carroll County (private lands and antlerless deer only)	First Saturday in September through the Friday prior to the first Saturday in October and the Sunday following the first Saturday in January through the last Sunday in March
Charles City County	Saturday prior to the third Monday in November through the first Saturday in January
Charlotte County	Saturday prior to the third Monday in November through the first Saturday in January
Chesapeake (City of)	October 1 through November 30
Chesterfield County	Saturday prior to the third Monday in November through the first Saturday in January
Clarke County	Saturday prior to the third Monday in November through the first Saturday in January
Clarke County (antlerless deer only)	First Saturday in September through the Friday prior to the first Saturday in October and the Sunday following the first Saturday in January through the last Sunday in March
Craig County (except on national forest and department-owned lands)	Saturday prior to the third Monday in November and for 28 consecutive days following
Craig County (national forest and department-owned lands)	Saturday prior to the third Monday in November and for 14 consecutive days following
Culpeper County (except Chester F. Phelps Wildlife Management Area)	Saturday prior to the third Monday in November through the first Saturday in January
Culpeper County (Chester F. Phelps Wildlife Management Area)	Saturday prior to the third Monday in November and for 14 consecutive days following
Culpeper County (private lands and antlerless deer only)	First Saturday in September through the Friday prior to the first Saturday in October and the Sunday following the first Saturday in January through the last Sunday in March
Cumberland County	Saturday prior to the third Monday in November through the first Saturday in January
Dickenson County (except on federal lands)	Saturday prior to the third Monday in November and for 28 consecutive days following
Dickenson County (federal lands)	Saturday prior to the third Monday in November and for 14 consecutive days following
Dinwiddie County	Saturday prior to the third Monday in November through the first Saturday in January
Essex County	Saturday prior to the third Monday in November through the first Saturday in January
Fairfax County	Saturday prior to the third Monday in November through the first Saturday in January
Fairfax County (antlerless deer only)	First Saturday in September through the Friday prior to the first Saturday in October and the Sunday following the first Saturday in January through the last Sunday in March
Fauquier County (except Chester F. Phelps Wildlife Management Area)	Saturday prior to the third Monday in November through the first Saturday in January

Fauquier County (Chester F. Phelps Wildlife Management Area)	Saturday prior to the third Monday in November and for 14 consecutive days following
Fauquier County (private lands and antlerless deer only)	First Saturday in September through the Friday prior to the first Saturday in October and the Sunday following the first Saturday in January through the last Sunday in March
Floyd County	Saturday prior to the third Monday in November ~~and for 28 consecutive days following~~ through the first Saturday in January
Floyd County (antlerless deer only)	First Saturday in September through the Friday prior to the first Saturday in October and the Sunday following the first Saturday in January through the last Sunday in March
Fluvanna County	Saturday prior to the third Monday in November through the first Saturday in January
Franklin County (except on federal and department-owned lands)	Saturday prior to the third Monday in November through the first Saturday in January
Franklin County (federal and department-owned lands)	Saturday prior to the third Monday in November and for 28 consecutive days following
Frederick County (non-national forest lands)	Saturday prior to the third Monday in November through the first Saturday in January
Frederick County (national forest lands)	Saturday prior to the third Monday in November and for 14 consecutive days following
Frederick County (non-national forest lands antlerless deer only)	First Saturday in September through the Friday prior to the first Saturday in October and the Sunday following the first Saturday in January through the last Sunday in March
Giles County (except on national forest lands)	Saturday prior to the third Monday in November and for 28 consecutive days following
Giles County (national forest lands)	Saturday prior to the third Monday in November and for 14 consecutive days following
Gloucester County	Saturday prior to the third Monday in November through the first Saturday in January
Goochland County	Saturday prior to the third Monday in November through the first Saturday in January
Grayson County (except on national forest lands and Grayson Highlands State Park)	Saturday prior to the third Monday in November and for 28 consecutive days following
Grayson County (national forest lands and Grayson Highlands State Park)	Saturday prior to the third Monday in November and for 14 consecutive days following
Greene County	Saturday prior to the third Monday in November through the first Saturday in January
Greene County (private lands and antlerless deer only)	First Saturday in September through the Friday prior to the first Saturday in October and the Sunday following the first Saturday in January through the last Sunday in March
Greensville County	Saturday prior to the third Monday in November through the first Saturday in January

Halifax County	Saturday prior to the third Monday in November through the first Saturday in January
Hanover County	Saturday prior to the third Monday in November through the first Saturday in January
Hanover County (private lands and antlerless deer only)	First Saturday in September through the Friday prior to the first Saturday in October and the Sunday following the first Saturday in January through the last Sunday in March
Henrico County	Saturday prior to the third Monday in November through the first Saturday in January
Henrico County (private lands and antlerless deer only)	First Saturday in September through the Friday prior to the first Saturday in October and the Sunday following the first Saturday in January through the last Sunday in March
Henry County	Saturday prior to the third Monday in November and for 28 consecutive days following
Highland County (except on national forest and department-owned lands)	Saturday prior to the third Monday in November and for 28 consecutive days following
Highland County (national forest and department-owned lands)	Saturday prior to the third Monday in November and for 14 consecutive days following
Isle of Wight County	Saturday prior to the third Monday in November through the first Saturday in January
James City County	Saturday prior to the third Monday in November through the first Saturday in January
James City County (private lands and antlerless deer only)	First Saturday in September through the Friday prior to the first Saturday in October and the Sunday following the first Saturday in January through the last Sunday in March
King and Queen County	Saturday prior to the third Monday in November through the first Saturday in January
King George County	Saturday prior to the third Monday in November through the first Saturday in January
King William County	Saturday prior to the third Monday in November through the first Saturday in January
Lancaster County	Saturday prior to the third Monday in November through the first Saturday in January
Lee County (except on national forest lands)	Saturday prior to the third Monday in November and for 28 consecutive days following
Lee County (national forest lands)	Saturday prior to the third Monday in November and for 14 consecutive days following
Loudoun County	Saturday prior to the third Monday in November through the first Saturday in January
Loudoun County (antlerless deer only)	First Saturday in September through the Friday prior to the first Saturday in October and the Sunday following the first Saturday in January through the last Sunday in March

Louisa County	Saturday prior to the third Monday in November through the first Saturday in January
Lunenburg County	Saturday prior to the third Monday in November through the first Saturday in January
Madison County	Saturday prior to the third Monday in November through the first Saturday in January
Madison County (private lands and antlerless deer only)	First Saturday in September through the Friday prior to the first Saturday in October and the Sunday following the first Saturday in January through the last Sunday in March
Mathews County	Saturday prior to the third Monday in November through the first Saturday in January
Mecklenburg County	Saturday prior to the third Monday in November through the first Saturday in January
Middlesex County	Saturday prior to the third Monday in November through the first Saturday in January
Montgomery County (non-national forest lands)	Saturday prior to the third Monday in November ~~and for 28 consecutive days following~~ through the first Saturday in January
Montgomery County (national forest lands)	Saturday prior to the third Monday in November and for 14 consecutive days following
Montgomery County (non-national forest lands and antlerless deer only)	First Saturday in September through the Friday prior to the first Saturday in October and the Sunday following the first Saturday in January through the last Sunday in March
Nelson County (~~west of Route 151,~~ except on national forest lands)	~~Saturday prior to the third Monday in November~~ and for 28 consecutive days following through the first Saturday in January
Nelson County (national forest lands)	Saturday prior to the third Monday in November and for 14 consecutive days following
~~Nelson County (east of Route 151)~~	~~Saturday prior to the third Monday in November through the first Saturday in January~~
New Kent County	Saturday prior to the third Monday in November through the first Saturday in January
Northampton County	Saturday prior to the third Monday in November through the first Saturday in January
Northumberland County	Saturday prior to the third Monday in November through the first Saturday in January
Nottoway County	Saturday prior to the third Monday in November through the first Saturday in January
Orange County	Saturday prior to the third Monday in November through the first Saturday in January
Orange County (private lands and antlerless deer only)	First Saturday in September through the Friday prior to the first Saturday in October and the Sunday following the first Saturday in January through the last Sunday in March

Page County (except on national forest lands)	Saturday prior to the third Monday in November through the first Saturday in January
Page County (national forest lands)	Saturday prior to the third Monday in November and for 14 consecutive days following
Page County (non-national forest lands and antlerless deer only)	First Saturday in September through the Friday prior to the first Saturday in October and the Sunday following the first Saturday in January through the last Sunday in March
Patrick County	Saturday prior to the third Monday in November and for 28 consecutive days following
Pittsylvania County	Saturday prior to the third Monday in November through the first Saturday in January
Powhatan County	Saturday prior to the third Monday in November through the first Saturday in January
Prince Edward County	Saturday prior to the third Monday in November through the first Saturday in January
Prince George County	Saturday prior to the third Monday in November through the first Saturday in January
Prince William County	Saturday prior to the third Monday in November through the first Saturday in January
Prince William County (antlerless deer only)	First Saturday in September through the Friday prior to the first Saturday in October and the Sunday following the first Saturday in January through the last Sunday in March
Pulaski County (except on New River Unit of the Radford Army Ammunition Plant adjacent to the Town of Dublin and national forest lands)	Saturday prior to the third Monday in November ~~and for 28 consecutive days following~~ through the first Saturday in January
Pulaski County (New River Unit of the Radford Army Ammunition Plant adjacent to the Town of Dublin)	Saturday prior to the second Monday in November through the first Saturday in January
Pulaski County (national forest lands)	Saturday prior to the third Monday in November and for 14 consecutive days following
Pulaski County (non-national forest lands and antlerless deer only)	First Saturday in September through the Friday prior to the first Saturday in October and the Sunday following the first Saturday in January through the last Sunday in March
Rappahannock County	Saturday prior to the third Monday in November through the first Saturday in January
Rappahannock County (private lands and antlerless deer only)	First Saturday in September through the Friday prior to the first Saturday in October and the Sunday following the first Saturday in January through the last Sunday in March
Richmond County	Saturday prior to the third Monday in November through the first Saturday in January
Roanoke County (~~private~~ except on national forest and department-owned lands)	Saturday prior to the third Monday in November ~~and for 28 consecutive days following~~ through the first Saturday in January

Roanoke County ~~(public~~ national forest and department-owned lands)	Saturday prior to the third Monday in November and for 14 consecutive days following
Rockbridge County (except on national forest and department-owned lands)	Saturday prior to the third Monday in November and for 28 consecutive days following
Rockbridge County (national forest and department-owned lands)	Saturday prior to the third Monday in November and for 14 consecutive days following
Rockingham County (except on national forest lands and private lands west of Routes 613 and 731)	Saturday prior to the third Monday in November through the first Saturday in January
Rockingham County (national forest lands)	Saturday prior to the third Monday in November and for 14 consecutive days following
Rockingham County (private lands west of Routes 613 and 731)	Saturday prior to the third Monday in November and for 28 consecutive days following
Russell County (except on national forest lands, Channels State Forest, and department-owned lands)	Saturday prior to the third Monday in November and for 28 consecutive days following
Russell County (national forest lands, Channels State Forest, and department-owned lands)	Saturday prior to the third Monday in November and for 14 consecutive days following
Scott County (except on national forest lands)	Saturday prior to the third Monday in November and for 28 consecutive days following
Scott County (national forest lands)	Saturday prior to the third Monday in November and for 14 consecutive days following
Shenandoah County (except on national forest lands)	Saturday prior to the third Monday in November through the first Saturday in January
Shenandoah County (national forest lands)	Saturday prior to the third Monday in November and for 14 consecutive days following
Shenandoah County (non-national forest lands antlerless deer only)	First Saturday in September through the Friday prior to the first Saturday in October and the Sunday following the first Saturday in January through the last Sunday in March
Smyth County (except on national forest lands, Hungry Mother State Park, and department-owned lands)	Saturday prior to the third Monday in November and for 28 consecutive days following
Smyth County (national forest lands, Hungry Mother State Park, and department-owned lands)	Saturday prior to the third Monday in November and for 14 consecutive days following
Southampton County	Saturday prior to the third Monday in November through the first Saturday in January
Spotsylvania County	Saturday prior to the third Monday in November through the first Saturday in January
Stafford County	Saturday prior to the third Monday in November through the first Saturday in January
Suffolk (City of) (east of Dismal Swamp Line)	October 1 through November 30
Suffolk (City of) (west of Dismal Swamp Line)	Saturday prior to the third Monday in November through the first Saturday in January

Surry County	Saturday prior to the third Monday in November through the first Saturday in January
Sussex County	Saturday prior to the third Monday in November through the first Saturday in January
Tazewell County (except on national forest and department-owned lands)	Saturday prior to the third Monday in November and for 28 consecutive days following
Tazewell County (national forest and department-owned lands)	Saturday prior to the third Monday in November and for 14 consecutive days following
Virginia Beach (City of)	October 1 through November 30
Warren County (non-national forest lands)	Saturday prior to the third Monday in November through the first Saturday in January
Warren County (national forest lands)	Saturday prior to the third Monday in November and for 14 consecutive days following
Warren County (non-national forest lands antlerless deer only)	First Saturday in September through the Friday prior to the first Saturday in October and the Sunday following the first Saturday in January through the last Sunday in March
Washington County (except on national forest lands, Channels State Forest, and department-owned lands)	Saturday prior to the third Monday in November and for 28 consecutive days following
Washington County (national forest lands, Channels State Forest, and department-owned lands)	Saturday prior to the third Monday in November and for 14 consecutive days following
Westmoreland County	Saturday prior to the third Monday in November through the first Saturday in January
Wise County (except on national forest lands)	Saturday prior to the third Monday in November and for 28 consecutive days following
Wise County (national forest lands)	Saturday prior to the third Monday in November and for 14 consecutive days following
Wythe County (except on national forest and department-owned lands)	Saturday prior to the third Monday in November through the first Saturday in January
Wythe County (national forest and department-owned lands)	Saturday prior to the third Monday in November and for 14 consecutive days following
York County	Saturday prior to the third Monday in November through the first Saturday in January
York County (private lands and antlerless deer only)	First Saturday in September through the Friday prior to the first Saturday in October and the Sunday following the first Saturday in January through the last Sunday in March

B. Except as provided in subsection A of this section, deer may be hunted from the Saturday prior to the third Monday in November through the first Saturday in January, both dates inclusive, within the incorporated limits of any city or town that allows deer hunting.

C. In addition to provisions of subsection A of this section, antlerless deer may be taken from the first Saturday in September through the Friday prior to the first Saturday in October and the Sunday following the first Saturday in January through the last Sunday in March, both dates inclusive, within any disease focus zone designated by the department

4VAC15-90-70. Archery hunting.

A. It shall be lawful to hunt deer during the early special archery season with archery equipment or a slingbow from the first Saturday in October through the Friday prior to the third Monday in November, both dates inclusive.

B. In addition to the season provided in subsection A of this section, it shall be lawful to hunt deer during the late special archery season with archery equipment or a slingbow~~: 1. From~~ from the Sunday following the close of the general firearms season on deer through the first Saturday in January, both dates inclusive, ~~(i)~~ in all cities, towns, and counties ~~west of the Blue Ridge Mountains (except Clarke County and on non-national forest lands in Frederick County); (ii) in the Counties (including the cities and towns within) of Amherst (west of Business U.S. 29 from the James River to its intersection with U.S. 29 just south of the Town of Amherst continuing north on U.S. 29 to the Tye River), Bedford, Franklin, Henry, Nelson (west of Route 151), and Patrick; (iii) on the Chester F. Phelps Wildlife Management Area; and (iv) on national forest lands in Frederick County. 2. From December 1 through~~, or portions thereof, where the general firearms deer season closes before the first Saturday in January~~, both dates inclusive, in the Cities of Chesapeake, Suffolk (east of the Dismal Swamp Line), and Virginia Beach~~.

C. Deer of either sex may be taken full season during the special archery seasons as provided in subsections A and B of this section.

D. It shall be unlawful to ~~carry~~ use firearms to hunt any game species while hunting with archery equipment during the special archery seasons, except that a muzzleloading gun, as defined in 4VAC15-90-80, may be ~~in the possession of~~ used by a properly licensed muzzleloading gun hunter to hunt for deer when and where a special archery deer season overlaps a special muzzleloading deer season.

E. It shall be unlawful to use dogs when hunting with archery equipment during any special archery season, except that tracking dogs as described in § 29.1-516.1 of the Code of Virginia may be used.

F. It shall be lawful to hunt antlerless deer during the special urban archery season with archery equipment or a slingbow from the first Saturday in September through the Friday prior to the first Saturday in October, both dates inclusive, and from the Sunday following the first Saturday in January through the last Sunday in March, both dates inclusive, within the incorporated limits of any city or town in the Commonwealth (except on national forest and department-owned lands) and counties with a human population density of 300 persons per square mile or more (except on national forest and department-owned lands), provided that ~~its~~ the governing body of the city, county, or town submits by certified letter to the department prior to April 1~~,~~ its intent to participate in the special urban archery season. Any city, town, or county no longer participating in this season shall submit by certified letter to the department prior to April 1 notice of its intent not to participate in the special urban archery season. When consistent with the department's deer management objectives and subject to the director's approval, a participating county may exclude from this season a geographic area by submitting a clear description of such area in a certified letter to the department prior to April 1.G. It shall be lawful to hunt antlerless deer during the special urban archery season with archery equipment or a slingbow during dates specified in subsection F of this section within the boundaries of any common interest community as defined in § 54.1-2345 of the Code of Virginia provided that (i) the association submits by certified letter to the department prior to July 1 the association's request to participate in the special urban archery season and (ii) the department approves such request.

1. The special urban archery season will in no way supersede any local ordinance, any restriction in the association's governing documents, or the requirement to obtain a landowner's permission to hunt.

2. An association no longer participating in the special urban archery season shall submit notice of the association's intent not to participate in the special urban archery season. The association shall submit the certified letter to the department prior to July 1.

3. At its discretion, the department may suspend or revoke the special urban archery season in any association upon written notice to the association.

For the purposes of this subsection, "association" means the governing board or the authorized agent of the governing board of an association of property owners, condominium unit owners, or proprietary lessees.

H. It shall be lawful to hunt antlerless deer during the special antlerless archery season with archery equipment or a slingbow from the Monday following the last Sunday in March through the last Sunday in April, both dates inclusive, in the Counties of Arlington, Fairfax, Loudoun, and Prince William (including the cities and towns within).

4VAC15-90-80. Muzzleloading gun hunting.

A. It shall be lawful to hunt deer during the early special muzzleloading season with muzzleloading guns from the Saturday prior to the first Monday in November through the Friday prior to the third Monday in November, both dates inclusive, in all cities, towns, and counties where deer hunting with a rifle or muzzleloading gun is permitted, except in the Cities of Chesapeake, Suffolk (east of the Dismal Swamp Line), and Virginia Beach.

B. It shall be lawful to hunt deer during the late special muzzleloading season with muzzleloading guns starting 21 consecutive days immediately prior to and on the first Saturday in January~~: 1. In~~ in all cities, towns, and counties ~~west of the Blue Ridge Mountains (except Clarke County and on non-~~

~~national forest lands in Frederick County); 2. East of the Blue Ridge Mountains in the Counties (including the cities and towns within) of Amherst (west of Business U.S. 29 from the James River to its intersection with U.S. 29 just south of the Town of Amherst continuing north on U.S. 29 to the Tye River), Bedford, Franklin, Henry, Nelson (west of Route 151), and Patrick; 3. On national forest lands in Frederick County; and 4. In the Cities of Chesapeake, Suffolk (east of the Dismal Swamp Line), and Virginia Beach~~, or portions thereof, where the general firearms deer season closes before the first Saturday in January.

C. Deer of either sex may be taken during the entire early special muzzleloading season east of the Blue Ridge Mountains unless otherwise noted in this subsection:

1. Deer of either sex may be taken on the second Saturday only of the early special muzzleloading season on state forest lands, state park lands (except Occoneechee State Park), department-owned lands (except on Merrimac Farm Wildlife Management Area), and Philpott Reservoir.

2. Antlered bucks only—no either-sex deer hunting days during the early special muzzleloading season on national forest lands in Amherst, Bedford, and Nelson Counties.

D. Deer of either sex may be taken on the second Saturday only during the early special muzzleloading season west of the Blue Ridge Mountains unless otherwise noted in this subsection.

1. Deer of either sex may be taken during the entire early special muzzleloading season in Clarke and Floyd Counties and on private lands in Augusta, Botetourt, Carroll, Craig, Frederick, Giles, Grayson, Montgomery, Page, Pulaski, Roanoke, Rockingham (east of Routes 613 and 731), Scott, Smyth, Shenandoah, Warren, and Wythe Counties.

2. Antlered bucks only—no either-sex deer hunting days during the early special muzzleloading season ~~in Buchanan County;~~ on federal lands in Dickenson County; on department-owned land in Russell County; on national forest lands in Alleghany, Bland, Craig, Frederick, Giles, Grayson, Lee, Montgomery, Page, Pulaski, Rockingham, Scott, Shenandoah, Warren, and Wise Counties; on national forest and department-owned lands in Augusta, Bath, Botetourt, Carroll, Highland (except Highland Wildlife Management Area), Roanoke, Rockbridge, Smyth, Tazewell, Washington, and Wythe Counties; on Channels State Forest, Grayson Highlands State Park, Hungry Mother State Park; and on private lands west of Routes 613 and 731 in Rockingham County.

E. Deer of either sex may be taken during the last six days of the late special muzzleloading season unless otherwise listed in this subsection:

1. Deer of either sex may be taken full season during the entire late special muzzleloading season in the Counties (including the cities and towns within) of ~~Amherst (west of Business U.S. 29 from the James River to its intersection with U.S. 29 just south of the Town of Amherst continuing north on U.S. 29 to the Tye River, except on national forest lands), Bedford (except on national forest lands), Floyd, Franklin,~~ Henry~~, Nelson (west of Route 151, except on national forest lands),~~ and Patrick ~~and~~; on private lands in Augusta, Botetourt, ~~Carroll,~~ Craig, Giles, Grayson, ~~Montgomery, Page, Pulaski, Roanoke, Rockingham (east of Routes 613 and 731),~~ Scott, and Smyth~~, Shenandoah, Warren, and Wythe~~ Counties; and on federal and department-owned lands in Franklin County.

2. Deer of either sex may be taken the last day only during the late special muzzleloading season in Alleghany, Bath, Buchanan, Highland, Lee, Russell, Tazewell, and Wise Counties; on national forest lands in Amherst, Bedford, Bland, Craig, Frederick, Giles, Grayson, Montgomery, Nelson, Page, Pulaski, Rockingham, Scott, Shenandoah, and Warren Counties; on national forest and department-owned lands in Augusta, Botetourt, Carroll, Roanoke, Rockbridge, Smyth, Washington, and Wythe Counties; on federal lands in Dickenson County; and on private lands west of Routes 613 and 731 in Rockingham County, Channels State Forest, Grayson Highlands State Park, and Hungry Mother State Park.

~~3. Antlered bucks only—no either-sex deer hunting days during the late special muzzleloading season in Buchanan County.~~

F. Deer of either sex may be taken full season during the special muzzleloading seasons within the incorporated limits of any city or town in the Commonwealth that allows deer hunting except in the Cities of Chesapeake, Suffolk, and Virginia Beach.

G. It shall be unlawful to hunt deer with dogs during any special season for hunting with muzzleloading guns, except that tracking dogs as described in § 29.1-516.1 of the Code of Virginia may be used.

H. Muzzleloading guns, for the purpose of this section, include:

1. ~~Single shot muzzleloading rifles .40~~ Muzzleloading rifles (one or more barrels) .40 caliber or larger, firing a single projectile or sabot (with a.35 caliber or larger projectile) where the projectile is loaded from the muzzle;

2. Muzzleloading shotguns (one or more barrels) not larger than 10 gauge where the projectiles are loaded from the muzzle;

3. Muzzleloading pistols (one or more barrels) .45 caliber or larger, firing a single projectile or sabot (with a .35 caliber or larger projectile) per barrel where the propellant and projectile are loaded from the muzzle;

4. Muzzleloading ~~revolvers.45~~ revolvers .44 caliber or larger, firing a single projectile or sabot (with a .35 caliber or larger

projectile) per cylinder where the propellant and projectile are loaded from the forward end of the cylinder.

I. It shall be unlawful to ~~have in immediate possession~~ hunt deer with any firearm other than a muzzleloading gun ~~while hunting with a muzzleloading gun in a~~ during the special muzzleloading deer season.

4VAC15-90-89. Earn a buck.

A. For the purposes of this section, the term "license year" means the period between July 1 and June 30 of the following year.

B. Within a license year and within in each individual county listed in this subsection, a hunter must have taken at least one antlerless deer on private lands in that county before taking a second antlered deer on private lands in that county. In those counties listed in this subsection east of the Blue Ridge Mountains, a hunter must have taken at least two antlerless deer on private lands in that county before taking a third antlered deer on private lands in that county.

The counties subject to the provisions of this subsection are Accomack, Albemarle, Amherst (west of Route 29), Augusta, Bedford, Botetourt, Carroll, Chesterfield, Clarke, Craig, Culpeper, Fauquier, Floyd, Franklin, Frederick, Giles, Grayson, Greene, Hanover, Henrico, James City, Madison, Montgomery, Orange, Page, Prince George, Pulaski, Rappahannock, Roanoke, Rockingham (east of Routes 613 and 731), Shenandoah, Spotsylvania, Stafford, Warren, Wythe, and York.

C. Within a license year and within each individual county listed in this subsection, a hunter must have taken at least one antlerless deer in that county before taking a second antlered deer in that county. A hunter must also have taken at least two antlerless deer in that county before taking a third antlered deer in that county.

The counties subject to the provisions of this subsection are Arlington, Fairfax, Loudoun, and Prince William (except on Department of Defense lands).

D. Within a license year and within any city or town, except the Cities of Chesapeake, Suffolk, and Virginia Beach, a hunter must have taken at least one antlerless deer in that city or town before taking a second antlered deer in that city or town. In those cities and towns east of the Blue Ridge Mountains, a hunter must have taken at least two antlerless deer in that city or town before taking a third antlered deer in that city or town.

E. The Earn A Buck Program does not apply to the Cities of Chesapeake, Suffolk, and Virginia Beach.

F. No deer taken under the provisions of § 29.1-529 of the Code of Virginia fulfills the requirement of subsections B, C, or D of this section.

4VAC15-90-91. General firearms season either-sex deer hunting days.

A. During the general firearms deer season, deer of either sex may be taken within:

Accomack County: full season.

Albemarle County: full season.

Alleghany County: the second Saturday, second Friday, and ~~the last day~~ third Saturday.

- National forest lands: the last day.

Amelia County: the second and third Saturdays and the last ~~13~~ 29 days.

- Amelia WMA: the second and third Saturdays and the last ~~six~~ 13 days.

Amherst County (east of Business U.S. 29 from the James River to its intersection with U.S. 29 just south of the Town of Amherst continuing north on U.S. 29 to the Tye River): ~~the second and third Saturdays and the last 29 days~~ full season.

Amherst County (west of Business U.S. 29 from the James River to its intersection with U.S. 29 just south of the Town of Amherst continuing north on U.S. 29 to the Tye River): full season.

- National forest lands: the last day.

Appomattox County: the second and third Saturdays and the last six days.

- Appomattox-Buckingham State Forest: the second and third Saturdays.

- Featherfin WMA: the second and third Saturdays and the last 29 days.

Arlington County: full season.

Augusta County: full season.

- National forest and department-owned lands: the last day.

Bath County: the second Saturday, second Friday, and ~~the last day~~ third Saturday.

- National forest and department-owned lands: the last day.

Bedford County: full season.

- National forest lands: the last day.

Bland County: the second Saturday ~~and~~ through the ~~last two days~~ third Saturday.

- National forest lands: the second Saturday and the last two days.

Botetourt County: full season.

- National forest and department-owned lands: the last day.

Brunswick County: the second and third Saturdays and the last six days.

Buchanan County: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Buckingham County: the second and third Saturdays and the last six days.

- Horsepen Lake WMA: the second and third Saturdays and the last six days.

- Appomattox-Buckingham State Forest: the second and third Saturdays.

- Featherfin WMA: the second and third Saturdays and the last 29 days.

Campbell County (east of Norfolk Southern Railroad): ~~the second and third Saturdays and the last 29 days~~ full season.

Campbell County (west of Norfolk Southern Railroad): full season.

Caroline County: the second and third Saturdays and the last six days.

- ~~Mattaponi WMA~~ Department-owned lands: the second and third Saturdays and the last six days.

Carroll County: full season.

- National forest and department-owned lands: the second Saturday and the last day.

Charles City County: full season.

- Chickahominy WMA: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Charlotte County: the second and third Saturdays and the last six days.

Chesapeake (City of): full season.

- Cavalier WMA: the second and third Saturdays and the last 13 days.

Chesterfield County: full season.

Clarke County: full season.

Craig County: full season.

- National forest and department-owned lands: the second Saturday and the last two days.

Culpeper County: full season.

- Chester F. Phelps WMA: the second Saturday.

Cumberland County: the second and third Saturdays and the last ~~13~~ 29 days.

- Cumberland State Forest: the second, ~~and~~ third, and fourth Saturdays.

Dickenson County: the third Saturday.

- Federal lands: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Dinwiddie County: the second and third Saturdays and the last six days.

Essex County: the second and third Saturdays and the last six days.

Fairfax County: full season.

Fauquier County: full season.

- G. Richard Thompson WMA: the second and third Saturdays and the last 13 days.

- Chester F. Phelps WMA: the second Saturday.

Floyd County: full season.

Fluvanna County: ~~second and third Saturdays and the last 29 days~~ full season.

- Hardware River WMA: the second and third Saturdays and the last 13 days.

Franklin County: full season.

- Philpott Reservoir: the second Saturday and the last six days.

- Turkeycock Mountain WMA: the second and third Saturday and the last six days.

Frederick County: full season.

- National forest lands: the last day.

Giles County: full season.

- National forest lands: the second Saturday and the last two days.

Gloucester County: the second and third Saturdays and the last ~~13~~ 29 days.

Goochland County: full season.

Grayson County: full season.

- National forest lands and Grayson Highlands State Park: the last day.

Greene County: full season.

Greensville County: ~~the second and third Saturdays and the last six days~~ full season.

Halifax County: ~~the second and third Saturdays and the last 13 days~~ full season.

Hanover County: full season.

Henrico County: full season.

Henry County: the second and third Saturdays and the last 13 days.

- Fairystone Farms WMA, Fairystone State Park, and Philpott Reservoir: the second Saturday and the last six days.

- Turkeycock Mountain WMA: the second and third Saturday and the last six days.

Highland County: the second Saturday, second Friday, and ~~the last day~~ third Saturday.

- National forest lands: the last day.

- Department-owned lands: the second Saturday, second Friday, and ~~the last day~~ third Saturday.

Isle of Wight County: full season.

- Ragged Island WMA: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

James City County: full season.

King and Queen County: the second and third Saturdays and the last 13 days.

King George County: ~~the second and third Saturdays and the last 29 days~~ full season.

King William County: the second and third Saturdays and the last 13 days.

Lancaster County: ~~the second and third Saturdays and the last 29 days~~ full season.

Lee County: the second Saturday, second Friday, and ~~the last two days~~ third Saturday.

- National forest lands: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Loudoun County: full season.

Louisa County: ~~the second and third Saturdays and the last 29 days~~ full season.

Lunenburg County: the second and third Saturdays and the last six days.

Madison County: full season.

- Rapidan WMA: the second and third Saturdays and the last 13 days.

Mathews County: the second and third Saturdays and the last six days.

Mecklenburg County: the second and third Saturdays and the last six days.

- Dick Cross WMA: the second and third Saturdays and the last six days.

Middlesex County: the second and third Saturdays and the last six days.

Montgomery County: full season.

- National forest lands: the second Saturday and the last day.

Nelson County (east of Route 151): ~~the second and third Saturdays and the last 29 days~~ full season.

- James River WMA and Tye River WMA: the second Saturday and the last six days.

Nelson County (west of Route 151): full season.

-National forest lands: the last day.

New Kent County: full season.

Northampton County: full season.

Northumberland County: ~~the second and third Saturdays and the last 29 days~~ full season.

Nottoway County: the second and third Saturdays and the last ~~13~~ 29 days.

Orange County: full season.

Page County: full season.

- National forest lands: the last day.

Patrick County: the second and third Saturdays and the last 13 days.

- Fairystone Farms WMA, Fairystone State Park, and Philpott Reservoir: the second Saturday and the last six days.

Pittsylvania County (east of Norfolk Southern Railroad): ~~the second and third Saturdays and the last 29 days~~ full season.

- White Oak Mountain WMA: the second and third Saturday and the last three days.

Pittsylvania County (west of Norfolk Southern Railroad): full season.

Powhatan County: full season.

- Powhatan WMA: the second and third Saturdays and the last 13 days.

Prince Edward County: the second and third Saturdays and the last six days.

- Briery Creek WMA: the second and third Saturdays and the last six days.

- Featherfin WMA: the second and third Saturdays and the last 29 days.

- Prince Edward State Forest: the second and third Saturdays.

Prince George County: full season.

Prince William County: full season.

Pulaski County: full season.

- National forest lands: the second Saturday and the last day.

Rappahannock County: full season.

Richmond County: ~~the second and third Saturdays and the last 29 days~~ full season.

Roanoke County: full season.

- National forest and department-owned lands: the last day.

Rockbridge County: ~~the second Saturday and the last two days~~ full season.

- National forest and department-owned lands: the last day.

Rockingham County: full season.

- National forest lands: the last day.

- Private lands west of Routes 613 and 731: the second Saturday, second Friday, and ~~the last day~~ third Saturday.

Russell County: the second Saturday ~~and~~ through the ~~last two days~~ third Saturday.

- Department-owned lands and the Channels State Forest: the last day.

Scott County: the second Saturday ~~and~~ through the ~~last six days~~ third Saturday.

- National forest lands: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Shenandoah County: full season.

- National forest lands: the last day.

Smyth County: full season.

- National forest lands, department-owned lands, and Hungry Mother State Park: the last day.

Southampton County: full season.

Spotsylvania County: full season.

- Oakley Forest WMA: the second and third Saturdays and the last 13 days.

Stafford County: full season.

Suffolk: full season.

Surry County: full season.

- Carlisle and Stewart Tracts of the Hog Island WMA: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Sussex County: full season.

- Big Woods WMA, Flippo-Gentry WMA, and Big Woods State Forest: full season.

Tazewell County: the second Saturday ~~and~~ through the ~~last two days~~ third Saturday.

- National forest and department-owned lands: the last day.

Virginia Beach (City of): full season.

Warren County: full season.

- National forest lands: the last day.

Washington County: ~~the second Saturday and the last six days~~ full season.

- National forest lands, department-owned lands, and the Channels State Forest: the last day.

Westmoreland County: ~~the second and third Saturdays and the last 29 days~~ full season.

Wise County: the third Saturday.

- National forest lands: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Wythe County: full season.

- National forest and department-owned lands: the second Saturday and the last two days.

York County: full season.

B. Except as provided in the subsection A of this section, deer of either sex may be taken full season during the general firearms deer season within the incorporated limits of any city or town, state park, national wildlife refuge, or military installation that allows deer hunting or within any common interest community participating in the special urban archery season according to provisions of 4VAC15-90-70.

4VAC15-90-530. Special elk hunting license, random drawing license program.

A. The dates for the ~~annual~~ application period to enter the random drawing for a special elk hunting license shall be published by the department ~~annually~~ and ~~shall~~ be no less than 30 days in duration. Individuals selected for special elk hunting licenses via the random drawing shall be notified no less than 60 days prior to the start of the elk hunt, and special elk hunting licenses must be purchased from the department within 30 days of notification.

~~B. To enter the random drawing for a special elk hunting license, applicants shall:~~

~~1. Complete the application for a special elk hunting license as provided by the department.~~

~~2. Pay a nonrefundable application fee.~~

~~3. Apply only once for each random drawing.~~

~~C.~~ B. Nonresidents shall not comprise more than 10%, or one drawn applicant, whichever is greater, of all drawn applicants in any application pool for the random drawing license program.

~~D.~~ C. Applicants who physically reside within the Elk Management Zone shall comprise no less than 10%, or a minimum of one, whichever is greater, of all drawn applicants in any application pool for the random drawing license program.

~~E.~~ D. A special elk hunting license awarded through the Random Drawing License Program shall not be transferable.

~~F.~~ E. An applicant drawn for a special elk hunting license may be rejected if it is determined that the applicant has (i) a hunting license revocation at the time the applicant is drawn, (ii) been convicted of ~~two~~ one or more wildlife violations within ~~three~~ five years prior to the last date of the application period, or (iii) been convicted of one or more violations involving elk. In determining an applicant's eligibility, the ~~director~~ department shall take into account the nature and severity of the violations.

~~G. The department will award unclaimed special elk hunting licenses to alternates who are drawn during the initial application and draw period in the order that the alternates are drawn.~~

4VAC15-90-540. Special elk hunting license, Landowner License Program.

A. Upon receipt of a valid Landowner License Program application from a landowner within the Elk Management Zone, the director or the director's designee shall verify the application materials and have sole discretion in enrolling the property in the Landowner License Program. The application deadline shall be published by the department ~~annually~~ no less than 30 days prior to the deadline.

~~B. A valid Landowner License Program application shall include:~~

~~1. Landowner's name, home address, telephone number, and address of the property to be enrolled in the program.~~

~~2. A recorded survey or other legal documentation certifying the acreage and ownership of the property to be enrolled.~~

~~3. Original signature of the landowner.~~

~~4. Only a single application per license year, per landowner.~~

~~C.~~ B. Landowners enrolled in the Landowner License Program maintain the right to limit access to certain areas of the property for safety or privacy reasons. ~~Areas of limited access must be outlined in the initial application.~~ Enrollment in the Landowner License Program does not preclude or limit in any way the landowner from allowing other hunting or other hunters on the property.

~~D.~~ C. The department shall determine and make available to the public a program guidance document outlining how landowners enrolled in the Landowner License Program shall accrue points toward a special elk hunting license, the number of points necessary to be awarded such license, ~~a list of criteria by which applications and associated properties will be evaluated for enrollment in the program,~~ and other program requirements. The program guidance document will be published ~~annually~~ no less than 30 days prior to the application deadline.

~~E.~~ D. Landowners who accrue the necessary number of points, as defined in the program guidance document, on an enrolled property may enter a landowner lottery for a special elk hunting license. ~~Once a special elk hunting license is awarded through the lottery, the landowner loses all accrued points. There is no time limit over which a landowner is required to accrue license points. Landowners shall not combine points from separate enrolled properties.~~

~~F.~~ E. Landowners enrolled in the Landowner License Program shall not subdivide contiguous properties under the same ownership into multiple, smaller parcels for the purposes of this program.

~~G.~~ F. License points cannot be sold or traded. License points are nontransferable if the property changes ownership, except that if the property is inherited from parents, grandparents, or children, resident or nonresident, license points may be transferred. The department may request documentation to certify the relationship between seller and purchaser as well as a copy of bill of sale.

~~H.~~ G. Landowners receiving a special elk hunting license shall comply with all of the requirements established in this section as well as 4VAC15-90-510, 4VAC15-90-520, and § 29.1-305.01 of the Code of Virginia. Landowners who fail to comply with this chapter may forfeit any accrued license points and may not be eligible to accrue new license points.

~~I. A special elk hunting license awarded to the landowner shall only be used on the property enrolled with the department in the Landowner License Program.~~

~~J. A landowner may transfer the special elk hunting license to any person eligible to hunt in Virginia. The special elk hunting license may not be sold. Transfer of the special elk hunting license must be reported to the department no less than one month prior to the opening day of the elk hunting season during the year in which the special elk hunting license is awarded. To report a transfer to the department, the landowner shall provide the department with the hunter's:~~

~~1. Name;~~

~~2. Department customer identification number;~~

~~3. Address; and~~

~~4. Telephone number.~~

~~K. A~~ H. No landowner shall ~~not~~ charge a fee for hunters to hunt elk on properties enrolled in the Landowner License Program ~~except as described in the program guidance document~~.

~~L.~~ I. A special elk hunting license transferee may be rejected if it is determined that the transferee has (i) a hunting license revocation at the time the transferee is drawn, (ii) been convicted of ~~two~~ one or more wildlife violations~~,~~ within ~~three~~ five years prior to the last date of the application period, or (iii) been convicted of one or more violations involving elk. In determining the transferee's eligibility, the ~~director~~ department shall take into account the nature and severity of the violations.

4VAC15-90-550. Special elk hunting license, Conservation License Program.

A. For the purposes of this section, the following words or terms shall have the following meanings, unless the context clearly indicates otherwise:

"Individual, cooperators, or wildlife conservation organizations" means those people or entities whose mission is to promote and ensure the conservation of Virginia's wildlife resources or to promote opportunities for hunting, fishing, trapping, boating, or other wildlife-related recreation within Virginia.

"Proceeds" means the amount of money received by the cooperator or organization from the transfer of a reserved special elk hunting license minus all expenses, including the fees associated with the license, and administrative costs directly attributable to the transfer of the permit or the implementation of the defined project.

B. Upon receipt of a valid Conservation License Program application from an officer or other designated official representative of any individual, cooperator, or wildlife conservation organization, the director or the director's designee shall verify the application materials and may select a program awardee annually. ~~Applications must be received or postmarked no later than April 1 to be eligible for the Conservation License Program during that calendar year.~~

~~C. A valid Conservation License Program application shall include:~~

~~1. Cooperator or organization name, name of the individual designated to submit and receive official correspondence, address for such correspondence, and a telephone number.~~

~~2. Cooperator or organization mission statement.~~

~~3. A written application describing:~~

~~a. Cooperator or organization role in wildlife conservation in Virginia.~~

~~b. Cooperator or organization purpose and intent for requesting a reserved special elk hunting license through the Conservation License Program.~~

~~c. Cooperator or organization proposal for method of generating funds from transfer of the reserved special elk hunting license to an eligible individual.~~

~~d. Cooperator or organization strategy to direct proceeds received from the transfer of the reserved special elk hunting license and any matching funding toward wildlife conservation or wildlife-related recreation in Virginia's Elk Management Zone.~~

~~D.~~ C. The director shall establish a Conservation License Program Committee to review program applications and submit a recommendation to the director to reserve no more than one special elk hunting license for a cooperator or organization whose application is deemed to provide the greatest benefit to ~~wildlife~~ elk conservation and ~~wildlife-related~~ elk-related recreation in Virginia per license year. This committee shall be composed of a minimum of three individuals and make a recommendation to the director ~~by May 1~~ each year.

~~E.~~ D. A cooperator or organization receiving a reserved special elk hunting license must direct all proceeds from the transfer of such reservation, toward a project to improve and enhance ~~wildlife~~ elk habitat, ~~wildlife~~ elk populations, or ~~wildlife-related~~ elk-related recreation within the Elk Management Zone. ~~The proposed strategy and requirements will be outlined in a memorandum of agreement between the department and the cooperator or organization.~~

~~F. A~~ E. In coordination with the department, a cooperator or organization may transfer the reserved special elk hunting license to any person eligible to hunt in Virginia. The generation of funds from the transfer of the reserved special elk hunting license may only be conducted through a raffle.

~~G. Transfer of the reserved special elk hunting license must be reported to the department no less than one month prior to the opening day of the elk hunting season during which the special elk hunting license is valid. To report a transfer to the department, the cooperator or organization shall provide the department with the hunter's:~~

~~1. Name;~~

~~2. Department customer identification number;~~

~~3. Address; and~~

~~4. Telephone number.~~

~~H.~~ F. A special elk hunting license transferee may be rejected if it is determined that the transferee has a hunting license revocation at the time the transferee is drawn, been convicted of ~~two~~ one or more wildlife violations within ~~three~~ five years prior to the last date of the application period, or convicted of one or more violations involving elk. In determining the transferee's eligibility, the ~~director~~ department shall take into account the nature and severity of the violations.

~~I. A cooperator or organization that receives a reserved special elk hunting license shall submit an annual report to the department regarding any proceeds received from the transfer of the reserved license and an accounting of how those funds were directed toward wildlife conservation or wildlife-related recreation in the Elk Management Zone.~~

VA.R. Doc. No. R25-8245; Filed April 9, 2025, 2:46 p.m.

Proposed Regulation

REGISTRAR'S NOTICE: The Board of Wildlife Resources is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 3 of the Code of Virginia when promulgating regulations regarding the management of wildlife.

Title of Regulation: **4VAC15-160. Game: Opossum (amending 4VAC15-160-31).**

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Public Comment Deadline: June 3, 2025.

Agency Contact: Aaron Proctor, Policy Manager, Department of Wildlife Resources, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 801-8199, or email aaron.proctor@dwr.virginia.gov.

Summary:

The proposed amendment adds private lands where permission to trap has been granted by the landowner to the list of areas where a continuous open trapping season for opossum exists.

4VAC15-160-31. Open season for trapping.

It shall be lawful to trap opossum from November 15 through the last day of February, both dates inclusive, except there shall be a continuous open season to trap opossum within the incorporated limits of any city or town in the Commonwealth ~~and~~; in the ~~counties~~ Counties of Arlington, Chesterfield, Fairfax, Henrico, James City, Loudoun, Prince William, Spotsylvania, Stafford, Roanoke, and York; and on private lands throughout the Commonwealth with permission of the landowner.

VA.R. Doc. No. R25-8251; Filed April 9, 2025, 2:46 p.m.

Proposed Regulation

REGISTRAR'S NOTICE: The Board of Wildlife Resources is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 3 of the Code of Virginia when promulgating regulations regarding the management of wildlife.

Title of Regulation: **4VAC15-170. Game: Otter (amending 4VAC15-170-30).**

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Public Comment Deadline: June 3, 2025.

Agency Contact: Aaron Proctor, Policy Manager, Department of Wildlife Resources, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 801-8199, or email aaron.proctor@dwr.virginia.gov.

Summary:

The proposed amendment enables the Department of Wildlife Resources to authorize individuals other than department staff to affix a Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) tag to an otter pelt.

4VAC15-170-30. Pelts to be sealed before sale, etc.

It shall be unlawful to buy, sell, barter, exchange, traffic or trade in, bargain for, solicit for, purchase, or transport out of the Commonwealth~~,~~ any otter pelts until the pelts have been sealed by an agent of or other individual designated by the department. This requirement shall not apply to licensed taxidermists who ship otter pelts out of state for tanning purposes or to individuals who ship otter pelts out of state to be tanned for personal use. All otter pelts required to be sealed under the provisions of this chapter must be sealed not later than April 1 of the license year in which the animal is taken.

VA.R. Doc. No. R25-8252; Filed April 9, 2025, 2:47 p.m.

Proposed Regulation

REGISTRAR'S NOTICE: The Board of Wildlife Resources is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 3 of the Code of Virginia when promulgating regulations regarding the management of wildlife.

Title of Regulation: **4VAC15-210. Game: Raccoon (amending 4VAC15-210-10, 4VAC15-210-51).**

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Public Comment Deadline: June 3, 2025.

Agency Contact: Aaron Proctor, Policy Manager, Department of Wildlife Resources, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 801-8199, or email aaron.proctor@dwr.virginia.gov.

Summary:

The proposed amendments (i) clarify language regarding the possession of a firearm and other weapons while engaging in the act of chasing a raccoon and (ii) add private lands where permission to trap has been granted by the landowner to the list of areas where there is a continuous open trapping season for raccoon.

4VAC15-210-10. Open season; raccoon chase on areas open to bear hound training; possession of certain devices unlawful.

A. Except as otherwise specifically provided in the sections appearing in this chapter, there shall be a continuous open season for chasing raccoon with dogs, without capturing or taking, except on department-controlled lands west of the Blue Ridge Mountains and on national forest lands.

B. It shall be lawful to chase raccoon with dogs, without capturing or taking, on department-controlled lands west of the Blue Ridge Mountains and on national forest lands where bear hound training is permitted during the season dates specified in 4VAC15-50-120.

C. It shall be unlawful to ~~have in possession~~ use for the purpose of chasing or taking a raccoon a firearm, bow, or crossbow~~,~~ or to have in possession an axe, saw, or any tree climbing device while hunting during this chase season. ~~The meaning of "possession" for the purpose of this section shall include, but not be limited to, having these devices in or on one's person, vehicle, or conveyance while engaged in the act of chasing.~~

4VAC15-210-51. Open season for trapping.

It shall be lawful to trap raccoon from November 15 through the last day of February, both dates inclusive, except that there shall be a continuous open season to trap raccoon within the incorporated limits of any city or town in the Commonwealth ~~and~~; in the ~~counties~~ Counties of Arlington, Chesterfield, Fairfax, Henrico, James City, Loudoun, Prince William, Spotsylvania, Stafford, Roanoke and York; and on private lands throughout the Commonwealth with permission of the landowner.

VA.R. Doc. No. R25-8254; Filed April 9, 2025, 2:48 p.m.

Proposed Regulation

REGISTRAR'S NOTICE: The Board of Wildlife Resources is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 3 of the Code of Virginia when promulgating regulations regarding the management of wildlife.

Title of Regulation: **4VAC15-240. Game: Turkey (amending 4VAC15-240-60).**

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Public Comment Deadline: June 3, 2025.

Agency Contact: Aaron Proctor, Policy Manager, Department of Wildlife Resources, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 801-8199, or email aaron.proctor@dwr.virginia.gov.

Summary:

The proposed amendment clarifies language regarding the possession of a firearm during the archery season for turkeys.

4VAC15-240-60. Archery hunting.

A. Season. It shall be lawful to hunt turkey with archery equipment or a slingbow in those counties and areas open to fall turkey hunting from the first Saturday in October through the Friday prior to the third Monday in November, both dates inclusive.

B. Bag limit. The daily and seasonal bag limit for hunting turkey with archery equipment or a slingbow shall be the same as permitted during the general turkey season in those counties and areas open to fall turkey hunting, and any turkey taken shall apply toward the total season bag limit.

C. ~~Carrying~~ Using firearms to hunt prohibited. It shall be unlawful to ~~carry~~ use firearms to hunt any game species while hunting with archery equipment or a slingbow during the special archery season.

D. Use of dogs prohibited during archery season. It shall be unlawful to use dogs when hunting with archery equipment from the first Saturday in October through the Saturday prior to the second Monday in November, both dates inclusive.

VA.R. Doc. No. R25-8256; Filed April 9, 2025, 3:06 p.m.

Proposed Regulation

REGISTRAR'S NOTICE: The Board of Wildlife Resources is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 3 of the Code of Virginia when promulgating regulations regarding the management of wildlife.

Title of Regulation: **4VAC15-260. Game: Waterfowl and Waterfowl Blinds (amending 4VAC15-260-50).**

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Public Comment Deadline: June 3, 2025.

Agency Contact: Aaron Proctor, Policy Manager, Department of Wildlife Resources, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 801-8199, or email aaron.proctor@dwr.virginia.gov.

Summary:

The proposed amendments allow for the purchase of new riparian stationary waterfowl blind licenses on shore in the City of Virginia Beach.

4VAC15-260-50. Blinds in the City of Virginia Beach.

In the City of Virginia Beach, except for blinds and floating blind sites ~~which~~ that may be erected by the department, no new blinds in the public waters shall be erected and no licenses shall be issued for the erection of new ~~shore or~~ stationary water blinds ~~upon the shores or~~ in the public waters, nor may floating or mat blinds anchor within 500 yards of the shores of lands or blinds owned or controlled by the department, except that floating blinds may be stationed at sites designated by the department. Blinds and floating blind sites erected by the department shall not be licensed, but there shall be a metal plate affixed to such blinds for identification purposes.

VA.R. Doc. No. R25-8253; Filed April 9, 2025, 3:07 p.m.

Proposed Regulation

REGISTRAR'S NOTICE: The Board of Wildlife Resources is claiming an exemption from the Administrative Process Act pursuant to § 29.1-701 E of the Code of Virginia, which provides that the board shall promulgate regulations to supplement Chapter 7 (§ 29.1-700 et seq.) of Title 29.1 of the Code of Virginia as prescribed in Article 1 (§ 29.1-500 et seq.) of Chapter 5 of Title 29.1 of the Code of Virginia.

Title of Regulation: **4VAC15-410. Watercraft: Boating Safety Education (amending 4VAC15-410-40, 4VAC15-410-50, 4VAC15-410-70, 4VAC15-410-90, 4VAC15-410-100, 4VAC15-410-110, 4VAC15-410-130, 4VAC15-410-140; repealing 4VAC15-410-30, 4VAC15-410-80).**

Statutory Authority: §§ 29.1-701 and 29.1-735 of the Code of Virginia.

Public Comment Deadline: June 3, 2025.

Agency Contact: Aaron Proctor, Policy Manager, Department of Wildlife Resources, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 801-8199, or email aaron.proctor@dwr.virginia.gov.

Summary:

The proposed amendments (i) repeal requirements for phasing in of boater education certification completion, (ii) clarify the minimum standards for boating safety education course competency, (iii) remove outdated or obsolete references to CD-ROM course delivery, (iv) clarify that all boating courses offered by providers shall meet certain provisions, (v) remove requirements of an open-book test, (vi) combine boating course documentation requirements into one section, and (vii) repeal outdated or unnecessary provisions.

4VAC15-410-30. ~~Compliance schedule and phase in provisions.~~ (Repealed.)

~~The requirements for boating safety education shall be phased in according to the following provisions:~~

~~1. Personal watercraft operators 20 years of age or younger shall meet the requirements by July 1, 2009;~~

~~2. Personal watercraft operators 35 years of age or younger shall meet the requirements by July 1, 2010;~~

~~3. Personal watercraft operators 50 years of age or younger and motorboat operators 20 years of age or younger shall meet the requirements by July 1, 2011;~~

~~4. All personal watercraft operators, regardless of age, and motorboat operators 30 years of age or younger shall meet the requirements by July 1, 2012;~~

~~5. Motorboat operators 40 years of age or younger shall meet the requirements by July 1, 2013;~~

~~6. Motorboat operators 45 years of age or younger shall meet the requirements by July 1, 2014;~~

~~7. Motorboat operators 50 years of age or younger shall meet the requirements by July 1, 2015;~~

~~8. All motorboat operators, regardless of age, shall meet the requirements by July 1, 2016.~~

4VAC15-410-40. Provisions for compliance and minimum standards for boating safety education course competency.

A. A person shall be considered in compliance with the requirements for boating safety education if ~~he~~ the person meets one or more of the following provisions pursuant to § 29.1-735.2 B 1 through B 9 of the Code of Virginia:

1. Completes and passes a boating safety education course;

2. Passes an equivalency exam;

3. Possesses a valid license to operate a vessel issued to maritime personnel by the United States Coast Guard or a marine certificate issued by the Canadian government or possesses a Canadian Pleasure Craft Operator's Card. For the purposes of this subsection, a license is considered valid regardless of whether the license is current;

4. Possesses a temporary operator's certificate;

5. Possesses a rental or lease agreement from a motorboat or personal watercraft rental or leasing business that lists the person as the authorized operator of the motorboat;

6. Operates the motorboat under onboard direct supervision of a person who meets the requirements of this section;

7. Is a nonresident temporarily using the waters of Virginia for a period not to exceed 90 days (~~which means~~ i.e., operating a boat not registered in Virginia), and meets any applicable boating safety education requirements of the state of residency, or possesses a Canadian Pleasure Craft Operator's Card;

8. Has assumed operation of the motorboat or personal watercraft due to the illness or physical impairment of the initial operator~~,~~ and is returning the motorboat or personal watercraft to shore in order to provide assistance or care for the operator; or

9. Is or was previously registered as a commercial fisherman pursuant to § 28.2-241 of the Code of Virginia or is under the onboard direct supervision of the commercial fisherman while operating the commercial fisherman's boat. For the purpose of operating a recreational vessel, a registered commercial fishing license is considered valid regardless of whether the license is current.

B. The minimum standards for boating safety education course competency required by the department are~~: 1. Successful completion of a classroom boating safety education course in person and~~ (i) a passing score of ~~at least~~ 70% on a closed-book written test ~~administered closed book at the conclusion of the course by the designated course instructor(s) or other designated course assistant; 2. Successful~~ upon completion of ~~a~~ an in-person classroom boating safety education course ~~in person and~~; (ii) a passing score of ~~at least~~ 90% on ~~a~~ an open-book written test ~~administered open book at the conclusion of the~~ upon completion of an in-person classroom boating safety education course ~~by the designated course instructor(s) or other designated course assistant~~; ~~3. Successful completion of a boating safety education course offered through the Internet or through an electronic format such as CD-ROM and~~ (iii) a passing score of at least 90% on a self-test administered in conjunction with the course material of a boating safety education course delivered through the Internet; or ~~4. A~~ (iv) a score of at least 80% on a proctored equivalency exam.

4VAC15-410-50. Boating safety education course provider requirements.

~~A. To be an approved course provider, any individual,~~

~~business, or organization that instructs or provides a boating safety education course shall execute and have on file a cooperative agreement with the department. It shall be the responsibility of the state boating law administrator to develop and execute such agreements. A list of approved course providers and boating safety education courses shall be kept by the department and made available to the public. Such list does not constitute any endorsement of any course or course provider by the department or the board.~~

~~B.~~ A. As of January 1, 2009, any boating safety education courses offered through the Internet and accepted by the department shall:

1. Be approved by NASBLA ~~in accordance with the National Boating Education Standards, updated January 1, 2012,~~ and the department for course ~~content/testing~~ content or testing; and

2. Be provided only by an approved course provider who has executed a valid cooperative agreement with the department. Such agreements may be amended at any time by the department and may be ~~cancelled~~ canceled with a 30 ~~days notice~~ day-notice upon failure of the course provider to comply with the terms and conditions of the agreement or its amendments.

~~C.~~ B. Any material ~~and/or~~ or products to be used by an approved course provider that make reference to the department must be approved by the department~~,~~ through the state boating law administrator~~,~~ before publishing ~~and/or~~ or distribution to the public.

~~D.~~ C. Any fees charged by a course provider are set by the course provider, but must be clearly communicated to the student prior to taking the course.

4VAC15-410-70. Boating safety education course certificates, recordkeeping, and student records.

A. Upon successful completion of a boating safety education course or proctored equivalency exam, the approved course provider shall provide the student with a course certificate ~~and/or~~ or pocket-size card. At a minimum, such ~~certificate/card~~ certificate or card shall include the student's name and date of birth, the issuance date, the name of the course, and indication of NASBLA course approval and acceptance by the department. ~~On a schedule and in a manner mutually agreed to through a cooperative agreement, each approved course provider shall provide to the department a copy of the record of those students issued a course certificate and/or pocket-size card. Upon request by the student and subject to verification of successful course completion, it shall be the responsibility of each approved course provider to issue duplicate certificates/cards.~~

~~B. Upon successful completion of the proctored equivalency exam, the department shall issue a completion certificate and/or card, which shall include the person's name, date of birth, and the issuance date. Upon request by the person to whom the certificate/card was originally issued and subject to verification of successful completion, the department shall issue a duplicate certificate/card.~~

B. The department shall maintain a database of all students successfully completing the department's classroom-based boating safety education course and all persons successfully completing the equivalency exam. Such database shall include the student's name, address, date of birth, course or equivalency exam completion date, and the specific name of the course.

C. Each approved course provider for boating safety education course shall maintain a database of all students successfully completing such course. The database shall include the student's name, address, date of birth, course completion date, and the specific name of the course. On a schedule and in a manner mutually agreed to through a cooperative agreement, each approved course provider shall provide to the department a copy of the record of those students successfully completing the course. Such record shall include the database information referenced in subsection B of this section. It shall be the responsibility of each approved course provider to ensure that reasonable measures, such as the Payment Card Industry (PCI) data security measures, are taken to protect any acquired student data. Further, such data shall not be sold or otherwise used in any way, except for the student's own completion of a boating safety education course and issuance of course completion documents.

4VAC15-410-80. ~~Recordkeeping and student records.~~ (Repealed.)

~~A. The department shall maintain a database of all students successfully completing the department's classroom-based boating safety education course and all persons successfully completing the equivalency exam. Such database shall include, but not be limited to, student name, address, date of birth, course/equivalency exam completion date, and the specific name of the course. On a schedule and in a manner mutually agreed to through a cooperative agreement, each approved course provider for other classroom-based boating safety education courses shall provide to the department a copy of the record of those students successfully completing such course and the department may add this information to the student database. A change in student address will be made only upon receipt of a written request from the affected student.~~

~~B. Each approved course provider for boating safety education courses offered over the Internet or through an electronic format such as CD-ROM shall maintain a database of all students successfully completing such course. The database shall include, but not be limited to, student name, address, date of birth, course completion date, and the specific name of the course. On a schedule and in a manner mutually agreed to through a cooperative agreement, each approved course provider shall provide to the department a copy of the~~

~~record of those students successfully completing their course. Such record shall include the database information referenced in this section. It shall be the responsibility of each approved course provider to ensure that reasonable measures, such as the Payment Card Industry (PCI) data security measures, are taken to protect any acquired student data. Further, such data shall not be sold or otherwise used in any way except for the student's own completion of a boating safety education course and issuance of course completion documents.~~

4VAC15-410-90. Instructor certification.

A. To be certified as a boating safety education course instructor for the department's classroom-based boating safety education course, a person shall have successfully completed a classroom-based boating safety education course and be certified as an instructor by the United States Coast Guard Auxiliary, or the United States Power Squadrons®, ~~or~~ the National Safe Boating Council, or another certification program accepted by the department.

B. Applicants for certified instructor shall submit an application to the department on a form and in a manner determined by the state boating law administrator. ~~At a minimum, the application shall include:~~

~~1. The applicant's name;~~

~~2. The applicant's street address;~~

~~3. The applicant's telephone number;~~

~~4. The applicant's email address, if any;~~

~~5. Information describing the applicant's experience and training in boating safety and seamanship and proof of completion of a NASBLA-approved boating safety education course; and~~

~~6. Any other information deemed necessary after review of the initial application.~~

C. Applicants may be required to submit a written consent for a criminal history background check in a manner determined by the Law Enforcement Division of the department.

4VAC15-410-100. Provisions for open-book tests for classroom courses.

~~A.~~ A boating safety education course offered in a classroom setting by either the department or an approved course provider shall offer the student the option of taking the end-of-course exam either closed-book or open-book. The minimum standards for boating safety education course competency shall be as provided for in 4VAC15-410-40 B ~~1 and 2~~.

~~B. In taking the exam open-book, the student may use the course text, instructor handouts, any related course material, and any personal notes taken during the class instruction to assist in the completion of the exam. The exam must be completed in a single session with a time limit not to exceed two hours.~~

4VAC15-410-110. Equivalency exam criteria.

A. The department shall develop and make available a written equivalency exam to test the knowledge of information included in the curriculum of a boating safety education course. ~~Such exam shall provide experienced and knowledgeable boaters with the opportunity to meet the boating safety education compliance requirement set forth in § 29.1-735.2 of the Code of Virginia without having to take and successfully complete a boating safety education course.~~

B. The equivalency exam shall be proctored by an ~~individual(s)~~ individual specifically designated by the department. The use of reference materials shall not be allowed while the exam is being administered, and the exam shall be completed in a single session with a time limit not to exceed three hours. A person who fails an equivalency exam the second time is required to complete a ~~NASBLA-approved~~ NASBLA-approved boating safety education course that is accepted by the department.

~~C. The equivalency exam shall be comprised of no less than 75 nor more than 100 exam questions and a minimum score of at least 80% shall be considered passing. Upon successful completion, an exam certificate and/or card shall be issued to the person completing the exam.~~

4VAC15-410-130. Temporary operator's certificate.

~~A.~~ The registered ~~owner(s)~~ owner of a motorboat or personal watercraft, if the boat is new or was sold with a transfer of ownership, shall be issued with the certificate of number for the motorboat or personal watercraft a temporary operator's certificate that shall allow the ~~owner(s)~~ owner to operate such boat in Virginia for 90 days.

~~B. A temporary operator's certificate shall be issued by the department, by any person authorized by the director to act as an agent to issue a certificate of number pursuant to § 29.1-706 of the Code of Virginia, or by a license agent of the department authorized to issue a temporary registration certificate for a motorboat.~~ A temporary operator's certificate shall not be renewable.

4VAC15-410-140. Virginia Boater Education Cards.

A. The department may establish an optional long-lasting and durable Virginia Boater Education Card for issuance to persons who ~~can show that they~~ have demonstrably met the minimum standard of boating safety education course competency ~~or,~~ who ~~possesses~~ possess a valid license to operate a vessel issued to maritime personnel by the United States Coast Guard or a marine certificate issued by the Canadian government, or ~~possesses~~ who possess a Canadian Pleasure Craft Operator's Card or ~~possesses~~ a commercial fisherman registration pursuant to § 28.2-241 of the Code of Virginia.

B. To obtain an optional Virginia Boater Education Card, a person must provide to the department:

1. A completed application on a form provided by the department. ~~The application shall require the applicant's name, current mailing address, and date of birth.~~ The applicant must also sign a statement declaring that statements made on the form are true and correct and that all documents submitted with the form are true and correct copies of documents issued to the applicant. Incomplete applications will be returned to the applicant;

2. A copy of the documentation ~~(such as the boating safety education course completion certificate/wallet card or equivalency exam completion certificate/card)~~ that indicates that the minimum standards for boating safety education course competency have been met. Such documents must contain the name of the individual applying for the Virginia Boater Education Card. The department may require the applicant to provide the original document in the event that the copy submitted with the application is illegible or if the authenticity of the copy is not certain.

C. Upon receipt by the applicant, the optional Virginia Boater Education Card will serve in lieu of any other certificates or cards that have been issued to the bearer as a result of meeting the minimum standards for boating safety education course competency. As such, the Virginia Boater Education Card will not be transferable or revocable and will have no expiration date.

~~D. A person may apply, on a form provided by the department, for a replacement Virginia Boater Education Card. A replacement card may be issued if the original card is lost, stolen or destroyed, if misinformation is printed on the card, or if the bearer has legally changed their name. The application shall include an affidavit stating the circumstances that led to the need for replacement of the original card.~~

VA.R. Doc. No. R25-8243; Filed April 9, 2025, 3:08 p.m.

Proposed Regulation

REGISTRAR'S NOTICE: The Board of Wildlife Resources is claiming an exemption from the Administrative Process Act pursuant to § 29.1-701 E of the Code of Virginia, which provides that the board shall promulgate regulations to supplement Chapter 7 (§ 29.1-700 et seq.) of Title 29.1 of the Code of Virginia as prescribed in Article 1 (§ 29.1-500 et seq.) of Chapter 5 of Title 29.1 of the Code of Virginia.

Title of Regulation: **4VAC15-430. Watercraft: Safety Equipment Requirements (amending 4VAC15-430-60, 4VAC15-430-150, 4VAC15-430-170, 4VAC15-430-210).**

Statutory Authority: §§ 29.1-701 and 29.1-735 of the Code of Virginia.

Public Comment Deadline: June 3, 2025.

Agency Contact: Aaron Proctor, Policy Manager, Department of Wildlife Resources, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 801-8199, or email aaron.proctor@dwr.virginia.gov.

Summary:

The proposed amendments (i) remove the requirement that life jackets be used according to label; (ii) remove requirements regarding engine compartment ventilation on boats; (iii) remove the requirement that boaters ensure that handheld fire extinguishers have a metal information plate affixed; and (iv) replace the in-depth requirements for backfire flame controls with a requirement that vessels comply with backfire flame control regulations at the federal level.

4VAC15-430-60. Personal flotation device condition; size and fit; approval marking.

It shall be unlawful to use a recreational vessel unless each PFD required by 4VAC15-430-30 or allowed by 4VAC15-430-40 is:

1. In serviceable condition as provided in 4VAC15-430-70;

2. Of an appropriate size and fit for the intended wearer, as marked on the approval label; and

3. Legibly marked with its U.S. Coast Guard approval number~~; and~~

~~4. Used in accordance with any requirements or restrictions on the approval label~~.

4VAC15-430-150. Ventilation.

~~A. All motorboats or motor vessels, except open boats and as provided in subsections D and E of this section, the construction or decking over of which is commenced after April 25, 1940, and which use fuel having a flashpoint of 110°F, or less, shall have at least two ventilator ducts, fitted with cowls or their equivalent, for the efficient removal of explosive or flammable gases from the bilges of every engine and fuel tank compartment. There shall be at least one exhaust duct installed so as to extend from the open atmosphere to the lower portion of the bilge and at least one intake duct installed so as to extend to a point at least midway to the bilge or at least below the level of the carburetor air intake. The cowls shall be located and trimmed for maximum effectiveness and in such a manner so as to prevent displaced fumes from being recirculated.~~

~~B. As used in this section, the term open boats means those motorboats or motor vessels with all engine and fuel tank compartments, and other spaces to which explosive or flammable gases and vapors from these compartments may flow, open to the atmosphere and so arranged as to prevent the entrapment of such gases and vapors within the vessel.~~

~~C. Vessels built after~~ No person shall operate a boat built after July 31, 1980, ~~which are manufactured or used primarily for noncommercial use; which are leased, rented, or chartered to another for the latter's noncommercial use; which are engaged in the carriage of six or fewer passengers for consideration; or which are in compliance with the requirements of~~ that has a gasoline engine for electrical generation, mechanical power, or propulsion, unless the boat is equipped with an operable

ventilation system that meets the requirements of 33 CFR 183.610(a) through (f) and 33 CFR 183.620(a) as established by the U.S. Coast Guard ~~are exempted from these requirements~~.

~~D. Vessels built after July 31, 1978, which are manufactured or used primarily for noncommercial use; which are rented, leased, or chartered to another for the latter's noncommercial use; or which engage in conveying six or fewer passengers for consideration are exempted from the requirements of subsection A of this section for fuel tank compartments that:~~

~~1. Contain a permanently installed fuel tank if each electrical component is ignition protected; and~~

~~2. Contain fuel tanks that vent to the outside of the boat.~~

4VAC15-430-170. Hand-portable fire extinguishers and semiportable fire extinguishing systems.

A. Hand-portable fire extinguishers and semiportable fire extinguishing systems are classified by a combination letter and number symbol, the letter indicating the type of fire that the unit could be expected to extinguish, and the number indicating the relative size of the unit.

B. For the purpose of this section, all required hand-portable fire extinguishers and semiportable fire extinguishing systems are of the "B" type; that is, suitable for extinguishing fires involving flammable liquids~~,~~ and greases~~, etc~~.

C. All fire extinguishers must be on board and readily accessible, in good and serviceable working condition, and comply with the following:

1. If the extinguisher has a pressure gauge reading or indicator, it must be in the operable range or position.

2. The extinguisher may not be expired or appear to have been previously used.

3. The lock pin is firmly in place.

4. The discharge nozzle is clean and free of obstruction.

5. The extinguisher ~~does not show~~ shows no visible signs of significant corrosion or damage.

~~D. All hand-portable fire extinguishers and semiportable fire extinguishing systems shall have permanently attached thereto a metallic name plate giving the name of the item, the rated capacity in gallons, quarts, or pounds, the name and address of the person or firm for whom approved, and the identifying mark of the actual manufacturer.~~

~~E.~~ D. Vaporizing-liquid type fire extinguishers containing carbon tetrachloride ~~or,~~ chlorobromomethane, or other toxic vaporizing liquids are not acceptable as equipment required by this section.

~~F.~~ E. Hand-portable or semiportable extinguishers that are required ~~on their~~ by the name plates to be protected from freezing shall not be located where freezing temperatures may be expected.

~~G.~~ F. The use of dry chemical, stored pressure~~,~~ fire extinguishers not fitted with pressure gauges or indicating devices, manufactured prior to January 1, 1965, may be permitted on motorboats and other vessels so long as such extinguishers are maintained in good and serviceable condition. The following maintenance and inspections are required for such extinguishers:

1. When the date on the inspection record tag on the extinguishers shows that six months have elapsed since last weight check ashore, then such extinguisher is no longer accepted as meeting required maintenance conditions until reweighed ashore and found to be in a serviceable condition and within required weight conditions.

2. If the weight of the container is one-fourth ounce less than that stamped on container, it shall be serviced.

3. If the outer seals ~~(~~that indicate tampering or use when broken~~)~~ are not intact, the boarding officer or marine inspector will inspect such extinguisher to see that the frangible disc in the neck of the container is intact~~;~~, and if such disc is not intact, the container shall be serviced.

4. If there is evidence of damage, use, or leakage, such as dry chemical powder observed in the nozzle or elsewhere on the extinguisher, the container shall be replaced with a new one and the extinguisher properly serviced or the extinguisher replaced with another approved extinguisher.

~~H. The~~ G. No dry chemical, stored pressure~~,~~ fire extinguishers without pressure gauges or indicating devices manufactured after January 1, 1965, shall ~~not~~ be carried on board motorboats or other vessels as required equipment.

4VAC15-430-210. Backfire flame control.

~~A.~~ Every ~~gasoline~~ engine ~~installed in a motorboat or motor,~~ except outboard motors, using gasoline as fuel and installed in a vessel ~~after April 25, 1940, except outboard motors,~~ shall be equipped with an acceptable means of backfire flame control that meets the requirements of 46 CFR 25.35.

~~B. Installations made before November 19, 1952, may be continued in use as long as they are serviceable and in good condition. Replacements shall comply with any applicable standards established by the U.S. Coast Guard and be marked accordingly. The flame arrester must be suitably secured to the air intake with a flametight connection.~~

~~C. Installations consisting of backfire flame arresters bearing basic approval nos. 162.015 or 162.041 or engine air and fuel induction systems bearing basic approval nos. 162.015 or 162.042 may be continued in use as long as they are serviceable and in good condition. New installations or replacements must comply with any applicable standards established by the U.S. Coast Guard and be marked accordingly. The flame arrester must be suitably secured to the air intake with a flametight connection.~~

VA.R. Doc. No. R25-8244; Filed April 9, 2025, 3:08 p.m.

VIRGINIA SOIL AND WATER CONSERVATION BOARD

Proposed Regulation

Title of Regulation: **4VAC50-20. Impounding Structure Regulations (amending 4VAC50-20-30, 4VAC50-20-40, 4VAC50-20-54, 4VAC50-20-58, 4VAC50-20-70, 4VAC50-20-105, 4VAC50-20-150, 4VAC50-20-170, 4VAC50-20-177, 4VAC50-20-200, 4VAC50-20-350, 4VAC50-20-360, 4VAC50-20-375, 4VAC50-20-380; adding 4VAC50-20-500 through 4VAC50-20-508; repealing 4VAC50-20-90 through 4VAC50-20-104).**

Statutory Authority: § 10.1-605 of the Code of Virginia.

Public Hearing Information:

June 12, 2025 - 1:30 p.m. - Virginia Department of Forestry, Training Room, 900 Natural Resources Drive, Charlottesville, VA 22903.

Public Comment Deadline: July 4, 2025.

Agency Contact: Lisa McGee, Policy and Planning Director, Department of Conservation and Recreation, 600 East Main Street, 24th Floor, Richmond, VA 23219, telephone (804) 786-4378, FAX (804) 786-6141, or email lisa.mcgee@dcr.virginia.gov.

Basis: Section 10.1-605 of the Code of Virginia requires the Virginia Soil and Water Conservation Board (board) to adopt regulations to ensure that impounding structures in the Commonwealth are properly and safely constructed, maintained, and operated.

Purpose: The proposed amendments protect public safety by enabling low hazard dams that are not currently in compliance with the Dam Safety Act (§ 10.1-604 et seq. of the Code of Virginia) to meet requirements that reflect the potential risk posed by a dam failure. The amendments will lead to significant cost-savings for the owners of low hazard dams while maintaining the board's commitment to public safety. Additional amendments simplify the emergency preparedness plan criteria and reflect potential administrative efficiency savings for dam owners.

Substance: The proposed amendments (i) more closely align the regulatory requirements with the statute; (ii) clarify and simplify the general permit requirements for dam owners by adding Part VII, which adds provisions related to the issuance of a conditional general permit in situations where there are deficiencies found or where the dam is out of compliance with the Dam Safety Act; and (iii) simplify the emergency preparedness plan criteria and reflect potential administrative efficiency savings for dam owners.

Issues: The primary advantage to the public is that the proposed amendments represent considerable potential cost-savings for owners of low hazard dams, both in administrative costs and engineering costs. The primary advantage to the agency is that the proposed amendments will allow the board and the department to focus limited resources on the dams that pose more substantial risks to public safety and property. The administrative requirements of the general permit should represent a cost-savings to the department, as well. There are no disadvantages to the public or the Commonwealth.

Department of Planning and Budget Economic Impact Analysis:

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia and Executive Order 19. The analysis presented represents DPB's best estimate of the potential economic impacts as of the date of this analysis.[1]

Summary of the Proposed Amendments to Regulation. As a result of a 2023 periodic review, the Virginia Soil and Water Conservation Board (board) proposes to fully incorporate the use of a general permit for low hazard dams (rather than the currently required certificate) in accordance with the Dam Safety Act (§ 10.1-604 et seq. of the Code of Virginia.)[2] The amendments would clarify the existing requirements for the general permit to ensure that the requirements reflect statute, and refine the processes related to administering the general permit.

Additional amendments simplify the emergency preparedness plan criteria. The proposed changes are expected to reduce costs to owners of low hazard dams as well as owners of dams that do not yet have a hazard classification but are anticipated to be classified as low hazard.

Background. The Department of Conservation and Recreation (DCR) reports that there are currently over 3,700 dams in DCR's Dam Safety Inventory System, and that slightly over 2,500 of these dams are regulated under the Dam Safety Act. The remaining dams are regulated by other Commonwealth statutes (specifically for mining applications) or other state or federal agencies. DCR also reports that 350 of the 2,500 dams regulated under the Dam Safety Act are classified as having low hazard potential because, by definition, a failure would result in no expected loss of life and would cause no more than minimal economic damage. Further, an additional 1,444 do not yet have a hazard classification; however, DCR anticipates that the vast majority of these dams would be classified as low hazard. At the board's direction, DCR convened a regulatory advisory panel consisting of professional engineers, local governments, state agencies, and dam owners. The proposed amendments reflect a consensus opinion on refining the requirements for low hazard dams and simplifying the emergency preparedness requirements. The most substantive changes are summarized below:

1. Definitions (section 30) would be amended to specify that an Operation and Maintenance Certificate is only required for high or significant hazard potential impounding structures and to add a definition of general permit as a requirement for the operation and maintenance of a low hazard potential impounding structure.

2. Hazard potential classifications of impounding structures (section 40) would be amended so that impounding structures that are found to have low hazard potential based on a dam break analysis would automatically qualify for a general permit.

3. Regular Operation and Maintenance Certificates (section 105) would be renamed and amended to specify that it applies only to high and significant hazard potential impounding structures. A current requirement for low hazard potential impounding structures to provide a professional engineer's inspection report every six years would be removed. There is currently no corresponding requirement for general permit holders, and such a requirement would not be added.

4. Emergency Preparedness Plan for Low hazard impounding structures (section 177) currently requires owners of low hazard impounding structures to file a dam break inundation zone map with DCR (a requirement that also appears in section 54), the local emergency management coordinator, and the Virginia Department of Emergency Management. The board proposes to replace this requirement with an identification of any downstream roadways that would be impacted by the impounding structures failure. This change would conform the regulatory requirements to statute, specifically § 10.1-605.3 of the Code of Virginia, and is expected to result in significant cost savings for owners of low hazard impounding structures, which is discussed in the following section.

5. Fee for coverage for low hazard impounding structures (section 375), which specifies fees for the general permit, would be renamed to include fees for a conditional general permit; this fee would be set at $200.

6. Conditional general permit for low hazard potential impounding structures (section 505), a newly proposed section, would address conditional general permits and specify that the conditional permit would be valid for two years. While the current regulation does not appear to cover conditional permits, fees for conditional certificates are listed in section 390 as being $300 for a two-year certificate and $150 for a one-year certificate.

7. Current requirements pertaining to the general permit would be moved from sections 90, 101, 102, 103, and 104, to sections 500-508; these changes would consolidate the sections pertaining to the general permit and separate them from the construction and alteration permits already established in the regulation.

It should also be noted that the duration of the permit and associated fees are currently the same as for a Low Hazard Potential Operation and Maintenance Certificate and would not be changed by this action; a permit costs $300 and be valid for six years.

Estimated Benefits and Costs. As mentioned previously, DCR reports that removing the dam break inundation zone map requirement would result in significant cost savings for the roughly 1,444 dams that have not yet received a certificate, most of which are likely to be classified as being low hazard potential; DCR estimates the cost for creating and each map at $11,400 to $90,000. Although it would no longer be required by the regulation, some owners of low hazard potential dams may still opt to file a dam break inundation zone map in order to be afforded the protections provided in § 10.1-606.3, whereby they would not bear the full cost of structural improvements should downstream development require structural changes to the dam. Once the proposed changes take effect, dam owners who currently have a certificate would avoid the expense of filing a professional engineer's inspection report every six years once the certificate is converted to a general permit; DCR estimates the cost of obtaining a report at $7,000 to $12,000. Current and future general permit holders already avoid these costs. Lowering the barriers to obtaining and maintaining a permit would encourage some private property owners who have low hazard potential impounding structures on their property, but do not currently have a certificate or permit, to come into compliance with the Dam Safety Act. Although the estimated economic loss from such dam breaks is, by definition, very low, greater compliance with relatively low-cost requirements (such as the annual inspection by the owner and maintaining an emergency preparedness plan), could both protect the value of the owner's property and generate a significant public benefit if, for example, it preserves road access to a neighboring property in the event of a dam break. DCR also reports that these changes will enable the board and the agency to focus limited financial and staff resources on the dams that pose the most risk to public safety and property. The agency also anticipates administrative efficiencies associated with regulating low hazard dams under general permits rather than certificates and expects to absorb any expenses arising from the transition from certificates to general permits for low hazard dams.

Businesses and Other Entities Affected. The proposed amendments would affect all owners of the roughly 350 low hazard dams, as well as owners of the 1,444 dams that have not yet been classified, many of which are likely to be low hazard. DCR reports that dam owners include some state agencies (including the Department of Wildlife Resources), some localities, as well as private individuals, homeowners associations, institutions of higher education, businesses, and other types of entities. The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.[3] An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs for all entities combined.[4] Since the proposed amendments would simplify requirements and reduce costs for low hazard dams without increasing costs or risks to the public, an adverse impact is not indicated.

Small Businesses[5] Affected.[6] The proposed amendments are not expected to increase costs to any small businesses. Small businesses that own and maintain low hazard dams would benefit from certain cost savings as described above.

Localities[7] Affected.[8] The proposed amendments would affect localities that own and maintain dams, but they are not

expected to create new costs for any local governments. Localities that own and maintain low hazard dams would benefit from avoiding certain costs as described above.

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

Effects on the Use and Value of Private Property. The proposed amendments could increase the value of private property that includes a low hazard dam by reducing the costs associated with obtaining and maintaining a general permit. Real estate development costs would similarly be reduced for properties that include a low hazard dam as certain costs associated with obtaining and maintaining a general permit would no longer be required.

[1] Section 2.2-4007.04 of the Code of Virginia requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

[2] See https://townhall.virginia.gov/L/ViewPReview.cfm?PRid=2485.

[3] Pursuant to § 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," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

[4] Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation. As a result, DPB has adopted a definition of adverse impact that assesses changes in net costs and benefits for each affected Virginia entity that directly results from discretionary changes to the regulation.

[5] Pursuant to § 2.2-4007.04, 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."

[6] If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

[7] "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.

[8] Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Response to Economic Impact Analysis: The Virginia Soil and Water Conservation Board concurs with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

As a result of a periodic review, the proposed amendments (i) fully incorporate the use of a general permit for low hazard dams in the regulation, (ii) clarify the existing requirements for the general permit to ensure the requirements accurately reflect statute, (iii) refine the processes related to administering the general permit, and (iv) simplify the emergency preparedness plan criteria.

4VAC50-20-30. Definitions.

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

"Acre-foot" means a unit of volume equal to 43,560 cubic feet or 325,853 gallons (equivalent to one foot of depth over one acre of area).

"Agricultural purpose" means the production of an agricultural commodity as defined in § 3.2-3900 of the Code of Virginia that requires the use of impounded waters.

"Agricultural purpose dams" means impounding structures ~~which~~ that are less than 25 feet in height or ~~which~~ that create a maximum impoundment smaller than 100 acre-feet, and operated primarily for agricultural purposes.

"Alteration" means changes to an impounding structure that could alter or affect its structural integrity. Alterations include~~, but are not limited to,~~ changing the height or otherwise enlarging the dam, increasing normal pool or principal spillway elevation or physical dimensions, changing the elevation or physical dimensions of the emergency spillway, conducting necessary structural repairs or structural maintenance, or removing the impounding structure. Structural maintenance does not include routine maintenance.

"Alteration permit" means a permit required for any alteration to an impounding structure.

"Annual average daily traffic" or "AADT" means the total volume of vehicle traffic of a highway or road for a year divided by 365 days and is a measure used in transportation planning and transportation engineering of how busy a road is.

"Board" means the Virginia Soil and Water Conservation Board.

"Conditional general permit" means the permit established pursuant to § 10.1-605.3 of the Code of Virginia that is required for the operation and maintenance of a low hazard potential impounding structure with deficiencies.

"Conditional Operation and Maintenance Certificate" means a certificate required for high or significant hazard potential impounding structures with deficiencies.

"Construction" means the construction of a new impounding structure.

"Construction ~~permit~~ Permit" means a permit required for the construction of a new impounding structure.

"Dam break inundation zone" means the area downstream of a dam that would be inundated or otherwise directly affected by the failure of a dam.

"Dam Safety Act" means Article 2 (§ 10.1-604 et seq.) of Chapter 6 of Title 10.1 of the Code of Virginia.

"Department" means the Virginia Department of Conservation and Recreation.

"Design flood" means the calculated volume of runoff and the resulting peak discharge utilized in the evaluation, design, construction, operation, and maintenance of the impounding structure.

"Director" means the Director of the Department of Conservation and Recreation or ~~his~~ the director's designee.

"Drill" means a type of emergency action plan exercise that tests, develops, or maintains skills in an emergency response procedure. During a drill, participants perform an in-house exercise to verify telephone numbers and other means of communication along with the owner's response. A drill is considered a necessary part of ongoing training.

"Emergency Action Plan" or "EAP" means a formal document that recognizes potential impounding structure emergency conditions and specifies preplanned actions to be followed to minimize loss of life and property damage. The EAP specifies actions the owner must take to minimize or alleviate emergency conditions at the impounding structure. It contains procedures and information to assist the owner in issuing early warning and notification messages to responsible emergency management authorities. It ~~shall~~ also ~~contain~~ contains dam break inundation zone maps as required to show emergency management authorities the critical areas for action in case of emergency.

"Emergency Action Plan Exercise" means an activity designed to promote emergency preparedness; test or evaluate EAPs, procedures, or facilities; train personnel in emergency management duties; and demonstrate operational capability. In response to a simulated event, exercises should consist of the performance of duties, tasks, or operations very similar to the way they would be performed in a real emergency. An exercise may include ~~but not be limited to~~ drills and tabletop exercises.

"Emergency Preparedness Plan" means a formal document prepared for ~~Low-Hazard~~ low hazard impounding structures that provides maps and procedures for notifying owners of downstream property that may be impacted by an emergency situation at an impounding structure.

"Existing impounding structure" means any impounding structure in existence or under a ~~construction permit~~ Construction Permit prior to July 1, 2010.

"Freeboard" means the vertical distance between the maximum water surface elevation associated with the spillway design flood and the top of the impounding structure.

"General permit" means the permit established pursuant to § 10.1-605.3 of the Code of Virginia that is required for the operation and maintenance of a low hazard potential impounding structure.

"Height" means the hydraulic height of an impounding structure. If the impounding structure spans a stream or watercourse, height means the vertical distance from the natural bed of the stream or watercourse measured at the downstream toe of the impounding structure to the top of the impounding structure. If the impounding structure does not span a stream or watercourse, height means the vertical distance from the lowest elevation of the downstream limit of the barrier to the top of the impounding structure.

"Impounding structure" or "dam" means a man-made structure, whether a dam across a watercourse or structure outside a watercourse, used or to be used to retain or store waters or other materials. The term includes~~:~~ (i) all dams that are 25 feet or greater in height and that create an impoundment capacity of 15 acre-feet or greater~~,~~ and (ii) all dams that are six feet or greater in height and that create an impoundment capacity of 50 acre-feet or greater. The term "impounding structure" ~~shall~~ does not include~~:~~ (a) dams licensed by the State Corporation Commission that are subject to a safety inspection program; (b) dams owned or licensed by the United States government; (c) dams operated primarily for agricultural purposes ~~which~~ that are less than 25 feet in height or ~~which~~ that create a maximum impoundment capacity smaller than 100 acre-feet; (d) water or silt retaining dams approved pursuant to § 45.1-222 or 45.1-225.1 of the Code of Virginia; or (e) obstructions in a canal used to raise or lower water.

"Impoundment" means a body of water or other materials the storage of which is caused by any impounding structure.

"Life of the impounding structure" and "life of the project" mean that period of time for which the impounding structure is designed and planned to perform effectively, including the time required to remove the structure when it is no longer capable of functioning as planned and designed.

"Maximum impounding capacity" means the volume of water or other materials in acre-feet that is capable of being impounded at the top of the impounding structure.

"New construction" means any impounding structure issued a construction permit or otherwise constructed on or after July 1, 2010.

"Normal or typical water surface elevation" means the water surface elevation at the crest of the lowest ungated outlet from

the impoundment or the elevation of the normal pool of the impoundment if different than the water surface elevation at the crest of the lowest ungated outlet. For calculating sunny day failures for flood control impounding structures, stormwater detention impounding structures, and related facilities designed to hold back volumes of water for slow release, the normal or typical water surface elevation shall be measured at the crest of the auxiliary or emergency spillway.

~~"Operation and Maintenance Certificate" means a certificate required for the operation and maintenance of all impounding structures.~~

"Owner" means the owner of the land on which an impounding structure is situated, the holder of an easement permitting the construction of an impounding structure, and any person or entity agreeing to maintain an impounding structure. The term "owner" may include the Commonwealth or any of its political subdivisions, including ~~but not limited to~~ sanitation district commissions and authorities, any public or private institutions, corporations, associations, firms or companies organized or existing under the laws of this Commonwealth or any other state or country, as well as any person or group of persons acting individually or as a group.

"Planned land use" means land use that has been approved by a locality or included in a master land use plan by a locality, such as in a locality's comprehensive land use plan.

"Regular Operation and Maintenance Certificate" means a certificate required for the operation and maintenance of high hazard potential or significant hazard potential impounding structures.

"Spillway" means a structure to provide for the controlled release of flows from the impounding structure into a downstream area.

"Stage I Condition" means a flood watch or heavy continuous rain or excessive flow of water from ice or snow melt.

"Stage II Condition" means a flood watch or emergency spillway activation or impounding structure overtopping where a failure may be possible.

"Stage III Condition" means an emergency spillway activation or impounding structure overtopping where imminent failure is probable.

"Sunny day dam failure" means the failure of an impounding structure with the initial water level at the normal reservoir level, usually at the lowest ungated principal spillway elevation or the typical operating water level.

"Tabletop ~~Exercise~~ exercise" means a type of emergency action plan exercise that involves a meeting of the impounding structure owner and the state and local emergency management officials in a conference room environment. The format is usually informal with minimum stress involved. The exercise begins with the description of a simulated event and proceeds with discussions by the participants to evaluate the EAP and response procedures and to resolve concerns regarding coordination and responsibilities.

"Top of the impounding structure" means the lowest point of the nonoverflow section of the impounding structure.

"Watercourse" means a natural channel having a well-defined bed and banks and in which water normally flows.

4VAC50-20-40. Hazard potential classifications of impounding structures.

A. Impounding structures shall be classified in one of three hazard classifications as defined in subsection B of this section and Table 1 of 4VAC50-20-50.

B. For the purpose of this chapter, hazards pertain to potential loss of human life or damage to the property of others downstream from the impounding structure in event of failure or faulty operation of the impounding structure or appurtenant facilities. Hazard potential classifications of impounding structures are as follows:

1. High ~~Hazard Potential~~ hazard potential is defined where an impounding structure failure will cause probable loss of life or serious economic damage. "Probable loss of life" means that impacts will occur that are likely to cause a loss of human life, including ~~but not limited to~~ impacts to residences, businesses, other occupied structures, or major roadways. Economic damage may occur to, but not be limited to, ~~building(s)~~ buildings, industrial or commercial facilities, public utilities, major roadways, railroads, personal property, and agricultural interests. "Major roadways" include~~, but are not limited to,~~ interstates, primary highways, high-volume urban streets, or other high-volume roadways, except those having an AADT volume of 400 vehicles or less in accordance with 4VAC50-20-45.

2. Significant ~~Hazard Potential~~ hazard potential is defined where an impounding structure failure may cause the loss of life or appreciable economic damage. "May cause loss of life" means that impacts will occur that could cause a loss of human life, including ~~but not limited to~~ impacts to facilities that are frequently utilized by humans other than residences, businesses, or other occupied structures, or to secondary roadways. Economic damage may occur to, but not be limited to, ~~building(s)~~ buildings, industrial or commercial facilities, public utilities, secondary roadways, railroads, personal property, and agricultural interests. "Secondary roadways" include~~, but are not limited to,~~ secondary highways, low-volume urban streets, service roads, or other low-volume roadways, except those having an AADT volume of 400 vehicles or less in accordance with 4VAC50-20-45.

3. Low ~~Hazard Potential~~ hazard potential is defined where an impounding structure failure would result in no expected loss of life and would cause no more than minimal economic

damage. "No expected loss of life" means no loss of human life is anticipated.

C. To support the appropriate hazard potential classification, dam break analysis shall be conducted by the owner's engineer or the department in accordance with one of the following alternatives and utilizing procedures set out in 4VAC50-20-54.

1. The owner of an impounding structure that does not currently hold a regular or conditional certificate or a conditional general permit or general permit from the board, or the owner of an impounding structure that is already under certificate ~~but the owner~~ or general permit who believes that a condition has changed downstream of the impounding structure that may reduce its hazard potential classification, may request in writing that the department conduct a simplified dam break inundation zone analysis to determine whether the impounding structure has a low hazard potential classification. The owner shall pay a fee to the department in accordance with 4VAC50-20-395 for conducting each requested analysis. The department shall address requests in the order received and shall strive to complete analysis within 90 days; or

2. The owner may propose a hazard potential classification that shall be subject to approval by the board. To support the proposed hazard potential classification, an analysis shall be conducted by the owner's engineer and submitted to the department. The hazard potential classification shall be certified by the owner.

D. Findings of the analysis conducted pursuant to subsection C of this section shall result in one of the following actions:

1. For findings by the department resulting from analyses conducted in accordance with subdivision C 1 of this section:

a. If the department finds that the impounding structure appears to have a low hazard potential classification, the owner ~~may be~~ is eligible for general permit coverage in accordance with ~~4VAC50-20-103~~ 4VAC50-20-503.

b. If the department finds that the impounding structure appears to have a high hazard potential or significant hazard potential classification, the owner's engineer shall provide further analysis in accordance with the procedures set out in 4VAC50-20-54 and this chapter. The owner may be eligible for grant assistance from the Dam Safety, Flood Prevention, and Protection Assistance Fund in accordance with Article 1.2 (§ 10.1-603.16 et seq.) of Chapter 6 of Title 10.1 of the Code of Virginia.

2. For findings by the owner's engineer resulting from analyses conducted in accordance with subdivision C 2 of this section:

a. If the engineer finds that the impounding structure has a low hazard potential classification, the owner ~~may be~~ is eligible for general permit coverage in accordance with ~~4VAC50-20-103~~ 4VAC50-20-503; or

b. If the engineer finds that the impounding structure appears to have a high hazard potential or significant hazard potential classification, then the owner shall comply with the applicable certification requirements set out in this chapter.

E. An incremental damage analysis in accordance with 4VAC50-20-52 may be utilized as part of a hazard potential classification by the owner's engineer.

F. Impounding structures shall be subject to reclassification by the board as necessary.

4VAC50-20-54. Dam break inundation zone mapping.

A. Dam break inundation zone maps and analyses shall be provided to the department, except as provided for in 4VAC50-20-51, to meet the requirements set out in 4VAC50-20-40~~,~~ and 4VAC50-20-175~~, and 4VAC50-20-177~~, as applicable. In accordance with subsection G of this section, a simplified dam break inundation zone ~~map and~~ analysis may be completed by the department and shall be provided to the impounding structure's owner to assist such owner in complying with the requirements of this chapter. All analyses shall be completed in accordance with 4VAC50-20-20 D.

B. The location of the end of the inundation mapping should be indicated where the water surface elevation of the dam break inundation zone and the water surface elevation of the spillway design flood during an impounding structure nonfailure event converge to within one foot of each other. The inundation maps shall be supplemented with water surface profiles showing the peak water surface elevation prior to failure and the peak water surface elevation after failure.

C. All inundation zone ~~map(s)~~ maps shall be signed and sealed by a licensed professional engineer.

D. Present and planned ~~land-use~~ land use for which a development plan has been officially approved by the locality in the dam break inundation zones downstream from the impounding structure shall be considered in determining the classification.

E. For determining the hazard potential classification, an analysis including~~, but not limited to,~~ those hazards created by flood and nonflood dam failures shall be considered. At a minimum, the following shall be provided to the department:

1. A sunny day dam break analysis utilizing the volume retained at the normal or typical water surface elevation of the impounding structure;

2. A dam break analysis utilizing the spillway design flood with a dam failure;

3. An analysis utilizing the spillway design flood without a dam failure; and

4. A dam break analysis utilizing the probable maximum flood with a dam failure.

F. To meet the Emergency Action Plan requirements set out in 4VAC50-20-175 ~~and the Emergency Preparedness Plan requirements set out in 4VAC50-20-177~~, all owners of high hazard potential or significant hazard potential impounding structures shall provide dam break inundation zone ~~map(s)~~ maps representing the impacts that would occur with both a sunny day dam failure and a probable maximum flood with a dam failure.

1. The ~~map(s)~~ maps shall be developed at a scale sufficient to graphically display downstream inhabited areas and structures, roads, public utilities that may be affected, and other pertinent structures within the identified inundation area. In coordination with the local organization for emergency management, a list of downstream inundation zone property owners and occupants, including telephone numbers, may be plotted on the map or may be provided with the map for reference during an emergency.

2. Each map shall include the following statement: "The information contained in this map is prepared for use in notification of downstream property owners by emergency management personnel."

~~Should the department prepare a dam break inundation zone map and analysis in response to a request received pursuant to 4VAC50-20-40 C, the owner shall utilize this map to prepare a plan in accordance with this subsection.~~

G. Upon receipt of a written request in accordance with 4VAC50-20-40 C and receipt of a payment in accordance with 4VAC50-20-395, the department shall conduct a simplified dam break inundation zone analysis. In conducting the analysis, a model acceptable to the department shall be utilized. The analysis shall result in maps produced as Geographic Information System shape files for viewing and analyzing and shall meet the other analysis criteria of this section.

Upon completion of the analysis, the department shall issue a letter to the owner communicating the results of the analysis, including the dam break inundation zone map, stipulating the department's finding regarding hazard potential classification based on the information available to the department, and explaining what the owner needs to do procedurally with this information to be compliant with the requirements of the Dam Safety Act ~~(§ 10.1-604 et seq.)~~ and this chapter.

4VAC50-20-58. Local government notifications.

For each certificate or general permit issued, the impounding structure owner shall send a copy of the certificate or general permit to the appropriate local ~~government(s)~~ government with planning and zoning responsibilities. A project description and ~~the map(s)~~ any maps required under 4VAC50-20-54 showing the area that could be affected by the impounding structure failure shall be submitted with the certificate or general permit. The department will provide a standard form cover letter for forwarding the certificate copy or general permit and accompanying materials.

Part II

Construction and Alteration Permit Requirements

4VAC50-20-70. Construction permits.

A. Prior to preparing the complete design report for a Construction Permit, applicants may submit a preliminary design report to the department to determine if the project concept is acceptable to the department. The preliminary design report should contain, at a minimum, a general description of subdivisions 1 through 12 of subsection B of this section and subdivisions 1 and 2 of this subsection:

1. Proposed design criteria and a description of the size of the impounding structure, ground cover conditions, extent of current upstream development within the watershed and the hydraulic, hydrological and structural features, geologic conditions, and the geotechnical engineering assumptions used to determine the foundation, impoundment rim stability, and materials to be used.

2. Preliminary drawings of a general nature, including cross sections, plans and profiles of the impounding structure, proposed pool levels, and types of ~~spillway(s)~~ spillways.

B. An applicant for a Construction Permit shall submit a design report. A form for the design report is available from the department ~~(Design Report for the Construction or Alteration of Virginia Regulated Impounding Structures)~~. The design report shall be prepared in accordance with 4VAC50-20-240. The design report is a required element of a complete application for a Construction Permit and shall include the following information:

1. Project information including a description of the proposed construction, name of the impounding structure, inventory number if available, name of the reservoir, and the purpose of the reservoir.

2. The proposed hazard potential classification in conformance with Table 1 of 4VAC50-20-50.

3. Location of the impounding structure, including the city or county, number of feet or miles upstream or downstream of a highway, and the highway number, name of the river or the stream, and the latitude and longitude.

4. Owner's name or representative if corporation, mailing address, residential and business telephone numbers, and other means of communication.

5. Owner's engineer's name, firm, professional engineer Virginia number, mailing address, and business telephone number.

6. Impounding structure data, including type of material (i.e., earth, concrete, masonry, or other), and the following design configurations:

a. Top of impounding structure (elevation);

b. Downstream toe – lowest (elevation);

c. Height of impounding structure (feet);

d. Crest length – exclusive of spillway (feet);

e. Crest width (feet);

f. Upstream slope (horizontal to vertical); and

g. Downstream slope (horizontal to vertical).

7. Reservoir data, including the following:

a. Maximum capacity (acre-feet);

b. Maximum pool (elevation);

c. Maximum pool surface area (acres);

d. Normal capacity (acre-feet);

e. Normal pool (elevation);

f. Normal pool surface area (acres); and

g. Freeboard (feet).

8. Spillway data, including the type, construction material, design configuration, and invert elevation for the ~~low-level~~ low-level drain, the principal spillway, and the emergency spillway.

9. Watershed data, including drainage area (square miles); type and extent of watershed development; time of concentration (hours); routing procedure; spillway design flood used and state source; design inflow hydrograph volume (acre-feet), peak inflow (cfs), and rainfall duration (hours); and freeboard during passage of the spillway design flood (feet).

10. A description of properties located in the dam break inundation zone downstream from the site of the proposed impounding structure, including the location and number of structures, buildings, roads, utilities, and other property that would be endangered should the impounding structure fail.

11. Evidence that the local government ~~or governments have~~ has been notified of the proposal by the owner to build an impounding structure.

12. Maps showing the location of the proposed impounding structure that include~~:~~ the county or city in which the proposed impounding structure would be located, the location of roads and access to the site, and the outline of the impoundment. Existing aerial photographs or existing topographic maps may be used for this purpose.

13. A report of the geotechnical investigations of the foundation soils~~,~~ or bedrock~~, or both~~ and of the materials to be used to construct the impounding structure.

14. Design assumptions and analyses sufficient to indicate that the impounding structure will be stable during its construction and during the life of the impounding structure under all conditions of impoundment operations, including rapid filling, flood surcharge, seismic loadings, and rapid drawdown of the impoundment.

15. Evaluation of the stability of the impoundment rim area to safeguard against impoundment rim slides of such magnitude as to create waves capable of overtopping the impounding structure and evaluation of rim stability during seismic activity.

16. Design assumptions and analyses sufficient to indicate that seepage in, around, through, or under the impounding structure, foundation, and abutments will be reasonably and practically controlled so that internal or external forces or results thereof will not endanger the stability and integrity of the impounding structure. The design report shall also include information on graded filter design.

17. Calculations and assumptions relative to hydraulic and structural design of the ~~spillway or~~ spillways and energy ~~dissipater or~~ dissipaters. Spillway capacity shall conform to the criteria of Table 1 and 4VAC50-20-52.

18. Provisions to ensure that the impounding structure and appurtenances will be protected against unacceptable deterioration or erosion due to freezing and thawing, wind, wave action, and rain or any combination thereof.

19. Other pertinent design data, assumptions, and analyses commensurate with the nature of the particular impounding structure and specific site conditions, including, when required by this chapter, a plan and water surface profile of the dam break inundation zone.

20. A description of the techniques to be used to divert stream flow during construction so as to prevent hazard to life, health, and property, including a detailed plan and procedures to maintain a stable impounding structure during storm events, a drawing showing temporary diversion devices, and a description of the potential impoundment during construction. Such diversion plans shall also be in accordance with applicable environmental laws.

21. A plan for project construction monitoring and quality control testing to confirm that construction materials and performance standards meet the design requirements set forth in the specifications.

22. Plans and specifications as required by 4VAC50-20-310.

23. Certification by the owner's engineer that the information provided pursuant to this subsection is true and correct in ~~their~~ the engineer's professional judgment. Such certification shall include the engineer's signature, printed name, Virginia number, date, and the engineer's Virginia seal.

24. Owner's signature certifying receipt of the information provided pursuant to this subsection.

C. A plan of construction is a required element of a complete permit application for a Construction Permit and shall include:

1. A construction sequence with milestones.

2. Elements of the work plan that should be considered include~~, but are not limited to,~~ foundation and abutment treatment, stream or river diversion, excavation and material fill processes, phased fill and compaction, testing and control procedures, construction of permanent spillway, and drainage devices.

3. The erosion and sediment control plan, as approved by the local government, ~~which~~ that minimizes soil erosion and sedimentation during all phases of construction.

4. The stormwater management plan or stormwater management facility plan, as approved by the local government, if the impounding structure is a stormwater management best management practice.

D. A Temporary Emergency Action Plan is a required element of a complete application for a Construction Permit and shall include:

1. A notification list of state and local emergency response agencies;

2. Provisions for notification of potentially affected residences and structures;

3. Construction site evacuation routes; and

4. Any other special notes particular to the project.

E. Within 120 days of receipt of a complete Construction Permit Application, the board shall act on the application. If the application is not acceptable, the director shall inform the applicant within 60 days of receipt and shall explain what changes are required for an acceptable application. A complete Construction Permit Application consists of the following:

1. A final design report, submitted on the department form ~~(Design Report for the Construction or Alteration of Virginia Regulated Impounding Structures)~~, with attachments as needed, and certified by the owner and the owner's engineer;

2. A plan of construction that meets the requirements of subsection C of this section; and

3. A ~~Temporary~~ temporary Emergency Action Plan that meets the requirements of subsection D of this section.

F. Prior to and during construction the owner shall provide the director with any proposed changes from the approved design, plans, specifications, or plan of construction. Approval shall be obtained from the director prior to the construction or installation of any changes that will affect the integrity or impounding capacity of the impounding structure.

G. The Construction Permit shall be valid for the plan of construction specified in the Construction Permit Application.

H. Construction must commence within two years after the permit is issued. If construction does not commence within two years after the permit is issued, the permit shall expire, except that the applicant may petition the board for extension of the two-year period and the board may extend such period for good cause with an appropriately updated plan of construction and Temporary Emergency Action Plan.

I. The board, the director, or both may take any necessary action consistent with the Dam Safety Act ~~(§ 10.1-604 et seq. of the Code of Virginia)~~ if any terms of this section or of the permit are violated, if the activities of the owner are not in accordance with the approved plans and specifications, if construction is conducted in a manner hazardous to downstream life or property, or for other cause as described in the Dam Safety Act.

J. Within 90 days after completion of the construction of an impounding structure, the owner shall submit:

1. A complete set of record drawings signed and sealed by a licensed professional engineer and signed by the owner:

2. A complete Record Report ~~(Record Report for Virginia Regulated Impounding Structures)~~ signed and sealed by a licensed professional engineer and signed by the owner that includes:

a. Project information, including the name and inventory number of the structure, name of the reservoir, and whether the report is associated with a new or old structure;

b. Location of the impounding structure, including the city or county, number of feet or miles upstream or downstream of a highway and the highway number, name of the river or the stream, and the latitude and longitude;

c. Owner's name or representative if corporation, mailing address, residential and business telephone numbers, and other means of communication;

d. Information on the design report, including who it was prepared by, the date of design report preparation, whether it was for new construction or for an alteration, and the permit issuance date;

e. Owner's engineer's name, firm, professional engineer Virginia number, mailing address, and business telephone number;

f. Impounding structure data, including type of material (i.e., earth, concrete, masonry, or other) and the following configurations:

(1) Top of impounding structure (elevation);

(2) Downstream toe – lowest (elevation);

(3) Height of impounding structure (feet);

(4) Crest length – exclusive of spillway (feet);

(5) Crest width (feet);

(6) Upstream slope (horizontal to vertical); and

(7) Downstream slope (horizontal to vertical).

g. Reservoir data, including the following:

(1) Maximum capacity (acre-feet);

(2) Maximum pool (elevation);

(3) Maximum pool surface area (acres);

(4) Normal capacity (acre-feet);

(5) Normal pool (elevation);

(6) Normal pool surface area (acres); and

(7) Freeboard (feet).

h. Spillway data, including the type, construction material, design configuration, and invert elevation for the low level drain, the principal spillway, and the emergency spillway; a description of the ~~low level~~ low-level drain and principal spillway, including dimensions, trash guard information, and orientation of intake and discharge to impounding structure if looking downstream; and a description of the emergency spillway, including dimensions and orientation to impounding structure if looking downstream;

i. Watershed data, including drainage area (square miles); type and extent of watershed development; time of concentration (hours); routing procedure; spillway design flood used and state source; design inflow hydrograph volume (acre-feet), peak inflow (cfs), and rainfall duration (hours); and freeboard during passage of the spillway design flood (feet);

j. Impounding structure history, including the date construction was completed, who it was designed by and the date, who it was built by and the date, who performed inspections and dates, description of repairs, and confirmation as to whether the impounding structure has ever been overtopped;

k. A narrative describing the impounding structure procedures for operation, maintenance, filling, emergency action plan implementation, and structure evaluation;

l. A narrative describing the hydraulic and hydrologic data on the spillway design flood, hydrologic records, flood experience, flood potential, reservoir regulation, and comments or recommendations regarding these attributes;

m. A narrative describing stability of the foundation and abutments, embankment materials, and a written evaluation of each;

n. A complete set of record drawings signed and sealed by a licensed professional engineer and signed by the owner;

o. Certification by the owner's engineer that the information provided pursuant to this subdivision J 2 ~~of this section~~ is true and correct in ~~their~~ the engineer's professional judgment. Such certification shall include the engineer's signature, printed name, Virginia number, date, and the engineer's Virginia seal; and

p. Owner's signature certifying receipt of the information provided pursuant to this subdivision J 2 ~~of this section~~.

3. Certification from the licensed professional engineer who has monitored construction of the impounding structure during construction that, to the best of the engineer's judgment, knowledge and belief, the impounding structure and its appurtenances were constructed in conformance with the plans, specifications, drawings, and other requirements approved by the board;

4. Operation and Maintenance Certificate Application ~~(Operation and Maintenance Certificate Application for Virginia Regulated Impounding Structures)~~ in accordance with 4VAC50-20-105 or a registration statement submitted in accordance with 4VAC50-20-502; and

5. Emergency Action Plan or Emergency Preparedness Plan in accordance with 4VAC50-20-175 or 4VAC50-20-177.

K. Upon completion of construction, the impoundment may be filled upon board issuance of an Operation and Maintenance Certificate or a general permit.

4VAC50-20-90. ~~Transfer of permits.~~ (Repealed.)

~~A. Prior to the transfer of ownership of a permitted impounding structure the permittee shall notify the director in writing and the new owner shall file a transfer notification with the department. A form for the transfer notification is available from the department (Transfer of Impounding Structure Notification form Past Owner to New Owner). The new owner shall amend the existing permit application as necessary and shall certify to the director that he is aware of and will comply with all of the requirements and conditions of the permit.~~

~~B. The transfer notification shall include the following required information:~~

~~1. Project information including the name and inventory number of the structure, name of the reservoir, and impoundment hazard classification;~~

~~2. Location of the impounding structure including the city or county, number of feet or miles upstream or downstream of a highway and the highway number, name of the river or the stream, and the latitude and longitude;~~

~~3. Type of certificates and permits to be transferred including effective date and expiration date of all certificates and permits;~~

~~4. Past owner's name, mailing address, and residential and business telephone numbers;~~

~~5. New owner's name, mailing address, and residential and business telephone numbers;~~

~~6. Request to transfer certification statement signed and dated by the past owner;~~

~~7. Certification of compliance with permit or certificate with all said terms and conditions signed and dated by the new owner; and~~

~~8. Contact information updates for Emergency Action Plan or Emergency Preparedness Plan provided by the new owner. Such updates shall include the name, mailing~~

address, and residential and business telephone numbers for the impounding structure owner, impounding structure operator, rainfall and staff gage observer, and alternate observer.

4VAC50-20-101. General permit requirements for low hazard potential impounding structures. (Repealed.)

Any impounding structure owner whose registration statement is approved by the board will receive the following permit and shall comply with the requirements in it. If the failure of a low hazard potential impounding structure is not expected to cause loss of human life or economic damage to any property except property owned by the owner, the owner may follow the special criteria established for certain low hazard impounding structures in accordance with 4VAC50-20-51 in lieu of coverage under the general permit.

General Permit No.: Dam Safety 1
Effective Date: (Date of Issuance of Coverage)
Expiration Date: (6 years following Date of Issuance of Coverage)
GENERAL PERMIT FOR OPERATION OF A LOW HAZARD POTENTIAL IMPOUNDING STRUCTURE

In compliance with the provisions of the Dam Safety Act and attendant regulations, owners of an impounding structure covered by this permit are authorized to operate and maintain a low hazard potential impounding structure. The owner shall be subject to the following requirements as set forth herein.

1. The spillway design of the owner's impounding structure shall be able to safely pass a 100-year flood. When appropriate, the spillway design flood requirement may be further reduced to the 50-year flood in accordance with an incremental damage analysis conducted by the owner's engineer.

2. The owner shall develop and maintain an emergency preparedness plan in accordance with 4VAC50-20-177. The owner shall update and resubmit the emergency preparedness plan immediately upon becoming aware of necessary changes to keep the plan workable.

3. The owner shall perform an annual inspection of the impounding structure. The owner shall maintain such records and make them available to the department upon request. The department also shall conduct inspections as necessary in accordance with 4VAC50-20-180.

4. The owner shall ensure that the impounding structure is properly and safely maintained and operated and shall have the following documents available for inspection upon request of the department:

a. An operating plan and schedule including narrative on the operation of control gates and spillways and the impoundment drain;

b. For earthen embankment impounding structures, a maintenance plan and schedule for the embankment, principal spillway, emergency spillway, low-level outlet, impoundment area, downstream channel, and staff gages; and

c. For concrete impounding structures, a maintenance plan and schedule for the upstream face, downstream face, crest of dam, galleries, tunnels, abutments, spillways, gates and outlets, and staff gages.

Impounding structure owners shall not permit growth of trees and other woody vegetation and shall remove any such vegetation from the slopes and crest of embankments and the emergency spillway area, and within a distance of 25 feet from the toe of the embankment and abutments of the dam.

5. The owner shall file a dam break inundation zone map developed in accordance with 4VAC50-20-54 with the department and with the offices with plat and plan approval authority or zoning responsibilities as designated by the locality for each locality in which the dam break inundation zone resides.

6. The owner shall notify the department immediately of any change in circumstances that would cause the impounding structure to no longer qualify for coverage under the general permit. In the event of a failure or an imminent failure of the impounding structure, the owner shall immediately notify the local emergency services coordinator, the Virginia Department of Emergency Management, and the department. The department shall take actions in accordance with § 10.1-608 or 10.1-609 of the Code of Virginia, depending on the degree of hazard and the imminence of failure caused by the unsafe condition.

4VAC50-20-102. Registering for coverage under the general permit for low hazard potential impounding structures. (Repealed.)

A. Pursuant to § 10.1-605.3, an impounding structure owner may seek general permit coverage from the board for a low hazard potential impounding structure in lieu of obtaining a Low Hazard Potential Regular Operation and Maintenance Certificate in accordance with 4VAC50-20-105 or a Conditional Operation and Maintenance Certificate for Low Hazard Potential impounding structures in accordance with 4VAC50-20-150.

B. An owner shall submit a complete and accurate registration statement in accordance with the requirements of this section prior to the issuance of coverage under the general permit. A complete registration statement shall include the following:

1. The name and address of the owner;

2. The location of the impounding structure;

3. The height of the impounding structure;

4. The volume of water impounded;

5. An Emergency Preparedness Plan prepared in accordance with 4VAC50-20-101;

~~6. The applicable fee for the processing of registration statements as set out in 4VAC50-20-375;~~

~~7. A dam break inundation zone map completed in accordance with 4VAC50-20-54 and evidence that such map has been filed with the offices with plat and plan approval authority or zoning responsibilities as designated by the locality for each locality in which the dam break inundation zone resides; and~~

~~8. A certification from the owner that the impounding structure (i) is classified as low hazard pursuant to a determination by the department or the owner's professional engineer in accordance with § 10.1-604.1 and this chapter; (ii) is, to the best of his knowledge, properly and safely constructed and currently has no observable deficiencies; and (iii) shall be maintained and operated in accordance with the provisions of the general permit.~~

4VAC50-20-103. ~~Transitioning from regular or conditional certificates to general permit coverage for low hazard potential impounding structures.~~ (Repealed.)

~~A. Holders of a regular certificate to operate a low hazard potential impounding structure shall be eligible for general permit coverage upon the expiration of their regular certificate. In lieu of a regular certificate renewal, registration coverage materials pursuant to 4VAC50-20-102 shall be submitted to the department 90 days prior to the expiration of the regular certificate.~~

~~B. Holders of a conditional certificate to operate a low hazard potential impounding structure shall be eligible for general permit coverage upon satisfying the registration requirements for a general permit pursuant to 4VAC50-20-102.~~

4VAC50-20-104. ~~Maintaining general permit coverage for low hazard potential impounding structures.~~ (Repealed.)

~~Provided that an impounding structure's hazard potential classification does not change, an owner's coverage under the general permit shall be for a six-year term after which time the owner shall reapply for coverage by filing a new registration statement and paying the necessary fee. No inspection of the impounding structure by a licensed professional engineer shall be required if the owner certifies at the time of general permit coverage renewal that conditions at the impounding structure and downstream are unchanged. If such certification is made, the owner is not required to submit an updated dam break inundation zone map.~~

4VAC50-20-105. Regular Operation and Maintenance Certificates for high hazard potential or significant hazard potential impounding structures.

A. A Regular Operation and Maintenance Certificate is required for ~~an~~ a high hazard potential or significant hazard potential impounding structure. Such six-year certificates shall include the following based on hazard classification:

1. High Hazard Potential Regular Operation and Maintenance Certificate; or

2. Significant Hazard Potential Regular Operation and Maintenance Certificate~~; or~~

~~3. Low Hazard Potential Regular Operation and Maintenance Certificate~~.

B. The owner of ~~an~~ a high hazard potential or significant hazard potential impounding structure shall apply for the renewal of the six-year Regular Operation and Maintenance Certificate 90 days prior to its expiration. If a Regular Operation and Maintenance Certificate is not renewed as required, the board shall take appropriate enforcement action.

C. Any owner of ~~an~~ a high hazard potential or significant hazard potential impounding structure that does not have a Regular Operation and Maintenance Certificate or any owner renewing a Regular Operation and Maintenance Certificate for a high hazard potential or significant hazard potential impounding structure shall file an Operation and Maintenance Certificate Application. A form for the application is available from the department ~~(Operation and Maintenance Certificate Application for Virginia Regulated Impounding Structures)~~. Such application shall be signed by the owner and signed and sealed by a licensed professional engineer. The following information shall be submitted on or with the application:

1. The application shall include the following required information:

a. The name of structure and inventory number;

b. The proposed hazard potential classification;

c. Owner's name or representative if corporation, mailing address, residential and business telephone numbers, and other means of communication;

d. An operating plan and schedule, including a narrative on the operation of control gates and spillways and the impoundment drain;

e. For earthen embankment impounding structures, a maintenance plan and schedule for the embankment, principal spillway, emergency spillway, low-level outlet, impoundment area, downstream channel, and staff gages;

f. For concrete impounding structures, a maintenance plan and schedule for the upstream face, downstream face, crest of dam, galleries, tunnels, abutments, spillways, gates and outlets, and staff gages;

g. An inspection schedule for operator inspection, maintenance inspection, technical safety inspection, and overtopping situations;

h. A schedule including the rainfall amounts, emergency spillway flow levels or storm event that initiates the Emergency Action ~~or Preparedness~~ Plan and the frequency of observations;

i. A statement as to whether or not the current hazard potential classification for the impounding structure is

appropriate and whether or not additional work is needed to make an appropriate hazard potential designation;

j. For newly constructed or recently altered impounding structures, a certification from a licensed professional engineer who has monitored the construction or alteration of the impounding structure that, to the best of the engineer's judgment, knowledge, and belief, the impounding structure and its appurtenances were constructed or altered in conformance with the plans, specifications, drawings, and other requirements approved by the board;

k. Certification by the owner's engineer that the Operation and Maintenance Certificate Application information provided pursuant to subdivision 1 of this subsection is true and correct in ~~their~~ the engineer's professional judgment. Such certification shall include the engineer's signature, printed name, Virginia number, date, and the engineer's Virginia seal; and

l. Owner's signature certifying the Operation and Maintenance Certificate Application information provided pursuant to subdivision 1 of this subsection and that the operation and maintenance plan and schedule shall be conducted in accordance with this chapter.

2. An ~~Inspection Report (Annual Inspection Report for Virginia Regulated Impounding Structures)~~ inspection report in accordance with subsection E of this section;

3. An Emergency Action Plan in accordance with 4VAC50-20-175 ~~or an Emergency Preparedness Plan in accordance with 4VAC50-20-177~~ and evidence that the required copies of such plan have been submitted to the local organization for emergency management and the Virginia Department of Emergency Management;

4. Any additional analysis determined necessary by the director, the board, or the owner's engineer to address public safety concerns. Such additional analysis may include~~, but not be limited to,~~ seismic stability, earthen spillway integrity, adequate freeboard allowance, stability assessment of the impoundment's foundation, potential liquefaction of the embankment, overturning or sliding of a concrete structure, and other structural stress issues; and

5. If applicable, a current certification from the dam owner in accordance with 4VAC50-20-53.

D. If the Operation and Maintenance Certificate Application submittal is found to be ~~not complete~~ incomplete, the director shall inform the applicant within 30 days and shall explain what changes are required for an acceptable submission. Within 60 days of receipt of a complete application, the board shall act upon the application. Upon finding that the impounding structure as currently operating is in compliance with this chapter, the board shall issue a Regular Operation and Maintenance Certificate. Should the board find that the impounding structure as currently operating is not in compliance with this chapter, the board may deny the ~~permit~~ certificate application or issue a Conditional Operation and Maintenance Certificate in accordance with 4VAC50-20-150.

E. Inspections shall be performed on an impounding structure annually.

1. Inspection ~~Reports (Annual Inspection Report for Virginia Regulated Impounding Structures)~~ reports signed and sealed by a licensed professional engineer shall be submitted to the department in accordance with the following schedule:

a. For a ~~High Hazard Potential~~ high hazard potential impounding structure, every two years;

b. For a ~~Significant Hazard Potential~~ significant hazard potential impounding structure, every three years; or

c. ~~For a Low Hazard Potential impounding structure, every six years; or d.~~ For a ~~High Hazard Potential~~ high hazard potential impounding structure to which 4VAC50-20-53 applies, annually in accordance with 4VAC50-20-53~~, where applicable~~.

In years when an ~~Inspection Report~~ inspection report signed and sealed by a licensed professional engineer is not required, an owner shall submit the Annual Inspection Report for Virginia Regulated Impounding Structures.

2. The ~~Inspection Report~~ inspection report shall include the following required information:

a. Project information, including the name and inventory number of structure, name of the reservoir, and purpose of the reservoir;

b. City or county where the impounding structure is located;

c. Owner's name or representative if corporation, mailing address, residential and business telephone numbers, and other means of communication;

d. Owner's engineer's name, firm, professional engineer Virginia number, mailing address, and business telephone number;

e. Inspection observation of the impounding structure, including the following:

(1) Earthen embankment information, including any embankment alterations; erosion; settlement, misalignments, or cracks; seepage and seepage flow rate; and location;

(2) Upstream slope information, including notes on woody vegetation removed, rodent burrows discovered, and remedial work performed;

(3) Intake structure information, including notes on deterioration of concrete structures, exposure of rebar reinforcement, need to repair or replace trash rack, any problems with debris in the reservoir, and whether the drawdown valve operated;

(4) Abutment contacts, including notes on seepage and seepage flow rate and location;

(5) Earthen emergency spillway, including notes on obstructions to flow and plans to correct, rodent burrows discovered, and deterioration in the approach or discharge channel;

(6) Concrete emergency spillway, including notes on the deterioration of the concrete, exposure of rebar reinforcement, any leakage below concrete spillway, and obstructions to flow and plans to correct;

(7) Downstream slope information, including notes on woody vegetation removed, rodent burrows discovered, whether seepage drains are working, and any seepage or wet areas;

(8) Outlet pipe information, including notes on any water flowing outside of discharge pipe through the impounding structure and a description of any reflection or damage to the pipe;

(9) Stilling basin information, including notes on the deterioration of the concrete, exposure of rebar reinforcement, deterioration of the earthen basin slopes, repairs made, and any obstruction to flow;

(10) Gates information, including notes on gate malfunctions or repairs, corrosion or damage, and whether any gates were operated and, if so, how often and to what extreme;

(11) Reservoir information, including notes on new developments upstream of the dam, slides or erosion of lake banks, and general comments to include silt, algae, or other influence factors;

(12) Instruments information, including any reading of instruments and any installation of new instruments; and

(13) General information, including notes on new development in the downstream dam break inundation zone that would impact hazard classification or spillway design flood requirements, the maximum stormwater discharge or peak elevation during the previous year, whether general maintenance was performed and when, and actions that need to be completed before the next inspection.

f. Evaluation rating of the impounding structure and appurtenances (i.e., excellent, good, or poor), general comments, and recommendations;

g. Certification by the owner and date of inspection; and

h. Certification and seal by the owner's engineer and date of inspection, as applicable.

F. The owner of an impounding structure shall notify the department immediately of any change in the use of the area downstream that would impose hazard to life or property in the event of failure.

4VAC50-20-150. Conditional ~~operation and maintenance certificate~~ Operation and Maintenance Certificate for high hazard potential or significant hazard potential impounding structures.

A. During the review of any Operation and Maintenance Certificate Application ~~(Operation and Maintenance Certificate Application for Virginia Regulated Impounding Structures)~~ completed in accordance with 4VAC50-20-105, should the director determine that the impounding structure has nonimminent deficiencies, the director may recommend that the board issue a Conditional Operation and Maintenance Certificate.

B. The Conditional Operation and Maintenance Certificate for High~~,~~ Hazard Potential or Significant~~, and Low~~ Hazard Potential impounding structures shall be for a maximum term of two years. This certificate will allow the owner to continue normal operation and maintenance of the impounding structure~~,~~ and shall require that the owner correct the deficiencies on a schedule approved by the board.

C. A Conditional Operation and Maintenance Certificate may be extended in accordance with the procedures of 4VAC50-20-155, provided that ~~Inspection Reports (Annual Inspection Report for Virginia Regulated Impounding Structures)~~ inspection reports are on file, and the board determines that the owner is proceeding with the necessary corrective actions.

D. Once the deficiencies are corrected, the board shall issue a Regular Operation and Maintenance Certificate based upon the impounding structure's meeting the requirements of 4VAC50-20-105.

4VAC50-20-170. Transfer of certificates.

A. Prior to the transfer of ownership of an impounding structure, the certificate holder shall notify the director in writing and the new owner shall file a transfer notification with the department. A form for the transfer notification is available from the department ~~(Transfer of Impounding Structure Notification from Past Owner to New Owner)~~. The new owner may elect to continue the existing operation and maintenance certificate for the remaining term or ~~he may~~ apply for a new certificate in accordance with 4VAC50-20-105. If the owner elects to continue the existing certificate, ~~he~~ the owner shall certify to the director that ~~he~~ the owner is aware of and will comply with all of the requirements and conditions of the certificate.

B. The transfer notification shall include the following required information:

1. Project information, including the name and inventory number of the structure, name of the reservoir, and impoundment hazard classification;

2. Location of the impounding structure, including the city or county, number of feet or miles upstream or downstream

of a highway and the highway number, name of the river or the stream, and the latitude and longitude;

3. Type of certificates and permits to be transferred, including effective date and expiration date of all certificates and permits;

4. Past owner's name, mailing address, and residential and business telephone numbers;

5. New owner's name, mailing address, and residential and business telephone numbers;

6. Request to transfer certification statement signed and dated by the past owner;

7. Certification of compliance with permit or certificate with all ~~said~~ terms and conditions signed and dated by the new owner; and

8. Contact information updates for the Emergency Action Plan ~~or Emergency Preparedness Plan~~ provided by the new owner. Such updates shall include the name, mailing address, and residential and business telephone numbers for the impounding structure owner, impounding structure operator, rainfall and staff gage observer, and alternate observer.

4VAC50-20-177. Emergency Preparedness Plan for ~~Low Hazard~~ low hazard impounding structures.

~~Low Hazard~~ Owners of low hazard impounding structures shall provide information for emergency preparedness to the department, the local ~~organization for~~ emergency management coordinator, and the Virginia Department of Emergency Management. A form for the submission is available from the department ~~(Emergency Preparedness Plan for Low Hazard Virginia Regulated Impounding Structures)~~. The information shall include~~, but not be limited, to~~ the following:

1. Name and location information for the impounding structure, including city or county and latitude and longitude;

2. Name of owner and operator and associated contact information, including residential and business telephone numbers and other means of communication;

3. Contact information for ~~relevant~~ the local emergency ~~responders including the following: a. Local dispatch center or centers governing the impounding structure's dam break inundation zone; and b. City or county emergency services coordinator's name or names~~ management coordinator;

4. Procedures for notifying downstream property owners or occupants potentially impacted by the impounding structure's failure;

5. ~~A dam break inundation zone map completed in accordance with 4VAC50-20-54 and evidence that: a. Such map has been filed with the offices with plat and plan approval authority or zoning responsibilities as designated by the locality for each locality in which the dam break inundation zone resides; and b. Required copies of such plan have been submitted to the local organization for emergency management and the Virginia Department of Emergency Management~~ Identification of any downstream roadways that would be impacted by the impounding structure's failure; and

6. Certification ~~of the accuracy of the plan~~ by the owner that the plan is accurate and that the owner understands the responsibilities included in the plan.

4VAC50-20-200. Enforcement.

The provisions of this chapter may be enforced by the board, the director, or both in any manner consistent with the provisions of the Dam Safety Act ~~(§ 10.1-604 et seq. of the Code of Virginia)~~. Failure to comply with the provisions of the general permit issued in accordance with ~~4VAC50-20-103~~ 4VAC50-20-503 may result in enforcement actions, including penalties assessed in accordance with §§ 10.1-613.1 and 10.1-613.2 of the Code of Virginia.

4VAC50-20-350. Fee submittal procedures.

A. Effective September 26, 2008, fees for all application submittals required pursuant to 4VAC50-20-370 through 4VAC50-20-390 are due prior to issuance of a certificate or permit. No application for an Operation and Maintenance Certificate ~~or~~, a Construction Permit, or a general permit will be acted upon by the board without full payment of the required fee per § 10.1-613.5 of the Code of Virginia.

B. Fees shall be paid by check, draft, or postal money order payable to the Treasurer of Virginia, or submitted electronically (if available), and must be in ~~U.S.~~ United States currency, except that agencies and institutions of the Commonwealth of Virginia may submit ~~Interagency Transfers~~ interagency transfers for the amount of the fee. All fees shall be sent to the following address (or submitted electronically, if available): Virginia Department of Conservation and Recreation, Division of Finance, Accounts Payable, ~~203 Governor Street, 4th Floor~~ 600 East Main Street, 24th floor, Richmond, Virginia 23219.

C. All fee payments shall be accompanied by the following information:

1. Applicant name, address, and daytime ~~phone~~ telephone number.

2. The name of the impounding structure~~,~~ and the impounding structure location.

3. The type of application or report submitted.

4. Whether the submittal is for a new permit or certificate issuance or permit or certificate reissuance.

5. The amount of fee submitted.

6. Impounding structure identification number, if applicable.

D. No permit fees remitted to the department shall be subject to refund except as credits provided for in 4VAC50-20-390 C.

4VAC50-20-360. Fee exemptions.

Impounding structures owned by Virginia Soil and Water Conservation Districts shall be exempt from all fees associated with this part in accordance with § 10.1-613.5 of the Code of Virginia. There will be no fee assessed for a low hazard impounding structure exempted from fees pursuant to 4VAC50-20-51 or 4VAC50-20-501 or for the decommissioning of an impounding structure.

4VAC50-20-375. Fee for coverage under the conditional general permit or general permit for low hazard impounding structures.

A. The fee for processing registration statements from impounding structure owners seeking to obtain coverage under the general permit for low hazard impounding structures shall be $300.

B. There will be no fee assessed for a low hazard impounding structure exempted from fees pursuant to 4VAC50-20-51 and 4VAC50-20-501.

C. The fee for processing registration statements from impounding structure owners obtaining coverage under the conditional general permit for low hazard impounding structures shall be $200.

D. The board may allow a partial credit towards the general permit fee if the owner of the impounding structure has completed, to the director's satisfaction, the conditions of the conditional general permit prior to its expiration.

4VAC50-20-380. Regular Operation and Maintenance Certificate application fees.

A. Any application for a six-year Regular Operation and Maintenance Certificate after September 26, 2008, except as otherwise exempted, shall be accompanied by a payment as determined in subsection B of this section.

B. Fees for ~~High, Significant, or Low Hazard Potential~~ high hazard potential or significant hazard potential impounding structures shall be as follows:

1. $600 for ~~High Hazard Potential~~ high hazard potential.

2. $600 for ~~Significant Hazard Potential~~ significant hazard potential.

~~3. $300 for Low Hazard Potential.~~

C. Fees for extension of Regular Operation and Maintenance Certificates shall be $250 per year or portion ~~thereof~~ of a year.

Part VII

General Permit for Low Hazard Potential Impounding Structure Requirements

4VAC50-20-500. Registering for coverage under the general permit.

A. Pursuant to § 10.1-605.3 of the Code of Virginia, the owner of a low hazard potential impounding structure shall apply for general permit coverage from the board in accordance with 4VAC50-20-502, except as provided for in 4VAC50-20-501.

B. Holders of a either a regular or conditional Operation and Maintenance Certificate for a low hazard potential impounding structure shall be transitioned to general permit coverage upon the expiration of the certificate. In lieu of a certificate renewal, registration coverage materials pursuant to 4VAC50-20-502 shall be submitted to the department 90 days prior to the expiration of the certificate.

4VAC50-20-501. Exemption from general permit requirements for certain low hazard potential impounding structures.

A. In accordance with § 10.1-605.3 of the Code of Virginia, should the failure of a low hazard potential impounding structure cause no expected loss of human life and no economic damage to any property except property owned by the impounding structure owner, the owner may choose to meet the following requirements instead of the requirements specified in the general permit for low hazard impounding structures:

1. A licensed professional engineer certifies that the impounding structure is a low hazard potential impounding structure that will cause no expected loss of human life and no economic damage to any property except property owned by the impounding structure owner;

2. The owner of an impounding structure shall notify the local emergency management coordinator in the event of a failure or emergency condition at the impounding structure; however, no emergency preparedness plan prepared pursuant to 4VAC50-20-177 shall be required; and

3. The owner of an impounding structure shall perform inspections of the impounding structure annually in accordance with the requirements of 4VAC50-20-105.

B. No specific spillway design flood is required for a dam that meets the criteria established in subsection A of this section, although the recommended minimum spillway design flood is a 50-year flood.

C. Any owner of an impounding structure electing to utilize the requirements of subsection A of this section shall otherwise comply with all other requirements of this chapter applicable to low hazard impounding structures.

D. The owner shall notify the department immediately of any change in circumstances that would cause the impounding structure to no longer qualify to utilize the provisions of this section.

E. No certificate or permit fee established in this chapter shall be applicable to the impounding structure.

4VAC50-20-502. General permit registration statement requirements.

A. A complete and accurate registration statement shall be filed by the dam owner in accordance with the requirements of this section prior to the issuance of coverage under the general permit.

B. A complete registration statement shall include the following:

1. The name and address of the owner;

2. The location of the impounding structure;

3. The height of the impounding structure;

4. The volume of water impounded;

5. An Emergency Preparedness Plan prepared in accordance with 4VAC50-20-177;

6. The applicable fee for the processing of registration statements as set out in 4VAC50-20-375; and

7. A certification from the owner that the impounding structure (i) is classified as low hazard potential pursuant to a determination by the department or the owner's professional engineer in accordance with § 10.1-604.1 of the Code of Virginia and this chapter; (ii) is, to the best of the owner's knowledge, properly and safely constructed and currently has no observable deficiencies; and (iii) shall be maintained and operated in accordance with the provisions of the general permit.

4VAC50-20-503. General permit requirements for low hazard potential impounding structures.

Any impounding structure owner whose registration statement is approved by the board will receive the following permit and shall comply with the requirements in it.

General Permit No.: Dam Safety 1
Effective Date: (Date of Issuance of Coverage)
Expiration Date: (six years following Date of Issuance of Coverage)
GENERAL PERMIT FOR OPERATION OF A LOW HAZARD POTENTIAL IMPOUNDING STRUCTURE

In compliance with the provisions of the Dam Safety Act and attendant regulations, owners of an impounding structure covered by this permit are authorized to operate and maintain a low hazard potential impounding structure. The owner shall be subject to the following requirements as set forth in this general permit.

1. The spillway design of the owner's impounding structure shall be able to safely pass a 100-year flood. When appropriate, the spillway design flood requirement may be further reduced to the 50-year flood in accordance with an incremental damage analysis conducted by the owner's engineer.

2. The owner shall develop and maintain an Emergency Preparedness Plan in accordance with 4VAC50-20-177. The owner shall update and resubmit the Emergency Preparedness Plan immediately upon becoming aware of necessary changes to keep the plan workable.

3. The owner shall perform an annual inspection of the impounding structure. The owner shall maintain such records and make them available to the department upon request. The department also shall conduct inspections as necessary in accordance with 4VAC50-20-180.

4. The owner shall ensure that the impounding structure is properly and safely maintained and operated and shall have the following documents available for inspection upon request of the department:

a. An operating plan and schedule, including narrative on the operation of control gates and spillways and the impoundment drain;

b. For earthen embankment impounding structures, a maintenance plan and schedule for the embankment, principal spillway, emergency spillway, low-level outlet, impoundment area, downstream channel, and staff gages; and

c. For concrete impounding structures, a maintenance plan and schedule for the upstream face, downstream face, crest of dam, galleries, tunnels, abutments, spillways, gates and outlets, and staff gages.

5. The owner shall not permit growth of trees and other woody vegetation and shall remove any such vegetation from the slopes and crest of embankments and the emergency spillway area, and within a distance of 25 feet from the toe of the embankment and abutments of the dam.

6. The owner shall notify the department immediately of any change in circumstances that would cause the impounding structure to no longer qualify for coverage under the general permit. In the event of a failure or an imminent failure of the impounding structure, the owner shall immediately notify the local emergency management coordinator, the Virginia Department of Emergency Management, and the department. The department shall take actions in accordance with § 10.1-608 or 10.1-609 of the Code of Virginia, depending on the degree of hazard and the imminence of failure caused by the unsafe condition.

7. In order to qualify for the protections established in § 10.1-606.3 of the Code of Virginia, the owner shall file a dam break inundation zone map developed in accordance with 4VAC50-20-54 with the department and with the

offices with plat and plan approval authority or zoning responsibilities as designated by the locality for each locality in which the dam break inundation zone resides.

4VAC50-20-504. Issuance of general permit for low hazard potential impounding structures.

If the general permit registration statement submittal is found to be incomplete, the director shall inform the applicant within 30 days and shall explain what changes are required for an acceptable submission. Within 60 days of receipt of a complete registration statement, the board shall act upon the application. Upon finding that the impounding structure as currently operating is in compliance with this chapter, the board shall issue a general permit for low hazard potential impounding structures. Should the board find that the impounding structure as currently operating is not in compliance with this chapter, the board may deny the permit registration statement or issue a conditional general permit for low hazard potential impounding structures in accordance with 4VAC50-20-505.

4VAC50-20-505. Conditional general permit for low hazard potential impounding structures.

A. During the review of any general permit for low hazard potential impounding structures issued in accordance with 4VAC50-20-502, should the director determine that the impounding structure has nonimminent deficiencies, the director may recommend that the board issue a conditional general permit for low hazard potential impounding structures.

B. Notwithstanding the provisions of 4VAC50-20-503, the conditional general permit for low hazard potential impounding structures shall be for a maximum term of two years. This permit will allow the owner to continue normal operation and maintenance of the impounding structure and shall require that the owner correct the deficiencies on a schedule approved by the board.

C. A conditional general permit for low hazard potential impounding structures may be extended provided that the owner submits a written request justifying an extension, the amount of time needed to comply with the requirements set out in the current conditional permit for low hazard potential impounding structures, and any required fees. The owner must have demonstrated substantial and continual progress toward meeting the requirements of the conditional permit for low hazard potential impounding structures in order to receive an extension.

D. Once the deficiencies are corrected, the board shall issue a general permit for low hazard potential impounding structures when the impounding structure meets the requirements of 4VAC50-20-502.

4VAC50-20-506. Reapplying for general permit coverage for low hazard potential impounding structures.

A. Provided that an impounding structure's hazard potential classification does not change, an owner's coverage under the general permit shall be for a six-year term, after which time the owner shall reapply for coverage by filing a new registration statement and paying the necessary fee.

B. No less than 90 days prior to the expiration of the general permit, the owner shall submit a complete registration statement as established in 4VAC50-20-502.

C. No inspection of the impounding structure by a licensed professional engineer shall be required if the owner certifies at the time of general permit coverage renewal that conditions at the impounding structure and downstream are unchanged.

4VAC50-20-507. Enforcement of general permit requirements for low hazard potential impounding structures.

Failure to comply with the provisions of the general permit issued in accordance with 4VAC50-20-503 or the provisions of a conditional general permit issued in accordance with 4VAC50-20-505 may result in enforcement actions pursued in accordance with the Dam Safety Act, including penalties assessed in accordance with §§ 10.1-613.1 and 10.1-613.2 of the Code of Virginia.

4VAC50-20-508. Transfer of permits.

A. Prior to the transfer of ownership of a permitted impounding structure, the permittee shall notify the director in writing, and the new owner shall file a transfer notification with the department. A form for the transfer notification is available from the department. The new owner shall amend the existing permit application as necessary and shall certify to the director that the new owner is aware of and will comply with all of the requirements and conditions of the permit.

B. The transfer notification shall include the following required information:

1. Project information, including the name and inventory number of the structure and name of the reservoir;

2. Location of the impounding structure, including the city or county and the latitude and longitude;

3. Effective date and expiration date of the permit to be transferred;

4. Past owner's name, mailing address, and residential and business telephone numbers;

5. New owner's name, mailing address, and residential and business telephone numbers;

6. Request to transfer certification statement signed and dated by the past owner;

7. Certification of compliance with the permit terms and conditions signed and dated by the new owner; and

8. Contact information updates for the new owner, including name, mailing address, and residential and business telephone numbers.

VA.R. Doc. No. R24-7875; Filed April 8, 2025, 12:15 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 3 of the Code of Virginia, which excludes regulations that consist only of changes in style or form or corrections of technical errors. The State Board of Education will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Titles of Regulations: **8VAC20-30. Regulations Governing Adult High School Programs (amending 8VAC20-30-20).**

8VAC20-81. Regulations Governing Special Education Programs for Children with Disabilities in Virginia (amending 8VAC20-81-10, 8VAC20-81-40, 8VAC20-81-110, 8VAC20-81-130, 8VAC20-81-250).

8VAC20-160. Regulations Governing Secondary School Transcripts (amending 8VAC20-160-10).

8VAC20-521. Regulations Governing Reduction of State Aid When Length of School Term Below 180 Teaching Days or 990 Teaching Hours (amending 8VAC20-521-10).

8VAC20-671. Regulations Governing the Operation of Private Schools for Students with Disabilities (amending 8VAC20-671-450).

8VAC20-740. Regulations Governing Nutritional Standards for Competitive Foods Available for Sale in the Public Schools (amending 8VAC20-740-10).

8VAC20-750. Regulations Governing the Use of Seclusion and Restraint in Public Elementary and Secondary Schools in Virginia (amending 8VAC20-750-20).

8VAC20-760. Regulations Governing the Designation of School Divisions of Innovation (amending 8VAC20-760-30).

Statutory Authority:

§ 22.1-16 of the Code of Virginia (8VAC20-160, 8VAC20-750, 8VAC20-760).

§§ 22.1-16 and 22.1-98 of the Code of Virginia (8VAC20-521).

§ 22.1-207.4 of the Code of Virginia (8VAC20-740).

§§ 22.1-16 and 22.1-224 of the Code of Virginia (8VAC20-30).

§§ 22.1-16 and 22.1-321 of the Code of Virginia (8VAC20-671).

§§ 22.1-16 and 22.1-214 of the Code of Virginia; 20 USC § 1400 et seq.; 34 CFR Part 300 (8VAC20-81).

Effective Date: June 4, 2025.

Agency Contact: Jim Chapman, Director of Board Relations, Department of Education, James Monroe Building, 101 North 14th Street, 25th Floor, Richmond, VA 23219, telephone (804) 750-8750, or email jim.chapman@doe.virginia.gov.

Summary:

The amendments replace references to Regulations Establishing Standards for Accrediting Public Schools in Virginia (8VAC20-131), which was repealed in 2024, with Virginia Standards of Accreditation (8VAC20-132).

8VAC20-30-20. Minimum requirements for adult high school programs.

Adult high school programs are not part of the 9 through 12 high school program and shall meet the following minimum requirements:

1. Age. Only those students who are not subject to the compulsory attendance requirements of § 22.1-254 of the Code of Virginia shall be enrolled in an adult high school program.

2. Credit.

a. Satisfactory completion of 108 hours of classroom instruction in a subject shall constitute sufficient evidence for one unit of credit toward a high school diploma.

b. When, in the judgment of the principal or the superintendent, an adult not regularly enrolled in the grades 9 through 12 high school program is able to demonstrate by examination or other objective evidence, satisfactory completion of the work, he may receive credit in accordance with policies adopted by the local school board. It is the responsibility of the school issuing the credit to document the types of examinations employed or other objective evidence used, the testing or assessment procedures, and the extent of progress in each case.

c. Credits earned in adult high school programs shall be transferable as prescribed in the Regulations Establishing Standards for Accrediting Public Schools in Virginia within the sponsoring school division and shall be transferable to public secondary schools outside of the sponsoring school division.

3. Diplomas.

a. A diploma, as provided in ~~8VAC20-131-50~~ 8VAC20-132-50, shall be awarded to an adult student who completes all requirements of the diploma regulated by the Board of Education, with the exception of health and physical education requirements, in effect at the time he will graduate.

b. An adult high school diploma shall be awarded to an adult student who completes the course credit requirements in effect for any Board of Education diploma, with the exception of health and physical education course requirements, at the time he first entered the ninth grade. The requirement for specific assessments may be waived if the assessments are no longer administered to students in Virginia public schools.

c. An adult high school diploma shall be awarded to an adult student who demonstrates through applied

performance assessment full mastery of the National External Diploma Program Competencies, version 5.0, January 2013, a CASAS program, as promulgated by the American Council on Education and validated and endorsed by the U.S. Department of Education.

d. A general achievement adult high school diploma shall be awarded to a student who is not subject to the compulsory attendance requirements of § 22.1-254 of the Code of Virginia and who:

(1) Successfully completes a high school equivalency examination approved by the Board of Education;

(2) Earns a Board of Education-approved career and technical education credential, such as the successful completion of an industry certification, a state licensure examination, a national occupational competency assessment, or the Virginia Workplace Readiness Skills Assessment; and

(3) Successfully completes the following courses that incorporate or exceed the applicable Standards of Learning:

Discipline Area	Standard Units of Credit Required
English	4
Mathematics	3
Science	2
History and Social Sciences	2
Electives	9
TOTAL	20

Courses completed to satisfy the requirements in mathematics and science shall include content in courses that incorporate or exceed the content of courses approved by the Board of Education to satisfy any other board-recognized diploma.

Courses completed to satisfy the history and social sciences requirements shall include one unit of credit in Virginia and U.S. history and one unit of credit in Virginia and U.S. government in courses that incorporate or exceed the content of courses approved by the Board of Education to satisfy any other board-recognized diploma.

Courses completed to satisfy the electives requirement shall include at least two sequential electives in an area of concentration or specialization, which may include career and technical education and training.

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 of a student with a disability transfer to the student. In Virginia, the age of majority is 18 years of age. (§ 1-204 of the Code of Virginia; 34 CFR 300.520)

"Agree" or "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 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 three years of age, 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 three years of age 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, except for 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, unless otherwise designated as a business day or a school day. (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 description in this definition; 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 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 Regulations Governing Special Education Programs for Children with Disabilities in Virginia (8VAC20-81).

"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 has not 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, another 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 coteaching in order to collaborate.

"Complaint" means a request that the Virginia Department of Education investigate an alleged violation by a public agency of a right of a 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" or "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 or eligible student has been fully informed of all information relevant to the activity for which consent is sought in the parent's or eligible student's native language or other mode of communication;

2. The 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 or eligible student understands that the granting of consent is voluntary on the part of the 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 is 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 should document their agreement.

"Controlled substance" means a drug or other substance identified under Schedule I, II, 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 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 two years of age by September 30 through six years of age, inclusive: (34 CFR 300.8(b); 34 CFR 300.306(b))

1. Who (i) 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) has an established physical or mental condition that has a high probability of resulting in developmental delay;

2. The 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 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 and a public 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 has the same meaning as "scholastic record." In addition to written records, "education record" includes electronic exchanges between school personnel and 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 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. An agency 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 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 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)~~ (Virginia Standards of Accreditation, 8VAC20-132-170)

"Home instruction" means instruction of a child by a parent, guardian, or other person having control or charge of such child 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 who is 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 from birth to two years of age, 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 three years of age, 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 the definition of "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" or "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 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.

"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 two through 21 years of age;

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 the definition of "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 U.S. 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 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, or, if the language or other mode of communication of the parent is not a written language, oral communication in the primary language of the home of the 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 and bone tuberculosis), 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 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 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 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 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 agency" means the state educational agency, a local educational agency, an educational service agency or other public institution, or nonprofit public charter schools that are not otherwise included as a local educational agency or an educational service agency or other public institution and any other political subdivision of the Commonwealth that is responsible for providing education to children with disabilities.

"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. (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 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)

"Short-term objectives" means measurable intermediate steps that enable an IEP team to monitor a student's progress toward achieving the annual goals.

"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, 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; or 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 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 the child to: (34 CFR 300.39(b)(4))

1. Develop an awareness of the environment in which the child lives; 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))

8VAC20-81-40. Special education staffing requirements.

A. School age programs. The following specifies the staffing patterns for special education services for school age (five to 21, inclusive) children, in addition to the Standards of Quality (§ 22.1.253.13:2 of the Code of Virginia) and ~~Regulations Establishing Standards for Accrediting Public Schools in Virginia (8VAC20-131-240)~~ Virginia Standards of Education (8VAC20-132-230).

1. Staffing shall be in accordance with the requirements of 8VAC20-81-340 in the following settings.

a. Students with disabilities shall be instructed with students without disabilities in general education settings and classrooms, as appropriate, and in accordance with the Individualized Education Program (IEP). The service level, Level I or II, is based on the amount of time the student receives special education.

b. When children with disabilities are removed from the general education setting and classroom to provide instruction, special education and related services, they may receive services with children with the same disability or with children with different disabilities.

2. Personnel assignment.

a. Each student shall receive special education services from special education personnel assigned in accordance with the Virginia Licensure Regulations for School Personnel (8VAC20-22).

b. Special education teachers who are the teachers of record shall be highly qualified.

c. General education qualified personnel who are knowledgeable about the students and their special education, may implement special education services in collaboration with special education personnel.

d. Special education services include those services provided directly to the student and those provided indirectly.

3. Caseload standards.

a. The maximum instructional caseloads for special education teachers and speech-language pathologists, for which public schools receive state funds in accordance with the Virginia Appropriation Act are listed in 8VAC20-81-340. Special education services for children with visual impairment are established, maintained, and operated jointly by the local school board and the Virginia Department for the Blind and Vision Impaired.

b. If children with disabilities in a single building receive academic content area instruction from multiple special education teachers, the teachers' caseloads shall be determined by using a building average.

(1) A building average is computed by dividing the total weights (found in 8VAC20-81-340) for all children served in this fashion by the number of special education teachers providing services. Any itinerant teacher shall be counted according to the amount of time the teacher spends in the school. Subdivision 3 d of this subsection applies for any teacher assigned to administrative duties or to providing services to children who do not have disabilities.

(2) The building average shall not exceed 20 points if services are provided to students receiving Level I services and to children receiving Level II services. The building average shall not exceed 24 points if services are provided only to children receiving Level I services.

(3) No more than 14 children shall be assigned to a single class period if there are similar achievement levels and one subject area and level are taught. No more than 10 students shall be assigned to a single class period when there are varying achievement levels.

c. Special education personnel may also be assigned to serve children who are not eligible for special education and related services under this chapter, as long as special education personnel hold appropriate licenses and endorsements for such assignments.

d. When special education personnel are assigned to provide services for children who do not have a disability under this chapter or are assigned to administrative duties, a reduction in the caseload specified in the Virginia

Appropriation Act shall be made in proportion to the percentage of school time on such assignment.

(1) This provision does not apply when special education and related services are provided in a general education class, based on the goals of the IEP of at least one child in that classroom, and children without disabilities incidentally benefit from such services.

(2) When special education personnel provide services in a general education classroom based on the IEP goals of at least one child in that classroom, the special education caseloads do not include children with disabilities who incidentally benefit from such services.

B. Staffing for early childhood special education.

1. Children of preschool ages (two to five, inclusive) who are eligible for special education receive early childhood special education. The amount of services is determined by the child's individualized education program (IEP) team. A schedule comparable in length to school age students shall be made available if determined appropriate by the IEP team.

2. Staffing requirements.

a. Children receiving early childhood special education services may receive services together with other preschool-aged children with the same or with different disabilities.

b. Each student shall receive special education services from special education personnel assigned in accordance with the Virginia Licensure Regulations for School Personnel (8VAC20-22).

c. The maximum special education caseloads, with and without paraprofessionals, are set and funded in the Virginia Appropriation Act. See 8VAC20-81-340 for the funded caseloads. Special education services for children with visual impairment are established, maintained, and operated jointly by the local school board and the Virginia Department for the Blind and Vision Impaired.

C. Staffing for education programs in regional and local jails. Special education personnel with any special education endorsement, except early childhood special education, may provide instructional services to eligible students with disabilities incarcerated in a regional or local jail.

D. Alternative special education staffing plan. School divisions and private special education schools may offer for consideration of approval, an alternative staffing plan in accordance with Virginia Department of Education procedures. The Virginia Department of Education may grant approval for alternative staffing levels upon request from local school divisions and private special education schools seeking to implement innovative programs that are not consistent with these staffing levels.

E. Educational interpreting services.

1. The qualification requirements for personnel providing interpreting services for children who are deaf or hard of hearing are as follows:

a. Personnel providing educational interpreting services for children using sign language shall:

(1) Have a valid Virginia Quality Assurance Screening (VQAS) Level III; or

(2) Have a passing score on the Educational Interpreter Performance Assessment (EIPA) Written Test along with a minimum of a Level 3.5 on the EIPA Performance Test or any other state qualification or national certification (excluding Certificate of Deaf Interpretation) recognized by the Virginia Department for the Deaf and Hard of Hearing as equivalent to or exceeding the VQAS Level III.

b. Personnel providing educational interpreting services for children using cued speech/language shall have a Virginia Quality Assurance Screening Level III for cued speech or hold a national Transliteration Skills Certificate from the Testing, Evaluation and Certification Unit (TEC Unit) or equivalent recognized by the Virginia Department for the Deaf and Hard of Hearing.

c. Personnel providing educational interpreting services for children requiring oral interpreting shall meet minimum requirements for competency on the Virginia Quality Assurance Screening written assessment of the Code of Ethics.

2. Personnel who provide interpreting services for children who use sign language or cued speech/language and who do not hold the required qualifications may be employed in accordance with the following criteria:

a. Personnel shall have a valid Virginia Quality Assurance Screening Level I, or its equivalent, as determined by the Virginia Department for the Deaf and Hard of Hearing; or

b. Personnel shall have a passing score on the EIPA Written Test and a minimum score of 2.5 on the EIPA Performance Test upon hiring date in any local educational agency in Virginia.

3. The following qualification requirements for personnel providing interpreting services for students who are deaf or hard of hearing will become effective in 2010:

a. Personnel providing educational interpreting services for children using sign language shall hold:

(1) A valid Virginia Quality Assurance Screening (VQAS) Level III; or

(2) A passing score on the Educational Interpreter Performance Assessment (EIPA) Written Test along with a minimum of a Level 3.5 on the EIPA Performance Test or any other state qualification or national certification (excluding Certificate of Deaf Interpretation) recognized by the Virginia Department for the Deaf and Hard of Hearing as equivalent to or exceeding the VQAS Level III.

(3) Under no circumstances shall local educational agencies or private special education schools hire interpreters who hold qualifications below a VQAS Level II, EIPA Level 3.0 or the equivalent from another state.

(4) Interpreters hired with a VQAS Level II, EIPA Level 3.0 or the equivalent shall have two years from the date of hire to reach the required qualifications.

b. Personnel providing educational interpreting services for children using cued speech/language shall have a valid Virginia Quality Assurance Screening Level III for cued speech/language or hold a national Transliteration Skills Certificate from the Testing, Evaluation and Certification Unit (TEC Unit) or equivalent recognized by the Virginia Department for the Deaf and Hard of Hearing.

(1) Under no circumstances shall local educational agencies or private special education schools hire educational interpreters to provide cued speech services who hold qualifications below a VQAS Level I or the equivalent from another state.

(2) Educational Interpreters to provide cued speech hired with a VQAS Level I or the equivalent have three years from the date of hire to reach the required qualifications.

c. Personnel providing educational interpreting services for children requiring oral interpreting shall hold a national Oral Transliteration Certificate (OTC) or equivalent recognized by the Virginia Department of Deaf and Hard of Hearing.

4. For a child who is not deaf or hard of hearing but for whom sign language services are specified in the IEP to address expressive or receptive language needs, the sign language services shall be provided by an individual meeting the requirements determined appropriate by the local educational agency.

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;

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 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 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 criteria in this subdivision;

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 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 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 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 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 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:

(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 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 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 in attendance if the local educational agency is unable to convince the 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 and any responses received; or

c. Detailed records of visits made to the 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 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 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 or other mode of communication used by the parent, unless it is clearly not feasible to do so.

7. The local educational agency shall give the parent a copy of the child's IEP at no cost to the 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 ~~and document in the IEP~~:

a. The strengths of the child;

b. The concerns of the parent~~, and child whenever appropriate,~~ for enhancing the education of the 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 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; and

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 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-age child with a disability, two (on or before September 30) through five years of age (on or before September 30), whose parent elects 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 years of age, 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 years of age, 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 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); Virginia Standards of Accreditation (8VAC20-132))

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 eligibility for early release.

8VAC20-81-130. Least restrictive environment and placements.

A. General least restrictive environment requirements.

1. Each local educational agency shall ensure: (34 CFR 300.114)

a. That to the maximum extent appropriate, children with disabilities, aged two to 21, inclusive, including those in public or private institutions or other care facilities, are educated with children without disabilities; and

b. That special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if 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.

2. In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and other nonacademic and extracurricular services and activities provided for children without disabilities, each local educational agency shall ensure that each child with a disability participates with children without disabilities in those services and activities to the maximum extent appropriate to the needs of the child with a disability. The local educational agency shall ensure that each child with a disability has the supplementary aids and services determined by the child's IEP team to be appropriate and necessary for the child to participate in nonacademic settings. (See also 8VAC20-81-100 H.) (34 CFR 300.117)

3. For children placed by local school divisions in public or private institutions or other care facilities, the local educational agency shall, if necessary, make arrangements with public and private institutions to ensure that requirements for least restrictive environment are met. (See also 8VAC20-81-150.) (34 CFR 300.114 and 34 CFR 300.118)

B. Continuum of alternative placements. (§ 22.1-213 of the Code of Virginia; 34 CFR 300.115)

1. Each local educational agency shall ensure that a continuum of alternative placements is available to meet the needs of children with disabilities, aged two to 21, inclusive, for special education and related services.

2. The continuum shall:

a. Include the alternative placements listed in the term "special education" at 8VAC20-81-10, including instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions; and

b. Make provision for supplementary services (e.g., resource room or services or itinerant instruction) to be provided in conjunction with regular education class placement. The continuum includes integrated service delivery, which occurs when some or all goals, including benchmarks and objectives if required, of the student's IEP are met in the general education setting with age-appropriate peers.

3. No single model for the delivery of services to any specific population or category of children with disabilities is acceptable for meeting the requirement for a continuum of alternative placements. All placement decisions shall be based on the individual needs of each child.

4. Local educational agencies shall document all alternatives considered and the rationale for choosing the selected placement.

5. Children with disabilities shall be served in a program with age-appropriate peers unless it can be shown that for a particular child with a disability, the alternative placement is appropriate as documented by the IEP.

C. Placements. ~~(Regulations Establishing Standards for Accrediting Public Schools in Virginia (8VAC20-131)~~ (Virginia Standards of Accreditation (8VAC20-132); 34 CFR 300.116)

1. In determining the educational placement of a child with a disability, including a preschool child with a disability, each local educational agency shall ensure that:

a. The placement decision is made by the IEP team in conformity with the least restrictive environment provisions of this chapter.

b. The child's placement is:

(1) Determined at least annually;

(2) Based on the child's IEP; and

(3) As close as possible to the child's home.

c. Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that the child would attend if a child without a disability.

d. In selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or on the quality of services which the child needs.

e. A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general curriculum.

2. Home-based instruction shall be made available to children whose IEPs require the delivery of services in the home or other agreed-upon setting.

3. Homebound instruction shall be made available to children who are confined for periods that would prevent normal school attendance based upon certification of need by a licensed physician or clinical psychologist. For students eligible for special education and related services, the IEP team shall revise the IEP, as appropriate, and determine the delivery of homebound services, including the number of hours of services.

8VAC20-81-250. State funds for local school divisions.

A. State funds to assist local school divisions with the cost of providing special education and related services for children with disabilities shall be provided through the Virginia Department of Education's appropriation as provided in this section.

B. Children with disabilities enrolled in programs operated by a local school board:

1. Public school programs. In addition to the funds received for each pupil from state basic aid, local school divisions shall receive payment to support the state share of the number of special education teachers and paraprofessionals required by the Standards of Quality. (Chapter 13.2 (§ 22.1-253.13:1 et seq.) of Title 22.1 of the Code of Virginia)

2. Homebound instruction. Subject to availability, local school divisions shall receive funds to assist with the cost of educating students who are temporarily confined for medical or psychological reasons. Such students may continue to be counted in the average daily membership (ADM) while receiving homebound instruction. In addition, costs will be reimbursed based on the composite index, the hourly rate paid to homebound teachers by the local educational agency, and the number of instructional hours delivered. Reimbursement is made in the year following delivery of instruction. ~~(Regulations Establishing Standards for Accrediting Public Schools in Virginia (8VAC20-131))~~ (Virginia Standards of Accreditation (8VAC20-132))

C. Children with disabilities enrolled in regional special education programs: (Virginia Appropriation Act; § 22.1-218 of the Code of Virginia)

1. Subject to availability, reimbursement may be made available for a portion of the costs associated with placement of children with disabilities in public regional special education programs pursuant to policies and procedures established by the Superintendent of Public Instruction or designee.

2. Such reimbursement shall be in lieu of other state education funding available for each child.

D. Applicability of least restrictive environment and FAPE provision in state-funded placements. No state-funding mechanism shall result in placements that deny children with disabilities their right to be educated with children without disabilities to the maximum extent appropriate, or otherwise result in a failure to provide a child with a disability a free appropriate public education. (34 CFR 300.114(b))

E. Children with disabilities receiving special education and related services in regional or local jails. Local school divisions are reimbursed for the instructional costs of providing required special education and related services to children with disabilities in regional or local jails. (Virginia Appropriation Act)

F. Funds under the Comprehensive Services Act for At-Risk Youth and Families. (§§ 2.2-5211 through 2.2-5212 of the Code of Virginia)

1. Funds are available under the Comprehensive Services Act to support the cost of:

a. Special education and related services for children with disabilities whose IEPs specify private day or private residential placement;

b. Certain nonspecial education services for children with disabilities whose Comprehensive Services Act team identifies that such services are necessary to maintain the child in a less restrictive special education setting, in accordance with Comprehensive Services Act requirements; and

c. Special education and related services for children with disabilities who are placed by a Comprehensive Services Act team in a private residential placement for noneducational reasons.

2. Local school divisions shall be responsible for payment of transportation expenses associated with implementing the child's IEP.

3. Comprehensive Services Act reimbursement requirements shall be applicable.

4. When a parent unilaterally places a child with a disability in an approved private nonsectarian school for children with disabilities, the local school division shall not be responsible for the cost of the placement. If a special education hearing officer or court determines that such placement, rather than the IEP proposed by the local school division, is appropriate and no appeal is perfected from that decision, the local school division is responsible for placement and funds are available under the Comprehensive Services Act to support the costs.

G. Reimbursement shall be made for the education of children with disabilities who: (§ 22.1-101.1 B and C of the Code of Virginia)

1. Have been placed in foster care or other custodial care within the geographical boundaries of the school division by a Virginia agency;

2. Have been placed in an orphanage or children's home, which exercises legal rights; or

3. Is a resident of Virginia, and has been placed, not solely for school purposes, in a child-caring institution or group home licensed in accordance with the Code of Virginia.

8VAC20-160-10. Definitions.

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

"Accelerated course" means a course that can be completed in less than the normal amount of time; the process of progressing through the school grades at a rate faster than that of the average student, either by skipping grades or by rapidly mastering the work of one course and moving on to the next higher course.

"Advanced-level courses/programs" means those academic, career/technical, fine and performing arts, or interdisciplinary high school courses/programs that enable students to acquire and master advanced knowledge. Such courses may be suitable for weighted credit in order to encourage students to take these courses and to be rewarded for the extra endeavor and academic performance these courses/programs require.

"Advanced Placement (AP) course" means an advanced-level course with a syllabus equivalent to the relevant Advanced Placement syllabus disseminated by the College Board.

"Assessment component" means any of the means by which one obtains information on the progress of the learner and the effectiveness of instruction; quantitative data, objective measures, subjective impressions, tests, and observations may all serve as instruments for deciding whether instructional objectives have been attained.

"Certificate of Program Completion award date" means the date when a Certificate of Program Completion is awarded. A Certificate of Program Completion is not to be included as a diploma option.

"Commonwealth College Course Collaborative (CCCC)" means a set of approved courses taken in high school that fully transfer as core requirements and degree credits at Virginia colleges and universities.

"Commonwealth Scholar" means a student who completes all of the requirements for at least a Standard Diploma and additional prescribed rigorous coursework in foreign language, history, mathematics, science, and other approved discipline areas consistent with the United States Department of Education's State Scholars Initiative.

"Credit" means a standard or a verified credit as specified in ~~Regulations Establishing Standards for Accrediting Public Schools in Virginia (8VAC20-131)~~ Virginia Standards of Accreditation (8VAC20-132).

"Credit summary" means the number of courses successfully completed in each discipline as required for graduation.

"Curriculum" means an official guide prepared for use by administrators, supervisors, and teachers of a particular school or school system as an aid to teaching in a given subject or area of study for a given grade; includes the goals and objectives of the course, the expected outcomes, assessment component, and the scope and nature of the materials to be studied.

"Dual enrollment course" means a course that carries both high school and college credit.

"Early College Scholar" means a student who signs the Early College Scholars agreement and completes the requirements of the program, which includes a prescribed number of potentially transferable college credits, maintaining a "B" average or better, and earning an Advanced Studies diploma.

"Grade point average" means a measure of average scholastic success in all high school credit-bearing courses taken by a student during a certain term or semester, or accumulated for several terms or semesters; obtained by dividing grade points by number of courses taken.

"Graduation date" means the date when diploma requirements have been met and a diploma is awarded.

"Honors course" means a course offered to academically advanced students to provide opportunities to study and learn with other advanced students and to accelerate their learning in a specific content area. These courses are designed to be more challenging by covering additional topics or some topics in greater depth.

"Industry certification credential" means a career and technical education credential that is earned by successfully completing a Board of Education-approved industry certification examination, a state-issued professional license, or an occupational competency examination.

"International Baccalaureate (IB) course" means an advanced-level course with a syllabus approved by the International Baccalaureate Organization (IBO) and meeting the criteria offered through the IBO program.

"Secondary course" means a high school-level course of study that awards high school credits. In addition to providing content and knowledge, secondary courses encourage students to develop higher level thinking skills such as problem solving, critical analyses and syntheses of ideas. Students are encouraged to understand, appreciate, and formulate ideas related to scientific, technical and social concepts.

"Secondary school profile data" means information given in a summary format of a particular secondary school, such as location; description; achievement data; definition of curriculum; grading scale, grade distribution; weighted grades; rank in class, if a ranking procedure is used; graduation requirements; and an explanation of advanced-level, accelerated, and honors courses, industry certifications, and other specialized programs.

"Secondary school transcript" means an official list of secondary courses taken by a student, except those purged from a middle school record in accordance with ~~8VAC20-131~~ 8VAC20-132, Regulations Establishing Standards for Accrediting Public Schools in Virginia, showing the final grade received for each course, with definitions of the various grades given.

"Weighted course" means an advanced-level course in which credit is increased as determined by local school board policies and defined on the school profile.

8VAC20-521-10. Definitions.

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

"Declared state of emergency" means the declaration of an emergency before or after an event by the Governor or by officials in a locality that requires the closure of any or all schools within a school division.

"Instructional time" means the period that students are in school on a daily or annual basis as defined in the ~~Regulations Establishing Standards for Accrediting Public Schools in Virginia, 8VAC20-131~~ Virginia Standards of Accreditation (8VAC20-132).

"Severe weather conditions or other emergency situations" means those circumstances presenting a threat to the health or safety of students that result from severe weather conditions or other emergencies, including, but not limited to, natural and man-made disasters, energy shortages or power failures.

"Teaching days" means days when instruction is provided.

"Teaching hours" means hours when instruction is provided.

8VAC20-671-450. Student achievement expectations.

A. Schools shall develop strategies to address the learning, behavior, and communication needs of individual students in collaboration with the parent.

B. Participation in the Virginia assessment program by students with disabilities shall be prescribed by provisions of their IEPs or 504 Plans.

C. Each school that serves students who anticipate earning a diploma and graduating from a public Virginia high school must follow the requirements for graduation outlined in the ~~Regulations Establishing Standards for Accrediting Public Schools in Virginia (8VAC20-131)~~ Virginia Standards of Accreditation (8VAC20-132).

D. The school shall cooperate with the public school in the administration of SOL tests.

E. The school shall use testing and evaluation materials that are not racially or culturally discriminatory and do take into consideration the student's disabling condition(s), racial background, and cultural background.

8VAC20-740-10. Definitions.

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

"A la carte item" means an individually priced food item served by the local school nutrition department that may or may not be part of the reimbursable meal under the federal Child Nutrition Programs.

"After school activities" means activities that occur on the school campus after the school day.

"Beverage" means a drinkable liquid.

"Calorie" means the amount of heat required to change the temperature of one gram of water from 14.5°C to 15.5°C. Calorie is used synonymously with kilocalorie as a unit of measure for energy obtained from food and beverages.

"Child nutrition programs" means school meal programs funded and regulated by the U.S. Department of Agriculture (USDA) and includes the National School Lunch Program (NSLP), School Breakfast Program (SBP), Afterschool Snack Programs (ASP), Child and Adult Care Food Program (CACFP), Summer Food Service Program (SFSP), and Special Milk Program (SMP).

"Combination foods" means products that contain two or more components representing two or more of the recommended food groups: fruit, vegetable, dairy, protein, or grains.

"Competitive food" means all food available for sale to students on the school campus during the school day other than meals reimbursed under programs authorized by the Richard B. Russell National School Lunch Act (42 USC § 1751 et seq.) and the Child Nutrition Act of 1966 (42 USC § 1771 et seq.).

"Competitive food" includes all foods available for sale to students:

1. In school cafeterias as a la carte items.

2. In vending machines located on the school campus during the school day.

3. As fundraisers held on the school campus during the school day.

4. In school snack bars on the school campus during the school day.

5. In school stores operated on the school campus during the school day by the school, a student association, or other school-sponsored organization.

6. At school activities such as special fundraisers, achievement rewards, classroom parties, school celebrations, classroom snacks, or school meetings held on the school campus during the school day.

7. In culinary education programs where food prepared as part of the educational curriculum is sold to students; however, this provision does not apply if food is sold to adults only.

This term does not apply to food a student brings from home for consumption at school or items available for sale to adults only in areas not accessible to students (e.g., teachers lounges).

"Dietary Guidelines for Americans" means guidelines jointly issued by the U.S. Department of Health and Human Services and U.S. Department of Agriculture and revised every five years and that provide authoritative advice based on current scientific evidence and medical knowledge for people two years of age and older about how good dietary habits can promote health and reduce risk for major chronic diseases.

"Entree item" means an item that is either (i) a combination food of meat or meat alternate and whole grain rich food; (ii) a combination food of vegetable or fruit and meat or meat alternate; or (iii) a meat or meat alternate alone with the exception of yogurt; low-fat or reduced fat cheese; nuts, seeds, and nut or seed butters; and meat snacks (e.g., dried beef jerky).

"Fundraiser" means a school-sponsored activity where food or nonfood items are sold on the school campus during regular school hours by the school-sponsored organization to raise money for a school-related program or activity. One fundraiser is defined as one or more fundraising activities by one or more school-sponsored organizations that last one school day.

"Fundraising exemption" means an exception that allows a school-sponsored organization to sell on the school campus during regular school hours (i) food or beverages that do not meet the nutrition standards established in this chapter and (ii) items that do not meet the U.S. Department of Agriculture's Smart Snacks in Schools regulation. Fundraisers that sell nonfood items or that sell foods or beverages that meet the nutrition standards are not subject to this chapter or the U.S. Department of Agriculture's Smart Snacks in Schools regulation.

"Obesity" means obesity in children and adolescents referring to the age-specific and sex-specific body mass index (BMI) that is equal to or greater than the 95th percentile of the BMI charts of the Centers for Disease Control and Prevention (CDC).

"Regular school hours" means the standard school day, as defined in ~~8VAC20-131-5~~ 8VAC20-132-10, except for the purpose of fundraiser exemptions, breaks for meals and recess are included in the regular school hours.

"School campus" means, for the purpose of competitive food standards implementation, all areas of the property under the jurisdiction of the school that are accessible to students during the school day.

"School day" means, for the purpose of competitive food standards implementation, the period from the midnight before to 30 minutes after the end of the official school day.

"School food authority" or "SFA" means, under the federal child nutrition laws, the entity that is legally responsible for the

operations and administration of the local school nutrition programs (i.e., school division).

"Trans fat" means food items containing vegetable shortening, margarine, or any partially hydrogenated vegetable oil unless the label required on the food, pursuant to applicable federal and state law, lists the trans fat content as zero grams per serving.

"Wellness policy" means a policy required for public schools participating in a nutrition program authorized by the Richard B. Russell National School Lunch Act (42 USC § 1751 et seq.) or the Child Nutrition Act of 1966 (42 USC § 1771 et seq.) that meets minimum standards designed to support school environments that promote student wellness.

"Whole grains" means grains that are made with enriched and whole grain meal or flour in accordance with the most recent grains guidance from the U.S. Department of Agriculture Food and Nutrition Service.

"Whole-grain rich" means products that contain at least 50% whole grains and the remaining grains in the product must be enriched.

8VAC20-750-20. General definitions.

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

"Behavioral intervention plan" or "BIP" means a plan that utilizes positive behavioral interventions and supports to address (i) behaviors that interfere with a student's learning or that of others or (ii) behaviors that require disciplinary action.

"Board" means the Virginia Board of Education.

"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).

"Chapter" means these regulations, that is, Regulations Governing the Use of Seclusion and Restraint in Public Elementary and Secondary Schools in Virginia, 8VAC20-750.

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

"Child with a disability" or "student with a disability" means a public elementary or secondary school student evaluated in accordance with the provisions of 8VAC20-81 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 8VAC20-81 as an emotional disability), an orthopedic impairment, autism, traumatic brain injury, other health impairment, a specific learning disability, deaf-blindness, or multiple disabilities who, by reason thereof, requires special education and related services. This also includes developmental delay if the school division recognizes this category as a disability under 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 related services and not special education, the child is not a child with a disability under 8VAC20-81. 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. As used in this chapter, the disability categories set forth in this definition and the terms "special education" and "related services" shall have the meanings set forth in 8VAC20-81-10.

"Day" means calendar day unless otherwise designated as business day or school day.

"Department" means the Virginia Department of Education.

"Evaluation" means procedures used in accordance with 8VAC20-81 to determine whether a child has a disability and the nature and extent of the special education and related services the child needs.

"Functional behavioral assessment" or "FBA" means a process to determine the underlying cause or functions of a student's behavior that impede the learning of the student or the learning of the student's peers. A functional behavioral assessment may include a review of existing data or new testing data or evaluation as determined as set forth in 8VAC20-750-70.

"Individualized education program" or "IEP" means a written statement for a child with a disability that is developed, reviewed, and revised at least annually in a team meeting in accordance with the Regulations Governing Special Education Programs for Children with Disabilities in Virginia (8VAC20-81). 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.

"Individualized education program team" or "IEP 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.

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

"School personnel" means individuals employed by the school division on a full-time or part-time basis or as independent contractors or subcontractors as instructional, administrative, and support personnel and include individuals

serving as a student teacher or intern under the supervision of appropriate school personnel.

"Section 504 plan" means a written plan of modifications and accommodations under Section 504 of the Rehabilitation Act of 1973 (29 USC § 794).

"Student" means any student, with or without a disability, enrolled in a public elementary or secondary school as defined in § 22.1-1 of the Code of Virginia.

1. For purposes of this chapter, the term "student" shall also include those students (i) attending a public school on a less-than-full-time basis, such as those students identified in § 22.1-253.13:2 N of the Code of Virginia; (ii) receiving homebound instruction pursuant to ~~8VAC20-131-180~~ 8VAC20-132-170 and as defined in 8VAC20-81-10, without regard to special education status; (iii) receiving home-based instruction pursuant to 8VAC20-81-10; and (iv) who are preschool students enrolled in a program operated by a school division or receiving services from school personnel.

2. As used in this chapter, "student" shall not include children meeting compulsory attendance requirements of § 22.1-254 of the Code of Virginia by (i) enrollment in private, denominational, or parochial schools; (ii) receipt of instruction by a tutor or teacher of qualifications prescribed by the Board of Education and approved by the relevant division superintendent; (iii) receipt of home instruction pursuant to § 22.1-254 of the Code of Virginia or (iv) receipt of instruction in a secure facility or detention home as defined in § 16.1-228 of the Code of Virginia or in a facility operated by the Virginia Department of Behavioral Health and Developmental Services. With regard to restraint and seclusion, students placed through public or private means in a private day or residential school for students with disabilities shall be afforded the protections set forth in 8VAC20-671.

"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.

8VAC20-760-30. Exemption from regulatory provisions.

A. In conjunction with the designation of an SDI, the board may exempt a local school board from board regulations as requested in a school division's plan of innovation. However, the board shall not grant exemptions from the following provisions:

1. Regulations mandated by state or federal law;

2. Regulations designed to promote health or safety;

3. Regulations Governing Special Education Programs for Children with Disabilities in Virginia (8VAC20-81);

4. Student achievement expectations ~~(8VAC20-131-30)~~ (8VAC20-132-40);

5. Requirements for graduation ~~(8VAC20-131-50 and 8VAC20-131-51)~~ (8VAC20-132-50 and 8VAC20-132-51);

6. Program of instruction and learning objectives ~~(8VAC20-131-70)~~ (8VAC20-132-70); or

7. ~~Part VIII of the Regulations Establishing Standards for Accrediting Public Schools in Virginia, School Accreditation (8VAC20-131-370 through 8VAC20-131-430)~~ Parts VIII and IX of the Virginia Standards of Accreditation (8VAC20-132-260 through 8VAC20-132-320).

B. The board may grant all or a portion of any request for such an exemption and designate conditions as appropriate.

VA.R. Doc. No. R25-8235; Filed April 16, 2025, 11:09 a.m.

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Fast-Track Regulation

Titles of Regulations: **12VAC30-50. Amount, Duration, and Scope of Medical and Remedial Care Services (amending 12VAC30-50-70; repealing 12VAC30-50-470).**

12VAC30-60. Standards Established and Methods Used to Assure High Quality Care (repealing 12VAC30-60-160).

12VAC30-120. Waivered Services (amending 12VAC30-120-630).

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

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: June 4, 2025.

Effective Date: June 19, 2025.

Agency Contact: Syreeta Stewart, Regulatory Coordinator, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 298-3863, FAX (804) 786-1680, TDD (800) 343-0634, or email syreeta.stewart@dmas.virginia.gov.

Basis: Section 32.1-325 of the Code of Virginia grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance, and § 32.1-324 of the Code of Virginia authorizes the Director of the Department of Medical Assistance Services (DMAS) to administer and amend the Plan for Medical Assistance according to the board's requirements. The Medicaid authority, as established by § 1902(a) of the Social Security Act (42 USC § 301 et seq.), provides governing authority for payments for services.

Purpose: These amendments remove outdated language related to case management services for recipients of auxiliary grants. These services have not been provided in over 10 years and the requirements can be repealed. The changes are essential to the health, safety, and welfare of Medicaid recipients because the changes ensure that the regulations align with current DMAS practices and the state plan.

Rationale for Using Fast-Track Rulemaking Process: This action is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process because DMAS has not provided case management services to recipients of auxiliary grants in over 10 years, and the provisions have had no effect since then.

Substance: The amendments remove outdated language related to case management services for recipients of auxiliary grants and bring the regulations into alignment with the state plan and DMAS current practices.

Issues: These changes create no disadvantages to the public, the agency, the Commonwealth, or the regulated community. The primary advantage is that the changes repeal outdated language to align the regulations with the state plan and DMAS current practices.

Department of Planning and Budget Economic Impact Analysis:

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia and Executive Order 19. The analysis presented represents DPB's best estimate of the potential economic impacts as of the date of this analysis.[1]

Summary of the Proposed Amendments to Regulation. The Director of Medical Assistance Services, on behalf of the Board of Medical Assistance Services (board), proposes to repeal the regulation concerning the provision of case management services to assisted living facility residents who receive auxiliary grants.

Background. This action would repeal coverage for case management services provided to assisted living facility residents who receive auxiliary grants. Auxiliary grants are a state supplement to supplemental security income, or for individuals who are aged, blind, or disabled. Previously, auxiliary grant recipients that resided in assisted living facilities were provided case management services through Medicaid. However, the utilization of this service was very low. Only 11 persons received services in 2011 and none since that time. The last claims paid for this service were in calendar year 2012. As a result, the Department of Medical Assistance Services (DMAS) submitted a state plan amendment to the Centers for Medicare and Medicaid Services to remove the outdated case management language from the state plan and the change was approved on September 11, 2024. The proposed repeal of the regulation would align the Virginia Administrative Code with the state plan language.

Estimated Benefits and Costs: The proposed changes would eliminate language pertaining to the provision of Medicaid case management services to auxiliary grant recipients residing in assisted living facilities. Since these services have not been provided under the regulatory authority being repealed in this action for over 10 years, no significant economic impact is expected other than aligning the regulatory text with the state plan and eliminating the potential for confusion. Further, DMAS states that if these individuals met the criteria, they may receive other types of state plan case management services (e.g., developmental disabilities case management, mental health case management, substance use disorder case management).

Businesses and Other Entities Affected. The proposed amendments should not affect any entity since no services have been provided under the regulatory authority for over 10 years. The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.[2] An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs for all entities combined.[3] Since the proposal does not increase net costs or reduce net benefits for any entity, no adverse impact is indicated.

Small Businesses[4] Affected.[5] The proposed amendments do not adversely affect small businesses.

Localities[6] Affected.[7] The proposed amendments do not introduce costs, nor do they disproportionally affect localities.

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

Effects on the Use and Value of Private Property. No impact on the use and value of private property nor on real estate development costs is expected.

[1] Section 2.2-4007.04 of the Code of Virginia requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to

affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

[2] Pursuant to § 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," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

[3] Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation. As a result, DPB has adopted a definition of adverse impact that assesses changes in net costs and benefits for each affected Virginia entity that directly results from discretionary changes to the regulation.

[4] Pursuant to § 2.2-4007.04, 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."

[5] If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

[6] "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.

[7] Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Agency Response to Economic Impact Analysis: The Department of Medical Assistance Services has reviewed the economic impact analysis prepared by the Department of Planning and Budget and raises no issues with this analysis.

Summary:

The amendments remove provisions associated with case management services for assisted living facility residents receiving auxiliary grants. The Department of Medical Assistance Services (DMAS) has not provided this service for over 10 years, so the regulations are outdated, and the provisions must be removed to align with current practices. DMAS submitted a state plan amendment (SPA) to the Centers for Medicare and Medicaid Services to remove the outdated case management language from the state plan. The SPA was approved on September 11, 2024, and this action will align the Virginia Administrative Code with state plan language.

12VAC30-50-70. Services or devices not provided to the medically needy.

The following services and devices shall not be provided to the medically needy:

1. Chiropractor services.

2. Private duty nursing services.

3. Dentures.

4. Diagnostic or preventive services other than those provided elsewhere in the State Plan.

5. Inpatient hospital services, skilled nursing facility services, and intermediate care facility services for individuals 65 years of age or older in institutions for mental diseases.

6. Intermediate care facility services (other than such services in an institution for mental diseases) for persons determined in accordance with § 1905(a)(4)(A) of the Social Security Act (the Act), to be in need of such care in a public institution, or a distinct part thereof, for persons with intellectual or developmental disability or related conditions.

7. (Reserved.)

8. Special tuberculosis services under § 1902(z)(2)(F) of the Act.

9. Respiratory care services ~~(~~in accordance with § 1920(e)(9)(A) through (C) of the Act~~)~~.

10. Ambulatory prenatal care for pregnant women furnished during a presumptive eligibility period by a qualified provider ~~(~~in accordance with § 1920 of the Act~~)~~.

11. Personal care services in a recipient's home, prescribed in accordance with a plan of treatment and provided by a qualified person under supervision of a registered nurse.

12. Home and community care for functionally disabled elderly individuals~~, as defined, described and limited in 12VAC30-50-470~~.

13. Personal care services furnished to an individual who is not an inpatient or resident of a hospital, nursing facility, intermediate care facility for intellectually or developmentally disabled persons, or institution for mental disease that are (i) authorized for the individual by a physician in accordance with a plan of treatment, (ii) provided by an individual who is qualified to provide such services and who is not a member of the individual's family, and (iii) furnished in a home.

12VAC30-50-470. ~~Case management for recipients of auxiliary grants.~~ (Repealed.)

~~A. Target group. Recipients of optional state supplements (auxiliary grants) as defined in 12VAC30-40-350 (Attachment 2.6 B), who reside in licensed adult care residences.~~

~~B. Services will be provided in the entire state.~~

~~C. Services are not comparable in amount, duration, and scope. Authority of § 1915(g)(1) of the Act is invoked to~~

provide services without regard to the requirements of § 1902(a)(10)(B) of the Act.

D. Definition of services. The case management services will provide assessment, service location, coordination and monitoring for aged, blind and disabled individuals who are applying for or receiving an optional state supplement (auxiliary grant) to pay the cost of residential or assisted living care in a licensed adult care residence in order to facilitate access to and receipt of the most appropriate placement. In addition, the case management services will provide for periodic reassessment to determine whether the placement continues to meet the needs of the recipient of optional state supplement (auxiliary grant) and to arrange for transfer to a more appropriate placement or arrange for supplemental services as the needs of the individual change.

E. Qualifications of providers. A qualified case manager for recipients of auxiliary grants must be a qualified employee of a human service agency as required in § 63.1-25.1 of the Code of Virginia. To qualify as a provider of case management for auxiliary grant recipients, the human service agency:

1. Must employ or contract for case managers who have experience or have been trained in establishing, and in periodically reviewing and revising, individual community care plans and in the provision of case management services to elderly persons and to disabled adults;

2. Must have signed an agreement with the Department of Medical Assistance Services to deliver case management services to aged, blind and disabled recipients of optional state supplements (auxiliary grants);

3. Shall have written procedures for assuring the quality of case management services; and

4. Must ensure that claims are submitted for payment only when the services were performed by case managers meeting these qualifications. The case manager must possess a combination of work experience in human services or health care and relevant education which indicates that the individual possesses the following knowledge, skills, and abilities at entry level. These must be documented on the job application form or supporting documentation.

a. Knowledge of:

(1) Aging;

(2) The impact of disabilities and illnesses on elderly and nonelderly persons;

(3) Conducting client assessments (including psychosocial, health and functional factors) and their uses in care planning;

(4) Interviewing techniques;

(5) Consumers' rights;

(6) Local human and health service delivery systems, including support services and public benefits eligibility requirements;

(7) The principles of human behavior and interpersonal relationships;

(8) Effective oral, written, and interpersonal communication principles and techniques;

(9) General principles of record documentation; and

(10) Service planning process and the major components of a service plan.

b. Skills in:

(1) Negotiating with consumers and service providers;

(2) Observing, recording and reporting behaviors;

(3) Identifying and documenting a consumer's needs for resources, services and other assistance;

(4) Identifying services within the established services system to meet the consumer's needs;

(5) Coordinating the provision of services by diverse public and private providers; and

(6) Analyzing and planning for the service needs of elderly or disabled persons.

c. Abilities to:

(1) Demonstrate a positive regard for consumers and their families;

(2) Be persistent and remain objective;

(3) Work as a team member, maintaining effective inter- and intra-agency working relationships;

(4) Work independently, performing position duties under general supervision;

(5) Communicate effectively, verbally and in writing;

(6) Develop a rapport and communicate with different types of persons from diverse cultural backgrounds; and

(7) Interview.

d. Individuals meeting all the above qualifications shall be considered a qualified case manager; however, it is preferred that the case manager possess a minimum of an undergraduate degree in a human services field, or be a licensed nurse. In addition, it is preferable that the case manager have two years of experience in the human services field working with the aged or disabled.

e. To obtain DMAS payment, the case management provider must maintain in a resident's record a copy of the resident's assessment, plan of care, all reassessments, and documentation of all contacts, including but not limited to face-to-face contacts with the resident, made in regard to the resident.

F. The state assures that the provision of case management services will not restrict an individual's free choice of providers in violation of § 1902(a)(23) of the Act.

G. Payment for case management services under the plan does not duplicate payments made to public agencies or private entities under other program authorities for this same purpose.

~~H. Payment for case management services is limited to no more than one visit during each calendar quarter. In order to bill for case management services during a calendar quarter, the case manager must comply with the documentation requirements of subdivision E 4 e of this section and have documented contact with the resident during that quarter.~~

12VAC30-60-160. ~~Utilization review of case management for recipients of auxiliary grants.~~ (Repealed.)

~~A. Criteria of need for case management services. It shall be the responsibility of the assessor who identifies the individual's need for residential or assisted living in an adult care residence to assess the need for case management services. The case manager shall, at a minimum, update the assessment and make any necessary referrals for service as part of the case management annual visit. Case management services may be initiated at any time during the year that a need is identified.~~

~~B. Coverage limits. DMAS shall reimburse for one case management visit per year for every individual who receives an auxiliary grant. For individuals meeting the following ongoing case management criteria, DMAS shall reimburse for one case management visit per calendar quarter:~~

~~1. The individual needs the coordination of multiple services and the individual does not currently have support available that is willing to assist in the coordination of and access to services, and a referral to a formal or informal support system will not meet the individual's needs; or~~

~~2. The individual has an identified need in his physical environment, support system, financial resources, emotional or physical health which must be addressed to ensure the individual's health and welfare and other formal or informal supports have either been unsuccessful in their efforts or are unavailable to assist the individual in resolving the need.~~

~~C. Documentation requirements.~~

~~1. The update to the assessment shall be required annually regardless of whether the individual is authorized for ongoing case management.~~

~~2. A care plan and documentation of contacts must be maintained by the case manager for persons authorized for ongoing case management.~~

~~a. The care plan must be a standardized written description of the needs which cannot be met by the adult care residence and the resident specific goals, objectives and time frames for completion. This care plan must be updated annually at the time of reassessment, including signature by both the resident and case manager.~~

~~b. The case manager shall provide ongoing monitoring and arrangement of services according to the care plan and must maintain documentation recording all contacts made with or on behalf of the resident.~~

12VAC30-120-630. Covered services.

A. The MCO shall, at a minimum, provide all medically necessary Medicaid covered services required under the state plan (12VAC30-50-10 through 12VAC30-50-310, 12VAC30-50-410 through 12VAC30-50-430, and ~~12VAC30-50-470~~ 12VAC30-50-480 through 12VAC30-50-580) ~~and~~; Elderly and Disabled with Consumer Direction waiver regulations (12VAC30-120-924 and 12VAC30-120-927) ~~and the Technology Assisted waiver regulations (12VAC30-120-1720);~~ and~~, effective January 1, 2018,~~ community mental health services (12VAC30-50-130 and 12VAC30-50-226).

B. The following services are not covered by the MCO and shall be provided through fee-for-service outside the CCC Plus MCO contract:

1. Dental services (12VAC30-50-190);

2. School health services (12VAC30-50-130);

3. Preadmission screening (12VAC30-60-303);

~~4. Individual and Developmental Disability Support waiver services (12VAC30-120-700 et seq.);~~

~~5. Intellectual Disability Waiver (12VAC30-120-1000 et seq.); or~~

~~6. Day Support Waiver (12VAC30-120-1500 et seq.)~~; or

4. Community waiver services for individuals with developmental disabilities (12VAC30-122).

C. The Program of All-Inclusive Care for the Elderly, or PACE, is not available to CCC Plus members.

VA.R. Doc. No. R25-8111; Filed April 15, 2025, 2:20 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD FOR HEARING AID SPECIALISTS AND OPTICIANS

Proposed Regulation

Title of Regulation: **18VAC80-20. Hearing Aid Specialists Regulations (amending 18VAC80-20-10, 18VAC80-20-30, 18VAC80-20-40, 18VAC80-20-50, 18VAC80-20-80, 18VAC80-20-90, 18VAC80-20-140, 18VAC80-20-220, 18VAC80-20-230, 18VAC80-20-250, 18VAC80-20-270; repealing 18VAC80-20-20, 18VAC80-20-100 through 18VAC80-20-130, 18VAC80-20-150, 18VAC80-20-160, 18VAC80-20-210, 18VAC80-20-240).**

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

Public Hearing Information:

June 3, 2025 - 10:25 a.m. - Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 200, Board Room One, Richmond, VA 23233.

Public Comment Deadline: July 4, 2025.

Agency Contact: Kelley Smith, Executive Director, Board for Hearing Aid Specialists and Opticians, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8590, FAX (866) 245-9693, or email hasopt@dpor.virginia.gov.

Basis: Section 54.1-201 of the Code of Virginia authorizes the Board for Hearing Aid Specialists and Opticians to promulgate regulations necessary to ensure continued competency and prevent deceptive or misleading practices by practitioners and to effectively administer the regulatory system.

Purpose: The board protects the public welfare in part by establishing through regulation (i) the minimum qualifications of applicants for licensure, provided that all qualifications are necessary to ensure either competence or integrity to engage in the profession or occupation; (ii) minimum standards to ensure continued competency and to prevent deceptive or misleading practices by practitioners; and (iii) requirements to effectively administer the regulatory system administered by the board. To the extent that any provision of this chapter is not necessary to protect the public health, safety, and welfare, or not necessary to effectively administer the licensure program, the board proposes to eliminate or reduce the burden of the requirement.

Substance: The proposed amendments:

1. Revise and remove definitions.

2. Revise subjects for training and experience as qualification for licensure.

3. Add registered apprenticeship as a new training option for licensure.

4. Revise requirements for disclosure of prior criminal history to reduce the stringency of the current criminal history disclosure requirement.

5. Revise provisions for temporary permits, including (i) extending the term of such permits to 18 months, (ii) allowing a registered apprenticeship under the Virginia Department of Workforce Development and Advancement (VDWDA) to be considered a temporary permit, and (iii) adding stipulations that sponsors cannot refer permit holders for the license examination until the permit holder has accrued six months of experience.

6. Revise provisions related to individuals licensed as a hearing aid specialist in another jurisdiction, including (i) replacing the term "reciprocity" with the term "endorsement" to describe the licensure of such individuals and (ii) providing that individuals who can demonstrate active engagement in the profession for the preceding five years need only take the rules and regulations portion of the license examination.

7. Increase to four the number of attempts a temporary permit holder has to pass any section of the license examination before the temporary permit automatically expires and clarify components of the examination.

8. Provide that licenses expire two years from the effective date and that the board may use email to send renewal notices.

9. Revise provisions related to reinstatement of licenses, including consolidating reinstatement provisions.

10. Repeal provisions requiring certain disclosures to a purchaser or prospective purchaser when first contact is established.

11. Remove vague requirements pertaining to compliance with various federal and state statutes and regulations, disclosures on hearing aid containers, charging of nonrefundable fees, and a requirement to disclose hearing aid warranty.

12. Remove a requirement that a hearing aid specialist ascertain whether a child has been examined by an otolaryngologist prior to fitting.

13. Repeal requirements that a regulant must (i) recommend that an adult client obtain a written statement from a licensed physician that the patient's hearing loss has been medically evaluated or (ii) obtain a waiver from the client in the event the client declines such recommendation.

14. Clarify that air conduction tests and bone conduction tests must be performed in accordance with American National Standards Institute standards.

15. Revise prohibited acts to (i) remove a prohibited act relating to advertising of hearing aids and (ii) reduce reporting requirements for criminal convictions.

Issues: This action offers several advantages for both the regulated community (i.e., applicants and licensees) and the public. The action allows registered apprentices to qualify for licensure, providing more avenues for individuals to enter the profession; reduces the stringency of criminal conviction disclosure requirements; and removes burdensome requirements in the standards of practice and conduct. One advantage to the public is that the action better ensures minimum competency by allowing temporary permit holders to have minimum experience requirements before taking the license examination. The proposed amendment may have potential disadvantages for the regulated community, including that temporary permit holders may experience a delay in taking the licensing exam due to the new experience requirement. Additionally, some stakeholders may view the removal of requirements in standards of practice and conduct as weakening protections for the public. There are no identifiable advantages or disadvantages to the agency or Commonwealth.

Department of Planning and Budget Economic Impact Analysis:

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia and Executive Order 19. The analysis presented represents DPB's best

estimate of the potential economic impacts as of the date of this analysis.[1]

Summary of the Proposed Amendments to Regulation. The Board for Hearing Aid Specialists and Opticians (board) proposes to (i) reduce the stringency of licensure by endorsement for those who have been active in the profession during the past five years, (ii) change the expiration date of licenses, (iii) afford one more chance to temporary permit holders to pass any part of the license examination, (iv) reduce the stringency of disclosure of criminal convictions, and (v) allow a post office box as a secondary address.

Background. This regulation governs those who engage in the practice of fitting or dealing in prescription hearing aids. DPOR states that to comply with Executive Directive Number One (2022), the board reviewed discretionary requirements imposed on regulated parties. The proposed amendments to the regulation discussed below reflect the board's consideration in eliminating current substantive requirements that are not deemed necessary to protect public health, safety, and welfare, or to effectively administer the licensure program.

Estimated Benefits and Costs: One of the proposed changes would reduce the requirements associated with the licensing examination. The examination is composed of three sections (with the associated fees in parentheses) as follows: written ($250), practical ($90), and rules and regulations ($35). Currently, license applicants by reciprocity or endorsement may be required to take certain sections if the licensing state did not administer that section of the examination. The board would instead stipulate that individuals licensed as hearing aid specialists in another jurisdiction who have been actively engaged in the profession for the past five years would be only required to take the rules and regulations section. According to DPOR, in the past four years, 17 of 59 reciprocity candidates were required to take the practical section, and 10 of 59 were required to take the written section. Under the proposed change, such applicants would only be required to take the rules and regulations section. Thus, the expected annualized fee savings to regulants amounts to $382.50 from the practical section (17 candidates multiplied by $90 exam fee per four years), $625 from the written section (10 candidates multiplied by $250 exam fee per four years) and the time, travel, and other expenses to take these examinations. The written examination fees are collected by a vendor while the practical examination fees are collected by DPOR. Hence, the estimated written and practical examination fee savings to the regulants would also represent a revenue reduction for both the vendor and DPOR, respectively. The board also proposes to change the expiration date of all licenses from December 31 on an even-numbered year to two years after the effective date. For example, under the current regulation if someone received a license on August 1, 2022, it would expire on December 31, 2022. As a result, they would only have the license for four months before needing to pay for a renewal. The proposed change would extend the duration of the initial license, thereby reducing early renewal costs to the licensees and associated revenues to DPOR. According to DPOR, 112 license renewals were issued between February 1, 2023, and September 2024 that expired before two years of the issuance date. Another proposed change would allow a temporary permit holder four successive examinations, rather than three, to achieve a passing score on any section of the licensing examination in order to avoid expiration of the temporary permit and the need to request an extension. This change would afford one more chance to pass any part of the examination to become fully licensed and likely reduce the number of extension requests. DPOR reports that over the past four years, 29 out of 237 temporary permit holders requested an extension. This equates to an average of seven extension requests per year. Under the proposal, the average extension requests should be fewer than seven per year. The board also proposes changes involving convictions. One change would reduce the look-back period for misdemeanor convictions involving sexual offense or physical injury from within five years prior to application for licensure to three years. Additionally, the board proposes to limit the required disclosure of felony convictions to those involving sexual offense, physical injury, drug distribution, or that involve the practice of fitting or dealing in hearing aids; currently, any felony conviction must be disclosed. Both of these disclosure requirements are less stringent and may increase the number of individuals applying who may have previously been discouraged from applying based on their criminal history. Additionally, the use of less stringent criminal disclosure requirements may reduce the number of cases the board may have to consider, given that criminal convictions do not automatically disqualify an applicant from obtaining a license and are decided on a case-by-case basis by the board. Finally, this action would allow an applicant to provide a post office box as a secondary address, providing more administrative flexibility.

Businesses and Other Entities Affected. According to DPOR, as of February 1, 2025, there were 917 hearing aid specialists and 56 temporary permit holders in the Commonwealth. None of the affected entities appear to be disproportionately affected. The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.[2] An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs for all entities combined.[3] No longer requiring the written part of the exam for certain applicants is expected to reduce vendor revenues by $625 per year. Thus, an adverse impact on the written exam vendor is indicated.

Small Businesses[4] Affected.[5] The vendor for the written exam is likely a small business.

Types and Estimated Number of Small Businesses Affected: There is a single vendor that conducts the written exams.

Costs and Other Effects: The vendor would likely see approximately $625 per year in exam revenue reduction.

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

Localities[6] Affected.[7] The proposed amendments do not introduce costs for localities nor do they disproportionately affect any locality.

Projected Impact on Employment. The use of less stringent disclosure requirements may expand the pool of potential applicants. However, the impact on total employment is not known, but would likely be small if any.

Effects on the Use and Value of Private Property. Although many licensed hearing aid specialist professionals are likely owners or employees of business entities, the proposed rules apply to licensed individuals. The asset value of the written exam vendor may be negatively affected due to moderate revenue loss. No impact on real estate development costs is expected.

[1] Section 2.2-4007.04 of the Code of Virginia requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (i) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (ii) the identity of any localities and types of businesses or other entities particularly affected, (iii) the projected number of persons and employment positions to be affected, (iv) the projected costs to affected businesses or entities to implement or comply with the regulation, and (v) the impact on the use and value of private property.

[2] Pursuant to § 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," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

[3] Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation. As a result, DPB has adopted a definition of adverse impact that assesses changes in net costs and benefits for each affected Virginia entity that directly results from discretionary changes to the regulation.

[4] Pursuant to § 2.2-4007.04, 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."

[5] If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include: (i) an identification and estimate of the number of small businesses subject to the proposed regulation, (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (iii) a statement of the probable effect of the proposed regulation on affected small businesses, and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

[6] "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.

[7] Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Response to Economic Impact Analysis: The Board for Hearing Aid Specialists and Opticians concurs with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

The proposed amendments (i) update and revise definitions, (ii) update entry requirements, (iii) reduce the stringency of licensure by endorsement for those who have been active in the profession during the past five years, (iv) revise renewal and reinstatement provisions, (v) update standards of practice and conduct, (vi) change the expiration date of licenses to two years after the effective date, (vii) afford one more chance to temporary permit holders to pass any part of the license examination, (viii) reduce the stringency of disclosure of criminal convictions, and (ix) allow a post office box as a secondary address.

18VAC80-20-10. Definitions.

A. The following words and terms when used in this chapter shall have the meanings ascribed to them in § 54.1-1500 of the Code of Virginia:

"Audiologist"

"Board"

"Hearing aid"

"Licensed hearing aid specialist"

"Licensed physician"

"Practice of audiology"

"Practice of fitting or dealing in hearing aids"

"Prescription hearing aid"

"Sell" or "sale"

"Temporary permit"

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

~~"Audiologist" means any person who engages in the practice of audiology as defined by § 54.1-2600 of the Code of Virginia.~~

~~"Board" means Board for Hearing Aid Specialists and Opticians.~~

"ANSI" means the American National Standards Institute.

"Department" means the Department of Professional and Occupational Regulation.

"Endorsement" means a method of obtaining a license by a person who is currently licensed in another state.

"Hearing aid specialist" means a person who engages in the practice of fitting or dealing in hearing aids ~~or who advertises~~

~~or displays a sign or represents himself as a person who practices the fitting or dealing in hearing aids~~.

"Licensed sponsor" means a licensed hearing aid specialist who is responsible for training one or more individuals holding a temporary permit.

~~"Licensee" means any person holding a valid license issued by the Board for Hearing Aid Specialists and Opticians for the practice of fitting or dealing in hearing aids, as defined in § 54.1-1500 of the Code of Virginia.~~

"Otolaryngologist" means a licensed physician specializing in ear, nose, and throat disorders.

~~"Reciprocity" means an agreement between two or more states to recognize and accept one another's regulations and laws.~~

"Reinstatement" means having a license restored to effectiveness after the expiration date has passed.

"Renewal" means continuing the effectiveness of a license for another period of time.

"Temporary permit holder" means any person who holds a valid temporary permit under this chapter.

18VAC80-20-20. ~~Explanation of terms.~~ (Repealed.)

~~Each reference in this chapter to a person shall be deemed to refer, as appropriate, to the masculine and the feminine, to the singular and the plural, and to the natural persons and organizations.~~

18VAC80-20-30. Basic qualifications for licensure.

A. Every applicant for a license ~~shall~~ must provide information on ~~his~~ an application establishing that:

1. The applicant is at least 18 years of age.

2. The applicant has successfully completed high school or a high school equivalency course.

3. The applicant has training and experience that covers the following subjects as ~~they~~ the subjects pertain to hearing aid fitting and the sale of hearing aids, accessories, and services:

a. Basic physics of sound;

b. Basic maintenance and repair of hearing aids;

c. The anatomy and physiology of the ear;

~~d. Introduction to psychological aspects of hearing loss;~~

~~e.~~ d. The function of hearing aids and amplification;

~~f.~~ e. Visible disorders of the ear requiring medical referrals;

~~g.~~ f. Practical tests utilized for selection or modification of hearing aids;

~~h. Pure~~ g. Audiometric testing, including pure tone audiometry, ~~including~~ air conduction~~,~~ and bone conduction, ~~and related tests~~ speech reception threshold testing, and speech discrimination testing;

~~i. Live voice or recorded voice speech audiometry, including speech reception threshold testing and speech discrimination testing;~~

~~j.~~ h. Masking when indicated;

~~k.~~ i. Recording and evaluating audiograms and speech audiometry to determine the proper selection and adaptation of hearing aids;

~~l.~~ j. Taking earmold impressions;

~~m.~~ k. Proper earmold selection;

~~n.~~ l. Adequate instruction in proper hearing aid orientation;

~~o.~~ m. Necessity of proper procedures in after-fitting checkup; and

~~p.~~ n. Availability of social service resources and other special resources for the hearing impaired.

4. The applicant has provided one of the following as verification of completion of training and experience as described in subdivision 3 of this subsection:

a. A statement on a form provided by the board signed by the licensed sponsor certifying that the requirements have been met and the applicant has completed at least six months of experience under the temporary permit; ~~or~~

b. A certified true copy of a transcript of courses completed at an accredited college or university, or other notarized documentation of completion of the required experience and training; or

c. An apprenticeship completion form from the Virginia Department of Workforce Development and Advancement reflecting completion of a registered apprenticeship, including all required related instruction, or an equivalent out-of-state registered apprenticeship.

5. ~~The applicant has not been convicted or found guilty of any crime directly related to the practice of fitting or dealing in hearing aids, regardless of the manner of adjudication, in any jurisdiction of the United States. Except for misdemeanor marijuana convictions and misdemeanor convictions that occurred five or more years prior to the date of application, with no subsequent convictions, all criminal convictions shall be considered as part of the totality of the circumstances of each applicant. The applicant review of prior convictions shall be subject to the requirements of~~ In accordance with § 54.1-204 of the Code of Virginia~~. Any plea of nolo contendere shall be considered a conviction for purposes of this subdivision~~, each applicant must disclose the following information regarding criminal convictions in Virginia and all other jurisdictions:

a. Misdemeanor convictions that occurred within three years of the date of application involving sexual offense or physical injury; and

b. Felony convictions involving sexual offense, physical injury, or drug distribution or felony convictions involving the practice of fitting or dealing in hearing aids.

The record of a conviction 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 conviction or guilt. The board has the authority to determine, based upon all the information available, including the applicant's record of prior convictions, if the applicant is unfit or unsuited to engage in the hearing aid specialist profession.

6. The applicant is in good standing as a licensed hearing aid specialist in every jurisdiction where licensed. The applicant must disclose if ~~he~~ the applicant has had a license as a hearing aid specialist that was suspended, revoked, or surrendered in connection with a disciplinary action or that 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 hearing aid specialist. ~~The applicant must also disclose whether he has been previously licensed in Virginia as a hearing aid specialist.~~

7. The applicant has disclosed ~~his~~ the applicant's physical address. A post office box ~~is not acceptable~~ may be provided as a secondary address.

8. The nonresident applicant for a license has filed and maintained with the department an irrevocable consent for the department to serve as service agent for all actions filed in any court in Virginia.

9. The applicant has submitted the required application with the proper fee as referenced in 18VAC80-20-70 and signed, as part of the application, a statement that the applicant has read and understands Chapter 15 (§ 54.1-1500 et seq.) of Title 54.1 of the Code of Virginia and this chapter.

B. The board may make further inquiries and investigations with respect to the qualifications of the applicant or require a personal interview ~~or both~~. The board may refuse initial licensure due to the applicant's failure to comply with entry requirements. The licensee is entitled to a review of such action~~. Appeals from such actions shall~~, which will be in accordance with the provisions of the Administrative Process Act~~, Chapter 40~~ (§ 2.2-4000 et seq.~~) of Title 2.2~~ of the Code of Virginia).

18VAC80-20-40. Temporary permit.

A. Any individual may apply for a temporary permit, which is to be used solely for the purpose of gaining the training and experience required to become a licensed hearing aid specialist in Virginia. The licensed sponsor ~~shall~~ must be identified on the application for a temporary permit, and the licensed sponsor ~~shall~~ must comply strictly with the provisions of subdivisions ~~B~~ D 1 and ~~B~~ D 2 of this section.

1. A temporary permit ~~shall~~ will be issued for a period of ~~12 months and may be extended once for not longer than six~~ 18 months. After a period of 18 months ~~an extension is no longer possible and~~, the former temporary permit holder ~~shall~~ must sit for the examination in accordance with this section.

2. The board may, at its discretion, extend the temporary permit for a temporary permit holder who suffers serious personal illness or injury~~,~~ or a death in ~~his~~ the permit holder's immediate family, ~~or~~ for obligation of military service or service in the Peace Corps, or for other good cause of similar magnitude approved by the board. Documentation of these circumstances must be received by the board no later than 12 months after the date of the expiration of the temporary permit or within six months of the completion of military or Peace Corps service, whichever is later.

B. A registered apprenticeship under the Virginia Department of Workforce Development and Advancement is held to be a board-approved temporary permit.

C. Every applicant for a temporary permit ~~shall~~ must provide information upon application establishing that:

1. The applicant for a temporary permit is at least 18 years of age.

2. The applicant for a temporary permit has successfully completed high school or a high school equivalency course.

3. ~~The applicant has not been convicted or found guilty of any crime directly related to the practice of fitting or dealing in hearing aids, regardless of the manner of adjudication, in any jurisdiction of the United States. Except for misdemeanor marijuana convictions and misdemeanor convictions that occurred five or more years prior to the date of application, with no subsequent convictions, all criminal convictions shall be considered as part of the totality of the circumstances of each applicant. Review of prior convictions shall be subject to the requirements of~~ In accordance with § 54.1-204 of the Code of Virginia~~. Any plea of nolo contendere shall be considered a conviction for purposes of this subdivision~~, each applicant for a temporary permit must disclose the following information regarding criminal convictions in Virginia and all other jurisdictions:

a. Misdemeanor convictions that occurred within three years of the date of application involving sexual offense or physical injury; and

b. Felony convictions involving sexual offense, physical injury, or drug distribution or felony convictions involving the practice of fitting or dealing in hearing aids.

The record of a conviction 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 conviction or guilt. The board has the authority to determine, based upon all the information available, including the applicant's record of prior convictions, if the applicant is unfit or unsuited to engage in the hearing aid specialist profession.

4. The applicant for a temporary permit is in good standing as a licensed hearing aid specialist in every jurisdiction where licensed. The applicant for a temporary permit must disclose if ~~he~~ the applicant has had a license as a hearing aid specialist that was suspended, revoked, or surrendered in connection with a disciplinary action or that has been the subject of discipline in any jurisdiction prior to applying for licensure in Virginia. At the time of application, the applicant for a temporary permit must also disclose any disciplinary action taken in another jurisdiction in connection with the applicant's practice as a hearing aid specialist. ~~The applicant for a temporary permit must also disclose whether he has been licensed previously in Virginia as a hearing aid specialist.~~

5. The applicant for a temporary permit has disclosed ~~his~~ the applicant's physical address. A post office box ~~is not acceptable~~ may be provided as a secondary address.

6. The applicant for a temporary permit has submitted the required application with the proper fee referenced in 18VAC80-20-70 and has signed, as part of the application, a statement that the applicant has read and understands Chapter 15 (§ 54.1-1500 et seq.) of Title 54.1 of the Code of Virginia and this chapter.

~~C.~~ D. The licensed hearing aid specialist who agrees to sponsor the applicant for a temporary permit ~~shall~~ must certify on the application that as sponsor, ~~he~~ the licensed hearing aid specialist:

1. Assumes full responsibility for the competence and proper conduct of the temporary permit holder with regard to all acts performed pursuant to the acquisition of training and experience in the fitting or dealing of hearing aids;

2. Will not assign the temporary permit holder to carry out independent field work without on-site direct supervision by the sponsor until the temporary permit holder is adequately trained for such activity;

3. Will personally provide and make available documentation, upon request by the board or its representative, showing the number of hours that direct supervision has occurred throughout the period of the temporary permit; ~~and~~

4. Will return the temporary permit to the department should the training program be discontinued for any reason; and

5. Will not refer the temporary permit holder for testing until the temporary permit holder has completed at least six months of training under the permit.

~~D.~~ E. The licensed sponsor ~~shall~~ must provide training and ~~shall~~ must ensure that the temporary permit holder under ~~his~~ the licensed sponsor's supervision gains experience that covers the following subjects as they pertain to hearing aid fitting and the sale of hearing aids, accessories, and services:

1. Basic physics of sound;

2. Basic maintenance and repair of hearing aids;

3. The anatomy and physiology of the ear;

~~4. Introduction to psychological aspects of hearing loss;~~

~~5.~~ 4. The function of hearing aids and amplification;

~~6.~~ 5. Visible disorders of the ear requiring medical referrals;

~~7.~~ 6. Practical tests utilized for selection or modification of hearing aids;

~~8. Pure~~ 7. Audiometric testing, including pure tone audiometry, ~~including~~ air conduction~~,~~ and bone conduction, speech reception threshold testing, and ~~related tests~~ speech discrimination testing;

~~9. Live voice or recorded voice speech audiometry, including speech reception threshold testing and speech discrimination testing;~~

~~10.~~ 8. Masking when indicated;

~~11.~~ 9. Recording and evaluating audiograms and speech audiometry to determine the proper selection and adaptation of hearing aids;

~~12.~~ 10. Taking earmold impressions;

~~13.~~ 11. Proper earmold selection;

~~14.~~ 12. Adequate instruction in proper hearing aid orientation;

~~15.~~ 13. Necessity of proper procedures in after-fitting checkup; and

~~16.~~ 14. Availability of social service resources and other special resources for the hearing impaired.

~~E.~~ F. The board may make further inquiries and investigations with respect to the qualifications of the applicant for a temporary permit or require a personal interview~~, or both~~.

~~F.~~ G. All correspondence from the board to the temporary permit holder not otherwise exempt from disclosure~~, shall~~ must be addressed to both the temporary permit holder and the licensed sponsor and ~~shall~~ must be sent to the business address of the licensed sponsor.

18VAC80-20-50. Qualifications for licensure by ~~reciprocity~~ endorsement.

A. Every applicant for Virginia licensure through ~~reciprocity~~ endorsement who is currently licensed as a hearing aid specialist in good standing in another jurisdiction ~~shall~~ must

provide information upon application establishing that the requirements and standards under which the license was issued are substantially equivalent to and not conflicting with the provisions of this chapter. The applicant ~~shall~~ must file the application for ~~reciprocity~~ endorsement with~~,~~ and pay a fee to~~,~~ the board~~,~~ and must successfully complete the specified sections of the examination.

B. Every applicant for Virginia licensure through endorsement that can demonstrate active engagement in the profession for the preceding five years will only be required to take the rules and regulations portion of the examination.

18VAC80-20-80. Examinations.

A. All examinations required for licensure ~~shall~~ must be approved by the board and administered by the board, a testing service acting on behalf of the board, or another governmental agency or organization.

B. The candidate for examination ~~shall~~ must 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 with regard to conduct at the examination ~~shall~~ will be grounds for denial of the application.

C. Applicants for licensure ~~shall~~ must pass a ~~two-part examination, of which Part I is a~~ written examination ~~and Part II is a~~, a rules and regulations examination, and all portions of the practical ~~examination~~ exam.

1. The applicant ~~shall~~ must pass each section of the written and practical examination administered by the board. Candidates failing one or more sections of the written or practical examination will be required to retake only those sections failed.

2. Any candidate failing to achieve a passing score on all sections in two years from the initial test date must reapply as a new applicant for licensure and repeat all sections of the ~~written and practical examination~~ examinations.

3. If the temporary permit holder fails to achieve a passing score on any section of the examination in ~~three~~ four successive scheduled examinations, the temporary permit ~~shall~~ will expire upon receipt of the examination failure letter resulting from the ~~third~~ fourth attempt.

18VAC80-20-90. License renewal required.

A. Licenses issued under this chapter ~~shall~~ will expire ~~on December 31 of each even-numbered year as indicated on the license~~ two years from the license effective date.

B. The board will mail or email a renewal notice to the licensee at the last known address. Failure to receive this notice does not relieve the licensee of the obligation to renew. Prior to the expiration date shown on the license, each licensee desiring to renew a license must return to the board all required forms and the appropriate fee as outlined in 18VAC80-20-70.

C. Licensees will be required to renew a license by submitting the proper fee made payable to the Treasurer of Virginia. Any licensee who fails to renew within 30 days after the license expires will be required to apply for reinstatement.

D. The board may deny renewal of a license for the same reasons as the board may refuse initial licensure as set forth in Part II (18VAC80-20-30 et seq.) of this chapter or discipline a licensee as set forth in Part V (18VAC80-20-180 et seq.) of this chapter. The licensee is entitled to a review of such action. Review of such actions will be in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

18VAC80-20-100. ~~Procedures for renewal.~~ (Repealed.)

~~The board will mail a renewal application form to the licensee at the last known address. Failure to receive this notice shall not relieve the licensee of the obligation to renew. Prior to the expiration date shown on the license, each licensee desiring to renew his license must return to the board all required forms and the appropriate fee as outlined in 18VAC80-20-70 of this chapter.~~

18VAC80-20-110. ~~Fees for renewal.~~ (Repealed.)

~~Licensees shall be required to renew their license by submitting the proper fee made payable to the Treasurer of Virginia. Any licensee who fails to renew within 30 days after the license expires shall be required to apply for reinstatement.~~

18VAC80-20-120. ~~Board discretion to deny renewal.~~ (Repealed.)

~~The board may deny renewal of a license for the same reasons as it may refuse initial licensure as set forth in Part II or discipline a licensee as set forth in Part V of this chapter. The licensee is entitled to a review of such action. Appeals from such actions shall be in accordance with the provisions of the Administrative Process Act, Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.~~

18VAC80-20-130. ~~Qualifications for renewal.~~ (Repealed.)

~~Applicants for renewal of a license shall continue to meet the standards of entry as set forth in 18VAC80-20-30 A 2, 18VAC80-20-30 A 3 and, 18VAC80-20-30 A 5 through 18VAC80-20-30 A 9.~~

18VAC80-20-140. Reinstatement required.

A. If a licensee fails to meet the requirements for renewal and submit the renewal fee within 30 days after the expiration date on the license, the licensee must apply for reinstatement on a form provided by the board.

~~1. Applicants for reinstatement shall continue to meet the standards of entry in 18VAC80-20-30 A 2, 18VAC80-20-30 A 3 and 18VAC80-20-30 A 5 through 18VAC80-20-30 A 9.~~

~~2.~~ 1. Applicants for reinstatement ~~shall~~ must submit the required fee referenced in 18VAC80-20-70.

~~3.~~ 2. Two years after the expiration date on the license, reinstatement is no longer possible. To resume practice as a hearing aid specialist, the former licensee must apply as a new applicant for licensure, meeting all educational, examination, and experience requirements as listed in the regulations current at the time of reapplication.

~~4. Any hearing aid specialist activity conducted subsequent to the expiration date of the license may constitute unlicensed activity and may be subject to prosecution by the Commonwealth under §§ 54.1-111 and 54.1-202 of the Code of Virginia.~~

B. The board may deny reinstatement of a license for the same reasons as it may refuse initial licensure or discipline a licensee. The licensee is entitled to a review of such action, which will be in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

C. When a license is reinstated, the license will continue to have the same license number and will be assigned an expiration date two years from the previous expiration date of the license, which is the expiration date assigned to all licenses at the time of reinstatement.

D. A licensee who reinstates a license will be regarded as having been continually licensed without interruption. Therefore, the licensee shall remain under the disciplinary authority of the board during the entire period and may be held accountable for activities during this period. Nothing in this chapter will divest the board of authority to discipline a licensee for a violation of the law or regulations during the period of licensure.

18VAC80-20-150. ~~Board discretion to deny reinstatement.~~ (Repealed.)

~~The board may deny reinstatement of a license for the same reasons as it may refuse initial licensure or discipline a licensee. The licensee is entitled to a review of such action. Appeals from such actions shall be in accordance with the provisions of the Administrative Process Act, Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.~~

18VAC80-20-160. ~~Status of license during the period prior to reinstatement.~~ (Repealed.)

~~A. When a licensee is reinstated, the license shall continue to have the same license number and shall be assigned an expiration date two years from the previous expiration date of the license, which is the expiration date assigned to all licenses at the time the license is reinstated.~~

~~B. A licensee who reinstates his license shall be regarded as having been continually licensed without interruption. Therefore, the licensee shall remain under the disciplinary authority of the board during the entire period and may be held accountable for his activities during this period. Nothing in this chapter shall divest the board of its authority to discipline a licensee for a violation of the law or regulations during the period of licensure.~~

18VAC80-20-210. ~~Measures to take when first contact is established with any purchaser or prospective purchaser.~~ (Repealed.)

~~A. When first contact is established with any purchaser or prospective purchaser outside the hearing aid specialist's principal place of business, the licensee shall provide a disclosure form prescribed by the board containing information that the purchaser or prospective purchaser will need to obtain service/maintenance. The disclosure form shall include:~~

~~1. Address and telephone number where the hearing aid specialist can be reached.~~

~~2. Days and hours contact can be made;~~

~~3. Whether service/maintenance will be provided in the office or in the home of the purchaser or prospective purchaser; and~~

~~4. If the hearing aid specialist has no principal place of business in Virginia, a clear statement that there is no principal place of business in Virginia.~~

~~B. When first contact is established with any purchaser or prospective purchaser the licensee shall:~~

~~1. Advise the purchaser or prospective purchaser that hearing aid specialists are not licensed to practice medicine; and~~

~~2. Advise the purchaser or prospective purchaser that no examination or representation made by the specialist should be regarded as a medical examination, opinion, or advice.~~

~~a. A statement that this initial advice was given to the purchaser or prospective purchaser shall be entered on the purchase agreement in print as large as the other printed matter on the receipt.~~

~~b. Exemption: Hearing aid specialists who are physicians licensed to practice medicine in Virginia are exempt from the requirements of this subsection.~~

18VAC80-20-220. Purchase agreement.

A. Each hearing aid ~~shall~~ must be sold through a purchase agreement that ~~shall~~ must:

1. Show the licensee's business address, license number, business telephone number, and signature;

~~2. Comply with federal and Virginia laws and regulations, U.S. Food and Drug Administration (FDA) regulations, the Virginia Home Solicitation Sales Act (Chapter 2.1 (§ 59.1-21.1 et seq.) of Title 59.1 of the Code of Virginia), and the~~

~~Virginia Consumer Protection Act (Chapter 17 (§ 59.1-196 et seq.) of Title 59.1 of the Code of Virginia);~~

~~3.~~ 2. Clearly state, if the hearing aid is not new and is sold or rented, that it is "used" or "reconditioned," whichever is applicable, including the terms of warranty, if any~~. The hearing aid container shall be clearly marked with the same information contained in the purchase agreement~~;

~~4.~~ 3. Identify the brand names and model of the hearing aid being sold, and the serial number of the hearing aid ~~shall~~ must be provided, in writing, to the purchaser ~~or prospective purchaser~~ at the time of delivery of the hearing aid;

~~5.~~ 4. Disclose the full purchase price;

~~6.~~ 5. Disclose the down payment and periodic payment terms in cases where the purchase price is not paid in full at delivery;

~~7.~~ 6. Disclose any nonrefundable fees established in accordance with § 54.1-1505 of the Code of Virginia~~. Nonrefundable fees shall not be a percentage of the purchase price of the hearing aid~~;

~~8. Disclose any warranty;~~

~~9.~~ 7. Explain the provisions of § 54.1-1505 of the Code of Virginia, which entitles the purchaser to return the hearing aid, in 10-point bold face type that is bolder than the type in the remainder of the purchase agreement; and

~~10.~~ 8. Disclose that the licensee or temporary permit holder is not a physician licensed to practice medicine in Virginia and that no examination or representation made ~~shall~~ will be regarded as a medical examination, opinion, or advice.

B. Subdivision A ~~10~~ 8 of this section ~~shall~~ will not apply to sales made by a licensed hearing aid specialist who is a physician licensed to practice medicine in Virginia.

18VAC80-20-230. Fitting or sale of hearing aids for children.

~~A. Any person engaging in the fitting or sale of hearing aids for a child under 18 years of age shall ascertain whether such child has been examined by an otolaryngologist or licensed physician within six months prior to fitting.~~

~~B.~~ A. No child ~~under~~ younger than 18 years of age ~~shall~~ will be initially fitted with a hearing aid or hearing aids unless the licensed hearing aid specialist has been presented with a written statement signed by an otolaryngologist stating the child's hearing loss has been medically evaluated and the child may be considered a candidate for a hearing aid. The medical evaluation must have taken place within the preceding six months.

~~C.~~ B. No child ~~under~~ younger than 18 years of age ~~shall~~ will be subsequently fitted with a hearing aid or hearing aids unless the licensed hearing aid specialist has been presented with a written statement signed by a licensed physician stating the child's hearing loss has been medically evaluated and the child may be considered a candidate for a hearing aid. The medical evaluation must have taken place within the preceding six months.

18VAC80-20-240. ~~Physician statement regarding adult client's medical evaluation of hearing loss.~~ (Repealed.)

~~A. Each licensee or holder of a temporary permit, in counseling and instructing adult clients and prospective adult clients related to the testing, fitting, and sale of hearing aids, shall be required to recommend that the client obtain a written statement signed by a licensed physician stating that the patient's hearing loss has been medically evaluated within the preceding six months and that the patient may be a candidate for a hearing aid.~~

~~B. Should the client decline the recommendation, a statement of such declination shall be obtained from the client over his signature. Medical waivers that are a part of purchase agreements shall be in a separate section, which shall be signed by the client indicating his understanding of the medical waiver. A separate, additional client signature space shall be provided in all purchase agreements for the client to sign acknowledging his understanding of the purchase terms and conditions established by 18VAC80-20-200.~~

~~1. Fully informed adult patients (18 years of age or older) may waive the medical evaluation.~~

~~2. The hearing aid specialist is prohibited from actively encouraging a prospective user to waive a medical examination.~~

~~C. The information provided in subsection A of this section must be made a part of the client's record kept by the hearing aid specialist.~~

18VAC80-20-250. Testing procedures.

It ~~shall be~~ is the duty of each licensee and holder of a temporary permit engaged in the fitting and sale of hearing aids to use appropriate testing procedures for each hearing aid fitting. All tests and case history information must be retained in the records of the specialist. The established requirements ~~shall be~~ are:

1. Air ~~Conduction Tests A.N.S.I.~~ conduction tests are to be made on every client using ANSI standard frequencies of 500-1000-2000-4000-6000-8000 Hertz. Intermediate frequencies ~~shall~~ must be tested if the threshold difference between octaves exceeds 15dB. Appropriate masking must be used if the difference between the two ears is 40 dB or more at any one frequency.

2. Bone ~~Conduction Tests~~ conduction tests are to be made on every client~~ A.N.S.I.~~ using ANSI. standards at 500-1000-2000-4000 Hertz. Proper masking is to be applied if the air conduction and bone conduction readings for the test

ear at any one frequency differ by 15 dB or if lateralization occurs.

3. Speech testings ~~shall~~ must be made before fittings and ~~shall~~ must be recorded with the type of test, method of presentation, and the test results.

4. The specialist ~~shall~~ must check for the following conditions and, if they are found to exist, ~~shall~~ must refer the client to a licensed physician unless the client can show that ~~his~~ the client's present condition is under treatment or has been treated:

a. Visible congenital or traumatic deformity of the ear.

b. History of active drainage from the ear within the previous 90 days.

c. History of sudden or rapidly progressive hearing loss within the previous 90 days.

d. Acute or chronic dizziness.

e. Unilateral hearing loss.

f. Audiometric air bone gap equal to or greater than 15 dB at 500 Hertz, 1000 Hertz, and 2000 Hertz.

g. Visible evidence or significant cerumen accumulation or a foreign body in the ear canal.

h. Tinnitus as a primary symptom.

i. Pain or discomfort in the ear.

5. All tests ~~shall~~ must have been conducted no more than six months prior to the fitting.

6. Post-fitting testing ~~shall~~ must be made and recorded with type of test, method of presentation and the test results.

18VAC80-20-270. Grounds for discipline.

The board may, in considering the totality of the circumstances, fine any temporary permit holder or licensee~~, and~~ or suspend, place on probation, ~~or~~ revoke, or refuse to renew any temporary permit or license or deny any application issued under the provisions of Chapter 15 (§ 54.1-1500 et seq.) of Title 54.1 of the Code of Virginia and this chapter. Disciplinary procedures are governed by the Administrative Process Act~~, Chapter 40~~ (§ 2.2-4000 et seq.~~) of Title 2.2~~ of the Code of Virginia). ~~In exercising its disciplinary function, the board will consider the totality of the circumstances of each case.~~ Any licensee is subject to board discipline for any of the following:

1. Improper conduct, including:

a. Obtaining, renewing, or attempting to obtain a license by false or fraudulent representation;

b. Obtaining any fee or making any sale by fraud or misrepresentation;

c. Employing to fit or sell hearing aids a person who does not hold a valid license or a temporary permit, or whose license or temporary permit is suspended;

d. Using, causing, or promoting the use of any misleading, deceptive, or untruthful advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or any other representation, whether disseminated orally or published;

~~e. Advertising a particular model or type of hearing aid for sale when purchasers or prospective purchasers responding to the advertisement cannot purchase the advertised model or type;~~

~~f.~~ e. Representing that the service or advice of a person licensed to practice medicine or audiology will be used in the selection, fitting, adjustment, maintenance, or repair of hearing aids when that is not true, or using the words "physician," "audiologist," "clinic," "hearing service," "hearing center," or similar description of the services and products provided when such use is not accurate;

~~g.~~ f. Directly or indirectly giving or offering to give favors, paid referrals, or anything of value to any person who in his professional capacity uses his position to influence third parties to purchase products offered for sale by a hearing aid specialist; or

~~h.~~ g. Failing to provide expedient, reliable, or dependable services when requested by a client or client's guardian.

2. Failure to include on the purchase agreement a statement regarding home solicitation when required by federal and state law.

3. Incompetence or negligence, as those terms are generally understood in the profession, in fitting or selling hearing aids.

4. Failure to provide required or appropriate training resulting in incompetence or negligence, as those terms are generally understood in the profession, by a temporary permit holder under the licensee's sponsorship.

5. Violating or cooperating with others in violating any provisions of ~~Chapters~~ Chapter 1 (§ 54.1-100 et seq.), 2 (§ 54.1-200 et seq.), 3 (§ 54.1-300 et seq.), ~~and~~ or 15 (§ 54.1-1500 et seq.) of Title 54.1 of the Code of Virginia or this chapter.

6. The licensee, temporary permit holder, or applicant has been convicted or found guilty of any crime directly related to the practice of fitting or dealing in hearing aids, regardless of the manner of adjudication, in any jurisdiction of the United States. Except for misdemeanor marijuana convictions and misdemeanor convictions involving sexual offense or physical injury that occurred ~~five~~ three or more years prior to the date of application, with no subsequent convictions, and all felony convictions involving sexual offense, physical injury, or drug distribution that occurred 10 or more years prior to the date of application with no subsequent convictions, all criminal convictions ~~shall~~ will be considered as part of the totality of the circumstances of each applicant. Review of prior convictions ~~shall~~ will be subject to the requirements of § 54.1-204 of the Code of Virginia.

Any pleas of nolo contendere ~~shall~~ will be considered a conviction for the purpose of this subdivision. The record of a conviction authenticated in such form as to be admissible in evidence of the law of the jurisdiction where convicted ~~shall~~ will be admissible as prima facie evidence of such conviction or guilt.

VA.R. Doc. No. R24-7493; Filed April 15, 2025, 4:07 p.m.

TITLE 20. PUBLIC UTILITIES AND TELECOMMUNICATIONS

STATE CORPORATION COMMISSION

Final Regulation

REGISTRAR'S NOTICE: The State Corporation Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

Title of Regulation: **20VAC5-305. Rules for Electricity and Natural Gas Submetering and for Energy Allocation Equipment (amending 20VAC5-305-10, 20VAC5-305-20).**

Statutory Authority: §§ 12.1-13 and 56-245.3 of the Code of Virginia.

Effective Date: June 1, 2025.

Agency Contact: Mike Cizenski, Deputy Director, Public Utility Regulation Division, State Corporation Commission, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9441, or email mike.cizenski@scc.virginia.gov.

Summary:

Pursuant to Chapter 557 of the 2024 Acts of Assembly, the amendments clarify that residential and nonresidential unit owners shall be considered tenants for purposes of rules for electricity and natural gas submetering and for energy allocation equipment.

AT RICHMOND, APRIL 14, 2025

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUR-2024-00186

Ex Parte: In the matter of amending regulations

governing gas and electric submetering of tenants

ORDER ADOPTING REGULATIONS

The Rules for Electricity and Natural Gas Submetering and for Energy Allocation Equipment, 20VAC5-305-10 et seq. (Submetering Rules), adopted by the State Corporation Commission (Commission) pursuant to § 56-245.3 of the Code of Virginia (Code), establish requirements for owners using submetering and energy allocation equipment to measure and fairly allocate the costs of electric or gas to tenants of residential, commercial, or mixed-use properties.

Chapter 557 (House Bill 1376) of the 2024 Virginia Acts of Assembly (Chapter 557) added the following language to § 56-245.3 of the Code of Virginia to make clear that residential and non-residential unit owners shall be considered tenants for purposes of the Submetering Rules:

"D. For the purposes of rules promulgated pursuant to this section, billing requirements and all other rules related to submetering or energy allocation equipment use by tenants of an apartment house, office building, shopping center, or campground shall apply to residential and nonresidential unit owners."

On November 18, 2024, the Commission entered an Order Establishing Proceeding ("Procedural Order") for the purpose of revising the current Submetering Rules to reflect the change set forth in Chapter 557. The Commission appended to its Procedural Order proposed amendments to Rules 20VAC5-305-10 and 20VAC5-305-20 of the Submetering Rules ("Proposed Amendments"), which were prepared by Commission Staff (Staff). The Procedural Order, among other things, directed the Commission's Office of General Counsel to forward a copy of the Procedural Order to the Registrar of Regulations for publication in the Virginia Register of Regulations; directed Staff to provide copies of the Procedural Order to individuals, organizations, and companies that were identified by Staff as potentially being interested in this proceeding; provided interested persons an opportunity to comment and request a hearing on the Proposed Amendments; and directed Staff to file a report (Report) on or a response to any comments or requests for hearing submitted to the Commission on the Proposed Amendments.

On November 19, 2024, Staff provided copies of the Procedural Order and Proposed Amendments to individuals, organizations, and companies who were identified by Staff as potentially being interested in this proceeding, and Staff filed its proof of notice on the same date. On December 16, 2024, notice of the proceeding and the Proposed Amendments were published in the Virginia Register of Regulations. Electronic versions of the Procedural Order and Proposed Amendments were posted on the Commission's website. As directed in the Procedural Order, interested persons were instructed to comment on or request a hearing on the Proposed Amendments by January 13, 2025.

Kentucky Utilities Company d/b/a Old Dominion Power Company filed a letter stating that it had no comments on the Proposed Amendments. No comments or requests for hearing on the Proposed Amendments were received.

On February 28, 2025, Staff filed its Report concluding that the Proposed Amendments appear sufficient to meet the requirements of Chapter 557 and recommending that the Commission adopt the Proposed Amendments.[1]

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that the Proposed Amendments, attached hereto as Appendix A, should be adopted as final rules.

Accordingly, IT IS ORDERED THAT:

(1) The Commission's Rules for Electricity and Natural Gas Submetering and for Energy Allocation Equipment, 20VAC5-305-10 et seq., are amended as shown in Appendix A attached to this Order and shall become effective on June 1, 2025.

(2) The Commission's Office of General Counsel shall forward a copy of this Order, with Appendix A, to the Registrar of Regulations for publication in the Virginia Register of Regulations.

(3) An electronic copy of this Order with Appendix A, including the amended Rules for Electricity and Natural Gas Submetering and for Energy Allocation Equipment, shall be made available on the Commission's website: scc.virginia.gov/regulated-industries/utility-regulation/pur-responsibilities/rulemaking.

(4) This docket 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.

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[1] Report at 2.

20VAC5-305-10. Definitions.

Certain words as used in this chapter shall be understood to have the following meaning:

"Apartment house" means a building ~~or buildings~~ with the primary purpose of residential occupancy containing more than two dwelling units, all of which are rented primarily for nontransient use, with rental paid at intervals of one week or longer. Apartment house includes residential condominiums and cooperatives whether rented or owner-occupied.

"Building" means all of the individual units served through the same utility-owned meter within an apartment house, office building, or shopping center as defined in this section.

"Campground" means and includes ~~but is not limited to~~ a travel trailer camp, recreation camp, family campground, camping resort, camping community, or any other area, place, parcel, or tract of land, by whatever name called, on which three or more campsites are occupied or intended for occupancy, or facilities are established or maintained, wholly or in part, for the accommodation of camping units for periods of overnight or longer, whether the use of the campsites and facilities is granted gratuitously, or by rental fee, lease, or conditional sale, or by covenants, restrictions, and easements. "Campground" does not include a summer camp, migrant labor camp, or park for mobile homes as defined in §§ 32.1-203 and 35.1-1 of the Code of Virginia, or a construction camp, storage area for unoccupied camping units, or property upon which the individual owner may choose to camp and not be prohibited or encumbered by covenants, restrictions, and conditions from providing sanitary facilities within the individual owner's property lines.

"Campsite" means and includes any plot of ground within a campground used or intended for occupation by the camping unit.

"Commission" means the State Corporation Commission of Virginia.

"Dwelling" means a room ~~or rooms~~ suitable for occupancy as a residence containing kitchen and bathroom facilities.

"Energy allocation equipment" means any device, other than submetering equipment, used to determine approximate electric or natural gas usage for any dwelling unit, nonresidential rental unit, or campsite within an apartment house, office building, shopping center, or campground.

"Energy unit" means the billing units for energy delivered to the master-metered customer. For electricity, the units are generally kilowatt hours (Kwh). For natural gas, the units are generally therms, but may be dekatherms (Dth), cubic feet (cf), hundreds of cubic feet (Ccf), or thousands of cubic feet (Mcf).

"Master meter" means a meter used to measure for billing purposes~~,~~ all electric or natural gas usage of an apartment house, office building, shopping center, or campground, including common areas, common facilities, and dwelling or rental units therein.

"Month" or "monthly" means the period between two consecutive meter readings, either actual or estimated, at approximately 30-day intervals.

"Nonresidential rental unit" means a room ~~or rooms~~ in which retail or commercial services, clerical work, or professional duties are carried out.

"Office building" means a building ~~or buildings~~ containing more than two rental units ~~which~~ that are rented primarily for retail, commercial, or professional use, with rental paid at intervals of one month or longer. Office buildings can include residential and nonresidential unit owners.

"Owner" means any owner, operator, or manager of an apartment house, office building, shopping center, or campground engaged in electrical or natural gas submetering or the use of energy allocation equipment.

"Owner-paid areas" means those areas for which the owner bears financial responsibility for energy costs, which include ~~but are not limited to~~ areas outside individual residential or nonresidential units or in owner-occupied or ~~-~~ shared areas such as maintenance shops, vacant units, meeting units, meeting rooms, offices, swimming pools, laundry rooms, or model apartments.

"Shopping center" means a building ~~or buildings~~ containing more than two stores ~~which~~ that are rented primarily for commercial, retail, or professional use. Shopping centers can include residential and nonresidential unit owners.

"Submeter" means electric energy or natural gas measurement device used in submetering.

"Submetering" means dwelling or rental unit electrical or natural gas direct remetering performed by the owner to measure the tenant's electrical or natural gas usage and to render a bill for such usage.

"Submetering equipment" means equipment used to measure actual electricity or natural gas usage in any dwelling unit, nonresidential rental unit, or campsite when such equipment is not owned or controlled by the electric or natural gas utility serving the apartment house, office building, shopping center, or campground in which the dwelling unit, nonresidential rental unit, or campsite is located.

"Tenant" means the occupant ~~or occupants~~ or residential or nonresidential unit owner of a submetered dwelling, ~~rental~~ unit, or campsite.

"Utility" means the supplier of electric service or natural gas service to a master meter.

20VAC5-305-20. General requirements.

Residential and nonresidential unit owners shall be considered tenants for billing requirements and all other rules in this chapter related to submetering or energy allocation equipment.

Submetering or energy allocation equipment may not be used in any dwelling unit unless all dwelling units in the apartment house utilize such equipment to the extent permitted by the physical facilities.

Any individual nonresidential rental unit, store, or campground may utilize submetering or energy allocation equipment, provided the rental agreement or lease between the owner and the tenant clearly states that the nonresidential rental unit, store, or campsite is or will be using submetering or energy allocation equipment.

All rental agreements and leases between the owner and the tenants shall clearly state that the dwelling unit, nonresidential rental unit, or campsite utilizes submetering or energy allocation equipment, that the basis of bills for electric or natural gas consumption will be rendered based on readings of such equipment, and that any disputes relating to the amount of the tenant's bill and the accuracy of the equipment will be between the tenant and the owner. Where applicable, the provisions of the Virginia Residential Landlord and Tenant Act (§ 55-248.2 et seq. of the Code of Virginia) will govern the landlord-tenant relationship concerning the use of submetering or energy allocation equipment on all related issues other than those covered by these rules.

Each owner shall be responsible for providing, installing, sealing (if necessary), and maintaining all submetering or energy allocation equipment necessary for the measurement or allocation of the costs for electrical energy or natural gas consumed by tenants.

Any electric submeter installed will be of a type and class to register properly the electrical consumption of the dwelling unit, nonresidential rental unit, or campsite, and such meter will meet the standards of the American National Standards Institute, Inc., Standard C12.1-2008 Code for Electricity Metering (ANSI C12.1).

Any natural gas submeter installed will be of a type and class to register properly the natural gas consumption of the dwelling, nonresidential rental unit, or campsite, and such meter will meet the standards of the American National Standard Institute Standards ANSI B109.1 (2000) and B109.2 (2000) for Diaphragm Type Gas Displacement Meters and ANSI B109.3 (2000) for Rotary Type Gas Displacement Meters (hereafter, ANSI B109).

Any energy allocation equipment installed will be of a type and class appropriate to the heating, ventilation, and air conditioning (HVAC) system of the apartment house, office building, shopping center, or campground and used in accordance with the manufacturer's installation specifications and procedures for such energy allocation equipment.

Any owner installing submetering or energy allocation equipment shall notify the commission and the utility providing electric or natural gas service to the apartment house, office building, shopping center, or campground in writing within 90 days of completion of such installation that the equipment has been installed and shall give the name of the apartment house, office building, shopping center, or campground; number of dwelling units, nonresidential rental units, or campsites in the project; location; mailing address of the owner; the approximate date of installation of the equipment; and the type, manufacturer, and model number of such equipment.

Natural gas submetering and energy allocation equipment, including related piping and materials, for which the owner is responsible shall be installed, operated, and maintained by the owner in conformity with all municipal, state, and federal requirements, including ~~but not limited to~~ § 56-257.2 of the Code of Virginia, and with the 2006 edition of the National Fuel Gas Code.

No building ~~or buildings which qualify~~ that qualifies as an apartment house, office building, or shopping center shall be excluded from this chapter because the apartment house, office building, or shopping center contains a mixture of dwelling units and nonresidential rental units.

VA.R. Doc. No. R25-8108; Filed April 15, 2025, 9:04 a.m.

Proposed Regulation

REGISTRAR'S NOTICE: The State Corporation Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

Title of Regulation: **20VAC5-314. Regulations Governing Interconnection of Small Electrical Generators and Storage (amending 20VAC5-314-10, 20VAC5-314-20, 20VAC5-314-38, 20VAC5-314-39, 20VAC5-314-70, 20VAC5-314-100, 20VAC5-314-150, 20VAC5-314-160, 20VAC5-314-170).**

Statutory Authority: §§ 12.1-13 and 56-578 of the Code of Virginia.

Public Hearing Information: A public hearing will be held upon request.

Public Comment Deadline: June 9, 2025.

Agency Contact: Mike Cizenski, Deputy Director, Division of Public Utility Regulation, State Corporation Commission, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9441, or email mike.cizenski@scc.virginia.gov.

Summary:

The proposed amendments (i) define "distributed energy resources" or "DER," (ii) specify treatment of material modifications to DER interconnection requests, (iii) modify the provisions for dispute resolution applicable to utilities and interconnecting generators, (iv) revise the insurance requirements applicable to DERs, (v) require DERs to follow cybersecurity standards, and (vi) revise schedules.

AT RICHMOND, APRIL 15, 2025

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUR-2023-00069

Ex Parte: In the matter of revising

the Commission's Regulations Governing

Interconnection of Small Electrical Generators

and Storage

ORDER FOR NOTICE AND COMMENT

On May 8, 2009, the State Corporation Commission ("Commission") adopted Regulations Governing Interconnection of Small Electrical Generators, 20VAC5-314-10 et seq. ("Interconnection Regulations") in Case No. PUE-2008-00004.1 The Commission initiated that rulemaking in accordance with § 56-578 C of the Code of Virginia, which provides, in part:

The Commission shall establish interconnection standards to ensure transmission and distribution safety and reliability, which standards shall not be inconsistent with nationally recognized standards acceptable to the Commission. In adopting standards pursuant to this subsection, the Commission shall seek to prevent barriers to new technology and shall not make compliance unduly burdensome and expensive.

On July 29, 2020, in Case No. PUR-2018-00107, the Commission revised the Interconnection Regulations.2 Subsequently, in Case No. PUR-2022-00073, a docket initiated to explore interconnection issues related to utility distribution energy resources (DER), the Commission determined it would be appropriate to initiate a rulemaking proceeding, in a separate docket, to examine certain potential changes to the Interconnection Regulations.3

On May 2, 2023, the Commission entered an Order Initiating Rulemaking Proceeding that, among other things, directed the Commission's Staff ("Staff") to solicit comments from, and to schedule a meeting or meetings (as necessary) with, stakeholders and persons having an interest in the Commission's Interconnection Regulations and the interconnection of small electrical generators and storage in the Commonwealth of Virginia, and to file a report ("Report") that included any proposed revisions to the current Interconnection Regulations that are developed with appropriate input from stakeholders and other interested persons. On January 21, 2025, Staff filed its Report and proposed regulations. On April 11, 2025, Virginia Electric and Power Company (DEV) filed a Motion of Virginia Electric and Power Company for Leave to File Comments to the Commission Staff Report.4

NOW THE COMMISSION, upon consideration of the foregoing, is of the opinion and finds that the Staff's proposed revisions, as appended hereto ("Proposed Rules"), should be considered for adoption. We further find that a copy of the Proposed Rules should be sent to the Registrar of Regulations for publication in the Virginia Register of Regulations.

Accordingly, IT IS ORDERED THAT:

(1) The Commission's Division of Information Resources shall forward a copy of this Order for Notice and Comment ("Order"), including a copy of the Proposed Rules, to the Registrar of Regulations for publication in the Virginia Register of Regulations.

(2) Within five business days of the filing of this Order with the Clerk of the Commission, Staff shall electronically transmit copies of this Order to those persons and entities identified by Staff as potentially having an interest in this matter. Staff shall maintain a list of names and addresses of the persons and entities to whom the Order was transmitted. Within five business days of the filing of this Order, Staff shall also include a copy of the Proposed Rules on the Division of Public Utility Regulation's website: scc.virginia.gov/pages/rulemaking.

(3) A copy of the Proposed Rules may be requested from Michael Cizenski, Division of Public Utility Regulation, at the following email address: mike.cizenski@scc.virginia.gov. An electronic copy of the Proposed Rules can also be found at the Division of Public Utility Regulation's website:

scc.virginia.gov/pages/rulemaking. Interested persons may also download unofficial copies of the Order and the Proposed Rules from the Commission's website: www.scc.virginia.gov/case-information/.

(4) On or before June 9, 2025, any interested person may comment on, propose modifications or supplements to, or request a hearing on the Proposed Rules following the instructions on the Commission's website: scc.virginia.gov/case-information/submit-public-comments. Those unable, as a practical matter, to submit such documents electronically may file such comments by U.S. mail to the Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118. All such documents shall refer to Case No. PUR-2023-00069. Individuals should be specific in their comments, proposals, or supplements to the Proposed Rules and shall address only those issues directly related to the Proposed Rules. Any request for hearing shall state with specificity why the issues raised in the request for hearing cannot be adequately addressed in written comments.

(5) All documents filed with the Office of the Clerk of the Commission in this docket may use both sides of the paper. In all other respects, all filings shall comply fully with the requirements of 5VAC5-20-150, Copies and format, of the Commission's Rules of Practice and Procedure, 5VAC5-20-10 et seq. ("Rules of Practice").

(6) All comments and other documents and pleadings filed in this matter shall be submitted electronically to the extent authorized by Rule 5VAC5-20-150, Copies and format, of the Rules of Practice. Confidential and Extraordinarily Sensitive Information shall not be submitted electronically and shall comply with Rule 5VAC5-20-170, Confidential information, of the Rules of Practice. Any person seeking to hand deliver and physically file or submit any pleading or other document shall contact the Clerk's Office Document Control Center at (804) 371-9838 to arrange the delivery.

(7) Pursuant to 5VAC5-20-140, Filing and service, of the Rules of Practice, the Commission directs that service on parties and the Staff in this matter shall be accomplished by electronic means. Concerning Confidential or Extraordinarily Sensitive Information, parties and the Staff are instructed to work together to agree upon the manner in which documents containing such information shall be served upon one another, to the extent practicable, in an electronically protected manner, even if such information is unable to be filed in the Office of the Clerk.

(8) On or before July 16, 2025, the Staff shall file with the Clerk of the Commission a report on or a response to any comments, proposals, or requests for hearing submitted to the Commission on the Proposed Rules.

(9) This matter is continued.

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.

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[1] Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: In the matter of establishing interconnection standards for distributed electric generation, Case No. PUE-2008-00004, 2009 S.C.C. Ann. Rept. 287, Order Adopting Regulations (May 8, 2009).

[2] Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: In the matter of revising the Commission's Regulations Governing Interconnection of Small Electrical Generators, Case No. PUR-2018-00107, 2020 S.C.C. Ann. Rept. 226, Order Adopting Regulations (July 29, 2020). In its Order Adopting Regulations, the Commission revised the title of the chapter to be "Regulations Governing Interconnection of Small Electrical Generators and Storage."

[3] Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: In the matter considering utility distributed energy resource interconnection-related issues and questions, Case No. PUR-2022-00073, Doc. Con. Cen. No. 230310110, Order (Mar. 3, 2023).

[4] Attachment A to DEV's Motion included proposed comments. The Commission will consider DEV's comments as part of its rulemaking process and notes that DEV may file additional comments on the Proposed Rules consistent with Ordering Paragraph 4.

20VAC5-314-10. Applicability and scope; waiver.

A. This chapter is promulgated pursuant to § 56-578 of the Virginia Electric Utility Regulation Act (§ 56-576 et seq. of the Code of Virginia). This chapter establishes standardized interconnection and operating requirements for the safe operation of electric generating facilities in Virginia. This chapter applies to utilities providing interconnections to retail electric customers, independently owned generators, and any other parties operating, or intending to operate, a distributed generating facility in parallel with utility systems. This chapter also applies to equipment used for the storage of electricity for later injection to utility systems. This chapter does not apply to customer generators operating pursuant to the Virginia State Corporation Commission's Regulations Governing Net Energy Metering (20VAC5-315) or those that fall under the jurisdiction of the Federal Energy Regulatory Commission (FERC).

If the utility has turned over control of its transmission system to a Regional Transmission Entity (RTE), and if the small generator interconnection process identifies upgrades to the transmission system as necessary to interconnect the small generating facility, then the utility will coordinate with the RTE, and the procedures in this chapter will be adjusted as necessary to satisfy the RTE's requirements with respect to such upgrades.

There are three review paths for the interconnection of generating facilities subject to this chapter in Virginia:

Level 1 - A request to interconnect a certified small generating facility (SGF) no larger than 500 kilowatts (kW) shall be evaluated under the Level 1 process.

Level 2 - A request to interconnect a certified SGF no larger than 2 MW and not qualifying for the Level 1 process shall be evaluated under the Level 2 process.

Level 3 - A request to interconnect an SGF not qualifying for the Level 1 process or Level 2 process, shall be evaluated under the Level 3 process.

The utility may place restrictions upon the interconnection of an SGF to a distribution feeder depending upon the characteristics of that feeder and the potential for upgrading it, as well as the nature of the loads and other generation on the feeder relative to the proposed point of interconnection. If the SGF cannot be safely and reliably interconnected to the utility's distribution feeder, the utility shall work with the interconnection customer (IC) to interconnect the SGF to the utility's transmission system. In such cases, the interconnection of the SGF may be governed by the regulations promulgated by FERC rather than the regulation of the Virginia State Corporation Commission.

The utility shall designate an employee or office from which the IC may request information concerning the interconnection application process. The name, telephone number, and email address of such contact employee or office shall be made available on the utility's website. Readily available electric system information relevant to the location of the proposed SGF shall be provided to the IC upon request, in writing, and may include interconnection studies and any other relevant materials, to the extent such provision does not violate confidentiality provisions of prior agreements or release critical infrastructure information. The utility shall comply with reasonable requests for such information unless the information is proprietary or confidential and cannot be provided pursuant to a prior confidentiality agreement. If the information is proprietary or confidential and cannot be provided, the utility shall state as such. Any one developer shall have no more than five active informal requests for information at one time.

The utility shall make reasonable efforts to meet all timeframes provided in these regulations unless the utility and the IC agree to a different schedule. If the utility cannot meet a deadline provided in this chapter, it shall notify the IC in writing, explain the reason for the failure to meet the deadline, and provide an estimated time by which it will complete the applicable interconnection procedure in the process.

Should an IC fail to meet a timeframe or default on another requirement under this chapter or fail to respond to a request for information from the utility, the utility shall also provide the IC written notice identifying the missed deadline or requirement and allow the IC an opportunity to cure on or before the close of business on the 10th business day following the posted date of such notice to cure, prior to the utility taking action to withdraw the IC's interconnection request.

Each utility shall have on file with the commission terms and conditions applicable to the interconnection of SGFs. Such terms and conditions shall, at a minimum, incorporate this chapter by reference, shall set forth terms and conditions applicable to SGFs for which no Small Generator Interconnection Agreement (SGIA) is executed, and shall not conflict with the provisions of this chapter. The terms and conditions applicable to SGFs for which no SGIA is executed shall be reasonably consistent with the terms and conditions of the SGIA.

B. The commission may waive any or all parts of the provisions of this chapter for good cause shown.

C. This chapter shall not apply to SGFs already interconnected as of October 15, 2020, unless:

1. The IC proposes a material modification; or

2. Application of this chapter is agreed to in writing by the utility and the IC.

D. This chapter shall apply if the IC has not actually interconnected the SGF as of October 15, 2020.

Any IC that has not executed an interconnection agreement with the utility prior to October 15, 2020, shall have 30 calendar days following the later of October 15, 2020, or the posted date of notice in writing from the utility to (i) demonstrate site control pursuant to Schedule 5 or 6 of 20VAC5-314-170; (ii) execute a combined study agreement as provided for in 20VAC5-314-70 or individual revised study agreements conforming with those set forth in Schedules 7, 8, and 9 of 20VAC5-314-170; and (iii) to post the deposit as specified in Schedule 6 of 20VAC5-314-170 minus any study costs previously paid.

Any IC that has executed an interconnection agreement with the utility prior to October 15, 2020, but where the utility has not actually interconnected the SGF or where the IC has not begun making payments, shall have 60 calendar days following the later of October 15, 2020, or the posted date of notice in writing from the utility to submit upgrade and interconnection facility payments (or financial security acceptable to the utility for attachment facilities and distribution upgrades) required pursuant to 20VAC5-314-50 F 2. Any amount previously paid by the IC at the time the deposit or payment is due under this subsection shall be credited toward the deposit amount or other payment required under this subsection.

Should an IC fail to comply with the provisions of this subsection following receipt of a written notice specifying how the IC failed to comply and the expiration of an opportunity to cure by the close of business on the 10th business day following the posted date of such notice to cure, the IC will lose its queue number and the interconnection request shall be deemed withdrawn.

E. Each SGF shall comply with IEEE 1547 Standard for Interconnection and Interoperability of Distributed Energy Resources with Associated Electric Power Systems Interfaces, 2018, and shall conform with the following minimum requirements:

1. Abnormal operating performance category: Category III capabilities must be supported for inverter-based SGFs. Rotating SGFs must meet Category I capabilities; and

2. Normal operating performance category: inverter-based SGFs must meet Category B capabilities and rotating SGFs must meet Category A capabilities.

F. Each utility shall post the utility's preferred settings in the utility's public-facing technical interconnection and interoperability requirements (TIIR) document. TIIR documents shall be submitted to the commission for approval with opportunity for public comment. Subsequent changes to TIIRs shall also be submitted to the commission for approval with opportunity for public comment. At a minimum, the following shall be identified in the TIIR documents: (i) voltage and frequency trip settings, (ii) frequency drop settings, (iii) activated reactive power control function and settings, (iv) voltage-active power mode activation and settings, (v) enter service settings, and (vi) communication protocols and ports requirements.

G. Each utility shall establish the utility's own utility-specific minimum cybersecurity standards based on, and not in conflict with, nationally recognized guidelines, including IEEE Standard 1547.3, Guide for Cybersecurity of Distributed Energy Resources Interconnected with Electric Power Systems, 2023, and the National Association of Regulatory Utility Commissioners' Cybersecurity Baselines for Electric Distribution Systems and DERs. These standards shall also include requirements for testing, validation, and auditing of the implemented cybersecurity measures. Each utility shall ensure these standards are publicly accessible by publishing these standards on the utility's respective websites.

20VAC5-314-20. Definitions.

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

"Affected system" means an electric utility system other than that of the utility that may be affected by the proposed interconnection.

"Affected system operator" means an entity that operates an affected system or, if the affected system is under the operational control of an independent system operator or a regional transmission entity, such independent entity.

"Applicable laws and regulations" means all duly promulgated applicable federal, state, and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders, permits, and other duly authorized actions of any government authority.

"Attachment facilities" means the facilities and equipment owned, operated, and maintained by the utility that are built new in order to physically connect the customer's interconnection facilities to the utility system. Attachment facilities shall not include distribution upgrades or previously existing distribution and transmission facilities.

"Bulk power system" means any electric generation resources, transmission lines, interconnections with neighboring systems, and associated equipment.

"Business day" means Monday through Friday, excluding federal holidays.

"Calendar day" means Sunday through Saturday, including all holidays.

"Certified" has the meaning ascribed to it in Schedule 2 of 20VAC5-314-170.

"Commission" means the Virginia State Corporation Commission.

"Customer's interconnection facilities" means all of the facilities and equipment owned, operated, and maintained by the IC, between the small generating facility and the point of interconnection necessary to physically and electrically interconnect the small generating facility to the utility system.

"Default" means the failure of a breaching party to cure its breach under the SGIA.

"Distribution system" means the utility's facilities and equipment generally delivering electricity to ultimate customers from substations supplied by higher voltages (usually at transmission level). For purposes of this chapter, all portions of the utility's transmission system regulated by the commission for which interconnections are not within FERC jurisdiction are considered also to be subject to this chapter.

"Distributed energy resource" or "DER" means a source of electric power that is not directly connected to the bulk power system. A DER includes both generators and energy storage facilities operating in parallel to the distribution system and capable of exporting active power to an electric power system.

"Distribution upgrades" means the additions, modifications, and enhancements made to the utility's distribution system on the utility's side of the point of interconnection necessary to ensure continued system reliability and power quality on the utility's distribution system caused by the interconnection of the SGF. Distribution upgrades do not include network upgrades or the customer's interconnection facilities or the utility's attachment facilities.

"Electric power system" means a facility that delivers electric power to a load.

"Energy storage system" has the meaning ascribed to it in 20VAC5-335-20.

"Facilities study" has the meaning ascribed to it in 20VAC5-314-70 E.

"Feasibility study" has the meaning ascribed to it in 20VAC5-314-70 C.

"FERC" means the Federal Energy Regulatory Commission.

"Good Utility Practice" means any of the practices, methods, and acts engaged in or approved by a significant portion of the electric industry during the relevant time period, or any of the practices, methods, and acts that, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost, consistent with good business practices, reliability, safety, and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to include practices, methods, or acts generally accepted in the region.

"Governmental authority" means any federal, state, local, or other governmental regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority having jurisdiction over the parties, their respective facilities, or the respective services they provide, and exercising or entitled to exercise any administrative, executive, police, or taxing authority or power; provided that such term does not include the IC, the utility, or a utility affiliate.

"Interconnection customer" or "IC" means any entity proposing to interconnect a new small generating facility with the utility system.

"Interconnection request" means the IC's request, in accordance with this chapter, to interconnect a new small generating facility, or to increase the capacity of, or make a material modification to the operating characteristics of, an existing small generating facility that is interconnected with the utility system.

"Interconnection studies" means the studies conducted by the utility, or, if agreed to by the utility and the IC, a third party supervised by the utility, in order to determine the interaction of the small generating facility with the utility system and the affected systems in order to specify any modifications to the small generating facility or the electric systems studied to ensure safe and reliable operation of the small generating facility in parallel with the utility system.

"Interdependent customer" or "interdependent project" means an IC or project whose upgrades to the utility system or attachment facilities are impacted by another earlier-queued generating facility, as determined by the utility.

"Material modification" has the meaning ascribed to it in 20VAC5-314-39.

"Maximum generating capacity" means the maximum continuous electrical output of the SGF at any time as measured at the point of interconnection or the maximum kW delivered to the utility during any metering period, whichever is greater. Requested maximum generating capacity will be specified by the IC in the interconnection request and an approved maximum generating capacity will subsequently be included as a limitation in the interconnection agreement.

"Network upgrades" means additions, modifications, and enhancements to the utility's transmission system that are required in order to accommodate the interconnection of the small generating facility with the utility's system. Network upgrades do not include distribution upgrades.

"Operating requirements" means any operating and technical requirements that may be applicable due to regional transmission entity, independent system operator, control area, or the utility's requirements, including those set forth in the SGIA.

"Party" means the utility or the IC.

"Point of interconnection" means the point where the customer's interconnection facilities connect physically and electrically to the utility's system.

"Processing fee" means a nonrefundable cost to administer or file an application.

"Project A" means any interconnection request that is not interdependent with another interconnection request.

"Project B" means any interconnection request that is interdependent with only one other interconnection request and has a higher queue number than a designated Project A.

"Queue number" refers to the number assigned by the utility, establishing a customer's interconnection request position in the study queue relative to all other valid interconnection requests. A lower queue number will be studied prior to a higher queue number, except in the case of interdependent projects.

"Regional Transmission Entity" or "RTE" means an entity having the management and control of a utility's transmission system as further set forth in § 56-579 of the Code of Virginia.

"Small generating facility" or "generating facility" or "generator" or "SGF" means the IC's equipment used for the production of electricity, as identified in the interconnection request.

"Small Generator Interconnection Agreement" or "SGIA" means the agreement between the utility and the IC as set forth in Schedule 10 of 20VAC5-314-170.

"Standby generating facility" means an electric generating facility primarily designed for standby or backup power in the event of a loss of power supply from the utility. Such facilities may operate in parallel with the utility for a brief period of time when transferring load back to the utility after an outage, or when testing the operation of the facility and transferring load from and back to the utility.

"Supplemental review" has the meaning ascribed to it in 20VAC5-314-60 H.

"System" or "utility system" means the distribution and transmission facilities owned, controlled, or operated by the utility that are used to deliver electricity.

"System impact study" has the meaning ascribed to in 20VAC5-314-70 D.

"System upgrades" means distribution upgrades and network upgrades collectively.

"Tariff" means the rates, terms, and conditions filed by the utility with the commission for the purpose of providing commission-regulated electric service to retail customers.

"Technical interconnection and interoperability requirements" or "TIIR" means the public documents, often utility specific, that include requirements for interconnection, interoperability, capabilities, their utilization (settings), and grid integration.

"Transmission system" means the utility's facilities and equipment delivering electric energy to the distribution system, such facilities being operated at voltage levels above the utility's typical distribution system voltage levels.

"Utility" means the public utility company subject to regulation by the commission pursuant to Chapter 10 (§ 56-232 et seq.) of Title 56 of the Code of Virginia with regard to rates or service quality, to whose system the IC proposes to interconnect a small generating facility.

20VAC5-314-38. Queue number and interdependent projects.

A. Queue number and queue position. The utility shall assign a queue number to an interconnection request based upon the date-stamp and time-stamp of receipt of a completed Interconnection Request Form by the utility. A later received Interconnection Request Form shall be assigned a higher numerical queue number than an earlier received Interconnection Request Form. The queue number and relative position of each interconnection request will be used to determine the cost responsibility for the upgrades necessary to accommodate the interconnection.

B. Interdependent projects.

1. Upon an IC's submission of an interconnection request for the 20VAC5-314-40 Level 1 interconnection process, 20VAC5-314-60 Level 2 interconnection process, or 20VAC5-314-70 Level 3 interconnection process, the utility shall review the interconnection request and make a preliminary determination of whether any interdependencies exist between the IC's proposed SGF and any other IC with a lower queue number. If the interconnection request is for a standby SGF with zero export, then the proposed SGF shall be studied as a Project A. For all other interconnections, any preliminary determination by the utility that the SGF does not create an interdependency will result in the interconnection request being preliminarily designated as a Project A, and the utility shall proceed immediately to either the 20VAC5-314-40, 20VAC5-314-60, or 20VAC5-314-70 Level 1, 2, or 3 study process, as applicable. At the 20VAC5-314-70 B scoping meeting, the utility shall advise the IC regarding its preliminary determination of whether interdependency would be created by the SGF. If no 20VAC5-314-70 B scoping meeting is scheduled, then the utility shall notify the IC in writing within five business days after making its preliminary determination of whether interdependency would be created by the SGF. If applicable, the Project A IC will pay the interconnection request study deposit required for the 20VAC5-314-70 Level 3 study process as identified in Schedule 6 of 20VAC5-314-170 in conjunction with the execution of the initial study agreement delivered by the utility pursuant to 20VAC5-314-70. An SGF preliminarily reviewed for system impacts and designated as a Project A may still be determined later to create an interdependency and may then be redesignated by the utility as an interdependent project during the 20VAC314-70 D system impact study process, thereby losing its Project A designation. Once the system impact study report is issued by the utility and the report designates an SGF as a Project A for purposes of the 20VAC314-70 E facilities study, the interconnection request shall retain this Project A designation during the facilities study, without change.

2. If the utility determines that the IC's proposed SGF is interdependent with one other interconnection request with a lower queue number (i.e., an earlier submitted interconnection request), the utility shall notify the IC in writing or at the 20VAC5-314-70 B scoping meeting that the interconnection request is designated as a Project B.

a. Following the 20VAC5-314-70 B scoping meeting, the Project B IC shall then have the option to either:

(1) Wait without further advancement of the interconnection request until Project A has executed a final interconnection agreement and begun making payments for any required upgrades, customer interconnection facilities, and other charges under 20VAC314-50 F. Under this option, Project B is not required to adhere to the timeline in 20VAC5-314-70 C until Project A has signed an SGIA and begun making payments or withdrawn its interconnection request; or

(2) ~~Proceed~~ Wait without further advancement of the interconnection request until Project A has received the Facilities Study Agreement pursuant to ~~the~~ 20VAC314-70 D ~~system impact study process~~ 10. If the Project B IC chooses this option, the utility shall provide the Project B IC a Feasibility Study Agreement pursuant to 20VAC5-314-70 C or a System Impact Study Agreement pursuant to 20VAC5-314-70 D within 10 business days. If the Project B IC signs a System Impact Study Agreement and pays the interconnection request study deposit pursuant to Schedule 6 of 20VAC5-314-170, the Project B shall

receive a system impact study report that assumes the Project A interconnection request with the lower queue number completes construction and interconnection, and another system impact study report that assumes the Project A interconnect request with the lower queue number is not constructed and is withdrawn. The Project B IC is responsible for all costs for studying with and without Project A.

b. The utility shall not proceed to a Project B facilities study until after the Project B IC returns a signed Facilities Study Agreement to the utility and the utility has issued the 20VAC314-70 E facilities study report for Project A. Once the Project A facilities study report has been issued, the Project B IC shall then have the option to either:

(1) Wait without further advancement of the interconnection request until Project A has executed a final interconnection agreement and begun making payments for any required upgrades, customer interconnection facilities, and other charges under 20VAC314-50 F. Under this option, Project B is not required to adhere to the timeline in 20VAC5-314-70 E until Project A has signed an SGIA and begun making payments or withdrawn its interconnection request; or

(2) Proceed with a 20VAC314-70 E facilities study process. If the Project B IC chooses this option, the utility shall provide the Project B IC a Facilities Study Agreement pursuant to 20VAC5-314-70 E within 10 business days. If the Project B IC signs a Facilities Study Agreement prior to Project A committing to construction by signing the final interconnection agreement and beginning to make payments, then Project B's facilities study shall assume that the Project A interconnection request with the lower queue number will complete construction and interconnection. If Project A is later canceled prior to the Project A IC making payment for the required upgrades, the utility shall revise the Project B facilities study at the Project B IC's expense.

3. If the utility determines that the IC's proposed SGF is interdependent with more than one other interconnection request with a lower queue number (i.e., an earlier submitted interconnection request), the utility shall notify the IC at the 20VAC5-314-70 B scoping meeting and describe generally the number and type of interdependencies of interconnection requests with lower queue numbers.

a. The utility shall not study a project if it is interdependent with more than one earlier queued project. The utility will study a project when interdependency with only one earlier queued project exists. The removal of interdependency with multiple projects may be the result of (i) upgrades to the utility system that eliminate the cause of the interdependency, (ii) withdrawal of interdependent projects with lower queue numbers, or (iii) a lower queue number project signing an interconnection agreement and making payments identified in their SGIA.

b. Within five business days of an interconnection request becoming a Project B interconnection request that is interdependent with only one other interconnection request with a lower queue number, the utility shall schedule the 20VAC5-314-70 B scoping meeting and provide the new Project B IC the options specified in subdivision 2 a of this subsection. Upon being designated by the utility as a Project B, the IC's queue number shall be used to determine the order in which the interconnection request is studied under 20VAC314-70 D relative to all other interconnection requests.

C. Interconnection requests submitted prior to October 15, 2020. Other than as set forth in 20VAC5-314-10 C, nothing in this chapter affects an IC's queue number assigned before October 15, 2020. Interconnection requests that have received a system impact study report as of October 15, 2020, that did not identify any interdependency with another project shall be deemed a Project A. Any interconnection requests for which the utility has not completed the system impact study and issued a system impact study report (or combined study report, as applicable) to the IC as of October 15, 2020, shall be reviewed for interdependency pursuant to this section.

Should an IC fail to comply with 20VAC5-314-10 C following receipt of written notice specifying how the IC failed to comply and the expiration of an opportunity to cure by the close of business on the 10th business day following the posted date of such notice to cure, the IC shall lose its queue number and the interconnection request shall be deemed withdrawn.

20VAC5-314-39. Modification of the interconnection request.

A. As used in this chapter, "material modification" means a modification to machine data or equipment configuration or to the interconnection site of the SGF that has a material impact on the cost, timing, or design of any customer interconnection facilities or upgrades or that may adversely impact other interdependent interconnection requests with higher queue numbers. Material modifications include certain project revisions as defined in subsection B of this section, but exclude certain project revisions as defined in subsection C of this section.

B. Changes that qualify as material modifications are described as follows:

1. A change in point of interconnection to a new location, unless ~~the change in a point of interconnection is on the same circuit less than two poles away from the original location, and~~ the new point of interconnection is within the same protection zone as the original location and the change in the point of interconnection is agreeable to the utility;

2. A change or replacement of generating equipment, such as generators, inverters, transformers, relaying, or controls, that is not a like-kind substitution in size, ratings, impedances, efficiencies, or capabilities of the equipment specified in the original or preceding interconnection request;

3. A change from certified to noncertified devices ("Certified" means certified by an Occupational Safety and Health Administration recognized Nationally Recognized Test Laboratory, to relevant Underwriters Laboratories and Institute of Electrical and Electronics Engineers standards, authorized to perform tests to such standards.);

4. A change of transformer connections or grounding from that originally proposed;

5. A change to certified inverters with different specifications or different inverter control specifications or set-up than originally proposed;

6. An increase of the maximum generating capacity of an SGF; or

7. A change reducing the maximum generating capacity of the SGF (i) by more than ~~25% before the Feasibility Study Agreement or Combined Study Agreement has been executed~~ the amount specified in subdivision C 3 of this section or (ii) ~~by more than 10% after the Feasibility Study Agreement or Combined Study Agreement has been executed~~ through more than one request.

C. Changes that do not qualify as material modifications are described as follows:

1. A change in ownership of an SGF; the new owner, however, will be required to execute a new Interconnection Request Form and study agreements for any study that has not been completed and the report issued by the utility;

2. A change or replacement of generating equipment, such as generators, inverters, solar panels, transformers, relaying, or controls, that is a like-kind substitution in size, ratings, impedances, efficiencies, or capabilities of the equipment specified in the original or preceding interconnection request;

3. A one-time change reducing the maximum generating capacity of the SGF by up to 75% before the Facilities Study Agreement;

4. An increase in the DC/AC ratio that does not increase the maximum AC output capability of the generating facility;

~~4.~~ 5. A decrease in the DC/AC ratio that does not reduce the AC output capability of the generating facility by more than the amount specified in subdivision ~~B 7~~ C 3 of this section.

~~5.~~ 6. A change in the DC system configuration to include additional equipment that does not impact the maximum generating capacity, daily production profile, or the proposed AC configuration of the SGF or energy storage ~~device~~ system, including DC optimizers, DC-DC converters, DC charge controllers, powerplant controllers, and energy storage ~~devices~~ systems such that the output is delivered during the same periods and with the same profile considered during the system impact study.

D. To the extent an IC proposes to modify any information provided in the interconnection request deemed complete by the utility, the IC shall submit any such modifications to the utility in writing. If the utility determines that the proposed modifications constitute a material modification, the utility shall notify the IC in writing within 10 business days that the modification is a material modification, and the interconnection request shall be withdrawn from the queue unless the IC withdraws the proposed material modification within 10 business days of receipt of the utility's written notification. If the modification is determined by the utility not to be a material modification, then the utility shall notify the IC in writing that the modification has been accepted and that the IC shall retain its queue number. An IC may seek an informal determination from the utility of whether a proposed modification constitutes a material modification in accordance with subdivision E of this section.

E. Modification inquiry.

1. Prior to making any modification, the IC may submit an informal modification inquiry in writing that requests the utility to evaluate whether the proposed modifications to the original or most recent interconnection request is a material modification. The IC shall provide specific details on all changes that are to be considered by the utility.

2. In response to IC's informal request, if the utility evaluates the proposed modifications and determines that the changes are not material modifications, the utility shall inform the IC in writing within 10 business days. If the IC wishes to proceed with the proposed modifications, the IC shall submit a revised Interconnection Request Form that reflects the approved modifications.

20VAC5-314-70. Level 3 interconnection process.

A. The Level 3 interconnection process shall be used by an IC proposing to interconnect an SGF with the utility system if the SGF does not pass or qualify for the Level 1 or Level 2 interconnection processes. As needed, a scoping meeting, feasibility study, system impact study, and facilities study shall precede the preparation of an SGIA (Schedule 10 of 20VAC5-314-170). Any of the studies may be combined by mutual, written agreement of the parties along with payment of applicable interconnection study deposit, set forth in Schedule 6 of 20VAC5-314-170. Such agreement for a combined study shall, at a minimum, include milestones for completion. The combined study timeframes and fees shall not exceed the aggregate timeframes and fees of the individual studies as specified in this section. To maintain its position in the utility's interconnection queue, the IC must execute the agreement for combined study, return it to the utility, and pay the interconnection request study deposit set forth in Schedule 6 of 20VAC5-314-170 within 15 business days after receipt of the agreement. If the IC fails to return the executed agreement for combined study or make the full payment of the interconnection request study deposit within 15 business days

after receipt of the agreement, the interconnection request shall be deemed withdrawn, and the interconnection request shall lose its place in the utility's interconnection queue.

B. Scoping meeting.

1. The purpose of the scoping meeting is to discuss the interconnection request and the utility's preliminary interdependency determination. The parties shall discuss the studies potentially required to safely and reliably interconnect the IC to the utility's system, including the cost responsibilities for the studies.

2. A scoping meeting shall be held no later than 10 business days after the Interconnection Request Form is deemed complete or as otherwise mutually agreed to in writing by the parties. The utility and the IC shall bring to the meeting all resources as may be reasonably required to accomplish the purpose of the meeting, such as system engineers and other personnel.

3. The scoping meeting may be omitted by mutual, written agreement of the parties.

C. Feasibility study.

1. If the parties agree that a feasibility study should be performed, the utility shall provide the IC with a Feasibility Study Agreement (Schedule 7 of 20VAC5-314-170), including an outline of the scope of the feasibility study and an estimate of the cost to perform the study, no later than 10 business days after the scoping meeting or 10 business days after the decision is made to not have a scoping meeting and otherwise pursuant to subsection D of this section.

If the parties agree to not perform a feasibility study, the utility shall provide the IC a System Impact Study Agreement (Schedule 8 of 20VAC5-314-170) including an outline of the scope of the study and an estimate of the cost to perform the study no later than 10 business days after the scoping meeting or five business days after the decision is made to not have a scoping meeting.

2. To maintain its position in the utility's interconnection queue, the IC must execute the Feasibility Study Agreement, return it to the utility, and pay the interconnection request study deposit set forth in Schedule 6 of 20VAC5-314-170 within 15 business days after receipt of the agreement. If the IC fails to return the executed Feasibility Study Agreement or make the full payment of the interconnection request study deposit within 15 business days after receipt of the agreement, the interconnection request shall be deemed withdrawn and the interconnection request shall lose its place in the utility's interconnection queue.

3. A feasibility study shall identify any potential adverse system impacts that would result from the interconnection of the SGF.

4. Feasibility study costs will be deducted from the interconnection request study deposit pursuant to Schedule 7 of 20VAC5-314-170.

5. The feasibility study shall be based on the technical information provided by the IC in the Interconnection Request Form, as may be modified as the result of the scoping meeting. The utility reserves the right to request additional technical information from the IC as may reasonably become necessary consistent with Good Utility Practice during the course of the feasibility study and as designated in accordance with the standard small generator interconnection procedures. All modifications made to the interconnection request shall be made in writing to the utility. If the IC submits a modification to its interconnection request in writing and the utility determines the modification is not a material modification, the time to complete the feasibility study may be extended by mutual, written agreement of the parties.

6. In performing the feasibility study, the utility shall rely, to the extent reasonably practicable, on recent studies. The IC shall not be charged for such existing studies; however, the IC shall be responsible for charges associated with any new study or modifications to existing studies that are reasonably necessary to perform the feasibility study.

7. The feasibility study report shall provide the following analyses for the purpose of identifying any potential adverse system impacts that would result from the interconnection of the SGF:

a. Initial identification of any circuit breaker short circuit capability limits exceeded;

b. Initial identification of any thermal overload or voltage limit violations;

c. Initial review of grounding requirements and electric system protection; and

d. Description and estimated cost of facilities and estimated construction time required to interconnect the SGF and to address the identified short circuit and power flow issues.

8. The feasibility study shall model the impact of the SGF for all purposes identified in the Interconnection Request Form in order to avoid the further expense and interruption of operation for reexamination of feasibility and impacts if the IC later changes the purpose for which the SGF is being installed.

9. The feasibility study shall include a determination of the feasibility of all potential points of interconnection for an SGF at the specified site as requested by the IC and shall be at the IC's cost.

10. A feasibility study report shall be prepared and transmitted to the IC within 30 business days of the utility's receipt of the complete executed Feasibility Study

Agreement and required deposit. If the utility expects to miss the 30-business-day deadline, the utility must notify the IC in writing at least five business days before the deadline and provide a new expected completion date.

11. If the feasibility study shows no potential for adverse system impacts, then within 10 business days of the completion of the study, the utility shall send the IC either an SGIA (Schedule 10 of 20VAC5-314-170) or a Facilities Study Agreement (Schedule 9 of 20VAC5-314-170), including an outline of the scope of the facilities study and an estimate of the cost to perform the study.

12. If the feasibility study shows potential for adverse system impacts, the review process shall proceed to the system impact study.

D. System impact study.

1. No later than 10 business days after the parties agree that a system impact study should be performed, the utility shall provide the IC a System Impact Study Agreement (Schedule 8 of 20VAC5-314-170), including an outline of the scope of the system impact study and an estimate of the cost to perform the study.

2. To maintain its position in the utility's interconnection queue, the IC must execute the System Impact Study Agreement, return it to the utility, and if applicable, pay the interconnection request study deposit set forth in Schedule 6 of 20VAC5-314-170 within 15 business days after receipt of the agreement. If the IC fails to return the executed System Impact Study Agreement or make the full payment of the applicable interconnection request study deposit within 15 business days after receipt of the agreement, the interconnection request shall be deemed withdrawn, and the interconnection request shall lose its place in the utility's interconnection queue.

3. System impact study costs will be deducted from the interconnection request study deposit pursuant to Schedule 8 of 20VAC5-314-170.

4. A system impact study shall identify and detail the electric system impacts that would result if the SGF were interconnected without project modifications or electric system modifications, including addressing any adverse electric system impacts identified in the feasibility study or in the scoping meeting. A system impact study shall evaluate the impact of the proposed interconnection on the reliability of the electric system.

5. A system impact study will be based upon the results of the feasibility study, if applicable, and the technical information provided by the IC in the interconnection request. The utility reserves the right to request additional technical information from the IC as may reasonably become necessary consistent with Good Utility Practice during the course of the system impact study. If the IC modifies its designated point of interconnection or interconnection request or the technical information provided in the connection request, the time to complete the system impact study may be extended by written, mutual agreement.

6. A system impact study shall consist of a study of the potentially impacted transmission and distribution systems, a short circuit analysis, a stability analysis, a power flow analysis, voltage drop and flicker studies, grounding reviews, distribution load flow study, analysis of equipment interrupting ratings, protection coordination study, communications study, and impacts on electric system operation, as necessary. A system impact study shall state the assumptions upon which it is based, state the results of the analyses, and provide the requirement or potential impediments to providing the requested interconnection service, including a preliminary indication of the cost and length of time that would be necessary to correct any problems identified in those analyses and implement the interconnection. A system impact study shall provide a list of facilities and modifications that would be required as a result of the interconnection along with estimates of cost responsibility and time to construct. If arranged with the utility prior to the utility preparing the System Impact Study Agreement, the system impact study may, at the IC's cost, include one or more alternatives to the point of interconnection; however, such alternative points must be on the same distribution circuit as the point of interconnection the IC specified as the proposed point of interconnection and the SGF must be at the same site.

7. Affected systems may participate in the preparation of a system impact study, with a division of costs among such entities as they may agree. All affected systems shall be afforded an opportunity to review and comment upon a system impact study that covers potential adverse system impacts on their electric systems, and the utility has 20 additional business days to complete a system impact study requiring review by affected systems.

8. If the utility uses a queuing procedure for sorting or prioritizing projects and their associated cost responsibilities for any required network upgrades, the system impact study shall consider all generating facilities, and with respect to clause iii of this subdivision, any identified upgrades associated with such higher queued interconnection) that, on the date the system impact study is commenced are (i) directly interconnected with the utility system or (ii) interconnected with affected systems and may have an impact on the proposed interconnection and (iii) have a pending higher queued interconnection request to interconnect with the utility system.

9. A system impact study, if required, shall be completed and the results transmitted to the IC within 45 business days after the System Impact Study Agreement is signed by the parties.

If the utility expects to miss the 45-business-day deadline, the utility must notify the IC in writing at least five business days before the deadline and provide a new expected completion date.

10. If the system impact study shows that facility modifications are needed to accommodate the SGF, then within 10 business days following transmittal of the system impact study report, the IC may request a one-time change reducing the maximum generating capacity according to the amount specified in 20VAC5-314-39 C 3 or the utility shall send the IC a Facilities Study Agreement (Schedule 9 of 20VAC5-314-170), including an outline of the scope of the study and an estimate of the cost to perform the study. The IC is responsible for all costs for the restudies required for the downsized SGF.

E. Facilities study.

1. The facilities study shall specify and estimate the cost of the equipment, engineering, procurement, and construction work needed to implement the conclusion of the feasibility impact study or system impact study and to allow the SGF to be interconnected and operate safely and reliably.

2. To maintain its position in the utility's interconnection queue, the IC must execute the Facilities Study Agreement and return it to the utility and, if applicable, pay the interconnection request study deposit set forth in Schedule 6 of 20VAC5-314-170 within 30 business days after receipt of the agreement, unless an extension has been agreed to in writing with the utility. Otherwise, the interconnection request shall be deemed withdrawn, and the interconnection request shall lose its place in the utility's interconnection queue.

3. Facilities study costs will be deducted from the interconnection request deposit pursuant to Schedule 9 of 20VAC5-314-170.

4. Design for any required customer's interconnection facilities, attachment facilities, or upgrades shall be performed under the facilities study. The utility may contract with consultants to perform activities required under the facilities study. The IC and the utility may agree in writing to allow the IC to separately arrange for the design of some of the customer's interconnection facilities. In such cases, facilities design will be reviewed or modified prior to acceptance by the utility, under the provisions of the facilities study. If the parties agree to separately arrange for design and construction, and provided security and confidentiality requirements can be met, the utility shall make sufficient information available to the IC in accordance with confidentiality and critical infrastructure requirements, to permit the IC to obtain an independent design and cost estimate for any necessary facilities.

5. The facilities study shall identify (i) the electrical switching configuration of the equipment, including transformer, switchgear, meters, and other station equipment; (ii) the nature and estimated cost of the attachment facilities and distribution upgrades necessary to accomplish the interconnection; and (iii) an estimate of the time required to complete the construction and installation of such facilities.

6. The utility may propose to group facilities required for more than one IC in order to minimize facilities costs through economies of scale, but any IC may direct the utility to install those facilities required for only the IC's own SGF if it pays the costs of those facilities.

7. In cases where system upgrades are required, the utility shall transmit the facilities study report within 45 business days after receipt of the completed Facilities Study Agreement. In cases where no system upgrades are necessary and the required facilities are limited to the IC's interconnection facilities and attachment facilities only, the utility shall transmit the facilities study report within 30 business days after receipt of the completed Facilities Study Agreement. If the utility expects to miss the 45-business-day or 30-business-day deadline, the utility must notify the IC in writing at least five business days before the deadline and provide a new expected completion date.

F. Construction planning meeting.

1. Within 15 business days of receipt of the report for the final study (i.e., the facilities study or, if applicable, a combined study that satisfies all study requirements), the IC shall request a construction planning meeting where failure to comply shall result in the interconnection request being deemed withdrawn. The construction planning meeting request shall be in writing and shall include the IC's reasonably requested date for completion of the construction of the customer's interconnection facilities and upgrades.

2. The construction planning meeting shall be scheduled within 15 business days of the request from the IC as stated in subdivision F 1 of this section, or as otherwise mutually agreed to in writing by the parties.

3. The purpose of the construction planning meeting is to identify the tasks for each party and discuss and determine the milestones for the construction of the system upgrades and attachment facilities. Agreed upon milestones shall be specific as to scope of action, responsible party, and dates of deliverables and shall be recorded in the SGIA (see Schedule 10 of 20VAC5-314-170) to be provided to the IC.

G. Small Generator Interconnection Agreement. No later than 10 business days after the construction planning meeting, the utility shall provide the IC an executable SGIA as set forth in 20VAC5-314-50 F (Schedule 10 of 20VAC5-314-170).

20VAC5-314-100. Disputes.

A. The parties agree to attempt to resolve all disputes arising out of the interconnection process according to the provisions of this section.

B. In the event of a dispute, either party shall provide the other party with a written notice of dispute. The notice shall describe in detail the nature of the dispute. The parties shall make a good faith effort to resolve the dispute informally within 10 business days.

C. If the dispute has not been resolved within 10 business days after receipt of the notice, either party may seek resolution assistance from the Division of Public Utility Regulation where the matter will be handled as an informal complaint.

Alternatively, the parties may, upon mutual agreement, seek resolution through the assistance of a dispute resolution service. The dispute resolution service will assist the parties in either resolving the dispute or in selecting an appropriate dispute resolution venue (e.g., mediation, settlement judge, early neutral evaluation, or technical expert) to assist the parties in resolving their dispute. Each party shall conduct all negotiations in good faith and shall be responsible for one-half of any costs paid to neutral third parties.

D. If the dispute remains unresolved, either party may petition the commission to handle the dispute as a formal complaint or may exercise whatever rights and remedies it may have in equity or law.

E. The specified time periods for the interconnection request shall be tolled during the period in which the parties are engaged in any of the dispute resolution processes described in this section. Tolling shall commence upon the initiation of a dispute resolution process and shall end upon the termination of such process. This tolling ensures that neither party is prejudiced by the time taken to resolve the dispute through informal or formal mechanisms. If the dispute remains unresolved after 20 business days, the utility shall provide a written notice to commission staff at the Division of Public Utility Regulation.

20VAC5-314-150. Capacity of the small generating facility.

A. If the interconnection request is for an increase in capacity for an existing SGF, the interconnection request shall be evaluated on the basis of the new total capacity of the SGF.

B. If the interconnection request is for a facility that includes multiple energy production or energy storage ~~devices~~ systems at a site for which the IC seeks a single point of interconnection, the interconnection request shall be evaluated on the basis of the maximum generating capacity of the facility.

C. The interconnection request shall be evaluated using the maximum capacity that the SGF is capable of injecting into the utility's electric system. However, if the maximum generating capacity that the SGF is capable of injecting into the utility's electric system is limited (e.g., through use of a control system, power relays, or other similar device settings or adjustments), then the IC must obtain the utility's agreement, with such agreement not to be unreasonably withheld, that the manner in which the IC proposes to implement such a limit will not adversely affect the safety and reliability of the utility's system. If the utility does not so agree, then the interconnection request must be withdrawn or revised to specify the maximum capacity that the SGF is capable of injecting into the utility's electric system without such limitations. Nothing in this section shall prevent a utility from considering an output higher than the limited output, if appropriate, when evaluating system protection impacts.

20VAC5-314-160. Insurance, liability, and indemnification.

A. For an SGF with a rated capacity not exceeding 10 kW, the IC, at its own expense, shall secure and maintain in effect during the term of the agreement, liability insurance with a combined single limit for bodily injury and property damage of not less than $100,000 for each occurrence.

For an SGF with a rated capacity exceeding 10 kW but not exceeding 500 kW, the IC, at its own expense, shall secure and maintain in effect during the term of the agreement, liability insurance with a combined single limit for bodily injury and property damage of not less than $300,000 for each occurrence.

For an SGF with a rated capacity exceeding 500 kW, the IC, at its own expense, shall secure and maintain in effect during the term of the agreement, liability insurance with a combined single limit for bodily injury and property damage of not less than $2 million for each occurrence.

An IC of sufficient creditworthiness, as determined by the utility, may propose to provide this insurance via a self-insurance program if it has a self-insurance program established in accordance with commercially acceptable risk management practices, and such a proposal shall not be reasonably rejected.

B. ~~Certificates of insurance evidencing the requisite coverage and provision shall be furnished to the utility prior to the date of interconnection of the SGF, as required by the utility.~~ The utility shall be permitted to periodically obtain proof of current insurance coverage from the IC in order to verify continuing proper liability insurance coverage. The utility reserves the right to refuse to commence or continue interconnected operations unless evidence is provided that required insurance coverage is in effect at all times.

C. Utility and IC liability to the other party for any loss, cost, claim, injury, liability, or expense, including reasonable attorney fees, relating to or arising from any act or omission pursuant to this chapter shall be limited to the amount of direct damage actually incurred. In no event shall either party be liable to the other party for any indirect, special, incidental, consequential, or punitive damages of any kind.

D. The utility and the IC shall at all times indemnify, defend, and save the other party harmless from any damages; losses; claims, including claims and actions relating to injury or death of any person or damage to property; demand; suits; recoveries; costs and expenses; court costs; attorney fees; and all other obligations by or to third parties arising out of or resulting from the other party's action or inaction of its obligations pursuant to this chapter on behalf of the indemnifying party, except in cases of gross negligence or intentional wrongdoing by the indemnified party.

20VAC5-314-170. Schedules for Chapter 314.

The following schedules shall be used in the administration of this chapter.

EDITOR'S NOTE: Schedules 1 and 2 of 20VAC5-314-170 are not amended; therefore, that text is not set out.

Schedule 3

Certification Codes and Standards

Attachment 3 of the FERC Small Generator Interconnection Procedures (SGIP) in 70 FR 34189 (June 13, 2005):

IEEE Std 1547 Standard for Interconnecting Distributed Resources with Electric Power Systems (including use of IEEE Std 1547.1 testing protocols to establish conformity and IEEE Std 1547.3 cybersecurity)

UL 1741 Inverters, Converters, and Controllers for Use in Independent Power Systems

IEEE Std 929-2000 IEEE Recommended Practice for Utility Interface of Photovoltaic (PV) Systems

NFPA 70 (2005), National Electrical Code

IEEE Std C37.90.1-1989 (R1994), IEEE Standard Surge Withstand Capability (SWC) Tests for Protective Relays and Relay Systems

IEEE Std C37.90.2 (1995), IEEE Standard Withstand Capability of Relay Systems to Radiated Electromagnetic Interference from Transceivers

IEEE Std C37.108-1989 (R2002), IEEE Guide for the Protection of Network Transformers

IEEE Std C57.12.44-2000, IEEE Standard Requirements for Secondary Network Protectors

IEEE Std C62.41.2-2002, IEEE Recommended Practice on Characterization of Surges in Low Voltage (1000V and Less) AC Power Circuits

IEEE Std C62.45-1992 (R2002), IEEE Recommended Practice on Surge Testing for Equipment Connected to Low-Voltage (1000V and Less) AC Power Circuits

ANSI C84.1-1995 Electric Power Systems and Equipment – Voltage Ratings (60 Hertz)

IEEE Std 100-2000, IEEE Standard Dictionary of Electrical and Electronic Terms

NEMA MG 1-1998, Motors and Small Resources, Revision 3

IEEE Std 519-1992, IEEE Recommended Practices and Requirements for Harmonic Control in Electrical Power Systems

NEMA MG 1-2003 (Rev 2004), Motors and Generators, Revision 1

NARUC Cybersecurity Baselines for Electric Distribution Systems and Distributed Energy Resources

EDITOR'S NOTE: Schedules 4, 5, and 6 of 20VAC5-314-170 are not amended; therefore, that text is not set out.

Schedule 7

LEVEL 3 FEASIBILITY STUDY AGREEMENT FOR SMALL GENERATING FACILITIES

This Agreement is made and entered into this _____day of _____20___ by and between_____ _____, a _____organized and existing under the laws of the state of _____, ("Interconnection Customer,") and _____, a_____existing under the laws of the state of_____, ("Utility"). Interconnection Customer and Utility each may be referred to as a "Party" or collectively as the "Parties."

RECITALS

WHEREAS, Interconnection Customer is proposing to develop an SGF or generating capacity addition to an existing SGF consistent with the interconnection request completed by Interconnection Customer on_____; and

WHEREAS, Interconnection Customer desires to interconnect the SGF with the Utility's system; and

WHEREAS, Interconnection Customer has requested the Utility to perform a feasibility study to assess the feasibility of interconnecting the proposed SGF with the Utility's system, and of any affected systems;

NOW, THEREFORE, in consideration of and subject to the mutual covenants contained in this Agreement the Parties agreed as follows:

1.0 The terms defined in Schedule 1 of 20VAC5-314-170 shall apply to this Schedule 7 of 20VAC 5-314-170.

2.0 The Interconnection Customer elects and the Utility shall cause to be performed an interconnection feasibility study

consistent with the standard small generator interconnection procedures.

3.0 The scope of the feasibility study shall be subject to the assumptions set forth in Attachment A to this Agreement.

4.0 Feasibility study costs will be deducted from the interconnection request study deposit, as set forth in Schedule 6 of 20VAC5-314-170.

4.1 Study cost shall be the Utility's actual incremental costs and will be invoiced to the Interconnection Customer no later than 60 business days after the study is completed and delivered and will include a summary of professional time. Actual study costs may be reconciled during the final accounting process described in Article 6 of the Interconnection Agreement, as applicable.

4.2 The Interconnection Customer shall pay any study costs that exceed the deposit within 20 business days after receipt of the invoice or resolution of any dispute. If the deposit exceeds the invoiced fees, the Utility shall refund the excess within 20 business days of the invoice without interest unless additional studies are required.

5.0 The feasibility study shall be based on the technical information provided by the Interconnection Customer in the interconnection request, as may be modified as the result of the scoping meeting. The Utility reserves the right to request additional technical information from the Interconnection Customer as may reasonably become necessary consistent with Good Utility Practice during the course of the feasibility study and as designated in accordance with the standard small generator interconnection procedures. If the information requested by the Utility is not provided by the Interconnection Customer within a reasonable timeframe to be identified by the Utility in writing, the Utility shall provide the Interconnection Customer written notice providing an opportunity to cure such failure by the close of business on the 10th business day following the posted date of such notice, where failure to provide the information requested within this period shall result in the study being terminated and the interconnection request being deemed withdrawn. The period of time for the Utility to complete the feasibility study shall be tolled during any period that the Utility has requested information in writing from the Interconnection Customer necessary to complete the study and such request is outstanding.

6.0 In performing the study, the Utility shall rely, to the extent reasonably practicable, on recent studies. The Interconnection Customer shall not be charged for such existing studies; however, the Interconnection Customer shall be responsible for charges associated with any new study or modifications to existing studies that are reasonably necessary to perform the feasibility study.

7.0 The feasibility study report shall provide the following analyses for the purpose of identifying any potential adverse system impacts that would result from the interconnection of the SGF as proposed:

7.1 Initial identification of any circuit breaker short circuit capability limits exceeded as a result of the interconnection;

7.2 Initial identification of any thermal overload or voltage limit violations resulting from the interconnection;

7.3 Initial review of grounding requirements and electric system protection; and

7.4 Description and nonbinding estimated cost of facilities required to interconnect the proposed SGF and to address the identified short circuit and power flow issues.

8.0 The feasibility study shall model the impact of the SGF for all purposes identified in the Interconnection Request Form in order to avoid the further expense and interruption of operation for reexamination of feasibility and impacts if the Interconnection Customer later changes the purpose for which the SGF is being installed.

9.0 The study shall include the feasibility of all potential points of interconnection as requested by the Interconnection Customer and at the Interconnection Customer's cost.

10.0 A feasibility study report shall be prepared and transmitted to the Interconnection Customer within 30 business days of the Utility's receipt of the complete executed feasibility study agreement and required deposit. If the Utility expects to miss the 30-business-day deadline, it must notify the Interconnection Customer in writing at least five business days before the deadline and provide a new expected completion date.

11.0 If the feasibility study shows no potential for adverse system impacts, then within 10 business days, the Utility shall send the Interconnection Customer either an executable Small Generator Interconnection Agreement (Schedule 10 of 20VAC5-314-170) or a Facilities Study Agreement, including an outline of the scope of the study.

12.0 If the feasibility study shows potential for adverse system impacts, the review process shall proceed to the system impact study.

13.0 Governing law, regulatory authority, and rules. The validity, interpretation, and enforcement of this Agreement and each of its provisions shall be governed by the laws of the Commonwealth of Virginia, without regard to its conflicts of law principles. This Agreement is subject to all applicable laws and regulations. Each Party expressly reserves the right to seek changes in, appeal, or otherwise contest any laws, orders, or regulations of a governmental authority.

14.0 Amendment. The Parties may amend this Agreement by a written instrument duly executed by both Parties.

15.0 No third-party beneficiaries. This Agreement is not intended to and does not create rights, remedies, or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, and the obligations in this Agreement assumed are solely for the use and benefit of the Parties, their successors in interest and where permitted, their assigns.

16.0 Waiver.

16.1 The failure of a Party to this Agreement to insist, on any occasion, upon strict performance of any provision of this Agreement will not be considered a waiver of any obligation, right, or duty of or duty imposed upon such Party.

16.2 Any waiver at any time by either Party of its rights with respect to this Agreement shall not be deemed a continuing waiver or a waiver with respect to any other failure to comply with any other obligation, right, or duty of this Agreement. Termination or default of this Agreement for any reason by an Interconnection Customer shall not constitute a waiver of the Interconnection Customer's legal rights to obtain an interconnection from the Utility. Any waiver of this Agreement shall, if requested, be provided in writing.

17.0 Entire agreement. This Agreement, including all attachments, constitutes the entire agreement between the Parties with reference to the subject matter hereof and supersedes all prior and contemporaneous understandings or agreements, oral or written, between the Parties with respect to the subject matter of this Agreement. There are no other agreements, representations, warranties, or covenants that constitute any part of the consideration for, or any condition to, either Party's compliance with its obligations under this Agreement.

18.0 Multiple counterparts. This Agreement may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

19.0 No partnership. This Agreement shall not be interpreted or construed to create an association, joint venture, agency relationship, or partnership between the Parties or to impose any partnership obligation or partnership liability upon either Party. Neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

20.0 Severability. If any provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction or other governmental authority, (i) such portion or provision shall be deemed separate and independent, (ii) the Parties shall negotiate in good faith to restore insofar as practicable the benefits to each Party that were affected by such ruling, and (iii) the remainder of this Agreement shall remain in full force and effect.

21.0 Subcontractors. Nothing in this Agreement shall prevent a Party from utilizing the services of any subcontractor as it deems appropriate to perform its obligations under this Agreement; however, each Party shall require its subcontractors to comply with all applicable terms and conditions of this Agreement in providing such services and each Party shall remain primarily liable to the other Party for the performance of such subcontractor.

21.1 The creation of any subcontract relationship shall not relieve the hiring Party of any of its obligations under this Agreement. The hiring Party shall be fully responsible to the other Party for the acts or omissions of any subcontractor the hiring Party hires as if no subcontract had been made; provided that in no event shall the Utility be liable for the actions or inactions of the Interconnection Customer or its subcontractors with respect to obligations of the Interconnection Customer under this Agreement. Any applicable obligation imposed by this Agreement upon the hiring Party shall be equally binding upon and shall be construed as having application to any subcontractor of such Party.

21.2 The obligations under this Section 21.0 of this Agreement will not be limited in any way by any limitation of subcontractor's insurance.

22.0 Reservation of rights. The Utility shall have the right to make a unilateral filing with the State Corporation Commission to modify this Agreement with respect to any rates, terms, and conditions, charges, or classifications of service, and the Interconnection Customer shall have the right to make a unilateral filing with the State Corporation Commission to modify this Agreement; provided that each Party shall have the right to protest any such filing by the other Party and to participate fully in any proceeding before the State Corporation Commission in which such modifications may be considered. Nothing in this Agreement shall limit the rights of the Parties except to the extent that the Parties otherwise agree as provided in this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by their duly authorized officers or agents on the day and year of this Agreement.

(Insert name of Utility) (Insert name of Interconnection Customer)

_____

_____

Signed: _____

Signed:_____

Name (Printed): Name (Printed):

_____
_____

Title: _____ Title: _____

Feasibility Study Due Date: _____

Attachment A to Schedule 7

Feasibility Study Agreement

Assumptions Used in Conducting the Feasibility Study

The feasibility study will be based upon the information set forth in the interconnection request and agreed upon in the scoping meeting held on _____:

1. Designation of point of interconnection and configuration to be studied.

2. Designation of alternative points of interconnection and configuration.

Questions 1 and 2 are to be completed by the Interconnection Customer. Any other assumptions are to be provided by the Interconnection Customer and the Utility.

_____
_____

_____
_____

Schedule 8

LEVEL 3 SYSTEM IMPACT STUDY AGREEMENT FOR SMALL GENERATING FACILITIES

This Agreement is made and entered into this _____day of_____20_____by and between_____
_____
_____, a _____ organized and existing under the laws of the state of_____, ("Interconnection Customer,") and_____, a_____existing under the laws of the state of_____, ("Utility"). Interconnection Customer and Utility each may be referred to as a "Party," or collectively as the "Parties."

RECITALS

WHEREAS, the Interconnection Customer is proposing to develop an SGF or generating capacity addition to an existing SGF consistent with the interconnection request completed by the Interconnection Customer on_____; and

WHEREAS, the Interconnection Customer desires to interconnect the SGF with the Utility's system; and

WHEREAS, the Utility has completed a feasibility study and provided the results of said study to the Interconnection Customer (This recital to be omitted if the Parties have agreed to forgo the feasibility study.); and

WHEREAS, the Interconnection Customer has requested the Utility to perform a system impact study to assess the impact of interconnecting the SGF with the Utility's system, and of any affected systems;

NOW, THEREFORE, in consideration of and subject to the mutual covenants contained in this Agreement the Parties agreed as follows:

1.0 The terms defined in Schedule 1 of 20VAC5-314-170 shall apply to this Schedule 8 of 20VAC 5-314-170.

2.0 The Interconnection Customer elects and the Utility shall cause to be performed a system impact study consistent with the standard small generator interconnection procedures.

3.0 System impact study costs will be deducted from the interconnection request study deposit as set forth in Schedule 6 of 20VAC5-314-170.

3.1 Study cost shall be the Utility's actual incremental costs and will be invoiced to the Interconnection Customer no later than 60 business days after the study is completed and delivered and will include a summary of professional time. Actual study costs may be reconciled during the final accounting process described in Article 6 of the Interconnection Agreement, as applicable.

3.2 The Interconnection Customer shall pay any study costs that exceed the deposit within 20 business days after receipt of the invoice or resolution of any dispute. If the deposit exceeds the invoiced fees, the Utility shall refund the excess within 20 business days of the invoice without interest unless additional studies are required.

4.0 A system impact study shall identify and detail the electric system impacts that would result if the SGF were interconnected without project modifications or electric system modifications, focusing on the adverse electric system impacts identified in the feasibility study or in the scoping meeting. A system impact study shall evaluate the impact of the proposed interconnection on the reliability of the electric system.

5.0 A system impact study will be based upon the results of the feasibility study and the technical information provided by Interconnection Customer in the interconnection request. The Utility reserves the right to request additional technical information from the Interconnection Customer as may reasonably become necessary consistent with Good Utility Practice during the course of the system impact study. If the information requested by the Utility is not provided by the Interconnection Customer within a reasonable timeframe to be identified by the Utility in writing, the Utility shall provide the Interconnection Customer written notice

providing an opportunity to cure such failure by the close of business on the 10th business day following the posted date of such notice, where failure to provide the information requested within this period shall result in the study being terminated, and the interconnection request being deemed withdrawn. The period of time for the Utility to complete the system impact study shall be tolled during any period that the Utility has requested information in writing from the Interconnection Customer necessary to complete the study and such request is outstanding.

6.0 A system impact study shall consist of a study of the potentially impacted transmission and distribution systems, a short circuit analysis, a stability analysis, a power flow analysis, voltage drop and flicker studies, grounding reviews, distribution load flow study, analysis of equipment interrupting ratings, protection coordination study, and impacts on electric system operation, as necessary. A system impact study shall state the assumptions upon which it is based, state the results of the analyses, and provide the requirement or potential impediments to providing the requested interconnection service, including a preliminary indication of the cost and length of time that would be necessary to correct any problems identified in those analyses and implement the interconnection. A system impact study shall provide a list of facilities and modifications that would be required as a result of the interconnection along with estimates of cost responsibility and time to construct. If arranged with the Utility prior to the Utility preparing the system impact study agreement, the system impact study may, at the Interconnection Customer's cost, include one or more alternatives to the point of interconnection; however, such alternative points must be on the same distribution circuit as the point of interconnection the Interconnection Customer specified as the proposed point of interconnection.

7.0 Affected systems may participate in the preparation of a system impact study, with a division of costs among such entities as they may agree. All affected systems shall be afforded an opportunity to review and comment upon a system impact study that covers potential adverse system impacts on their electric systems, and the Utility has 20 additional business days to complete a system impact study requiring review by affected systems.

8.0 If the Utility uses a queuing procedure for sorting or prioritizing projects and associated cost responsibilities for any required network upgrades, the system impact study shall consider all generating facilities (and with respect to Section 8.3 of this Agreement, any identified upgrades associated with such higher queued interconnection) that, on the date the system impact study is commenced:

8.1 Are directly interconnected with the Utility's system; or

8.2 Are interconnected with affected systems and may have an impact on the proposed interconnection; and

8.3 Have a pending higher queued interconnection request to interconnect with the Utility's system.

9.0 A system impact study, if required, shall be completed and the results transmitted to the Interconnection Customer within 45 business days after this Agreement is signed by the Parties or in accordance with the Utility's queuing procedures. If the Utility expects to miss the 45-business-day deadline, it must notify the Interconnection Customer in writing at least five business days before the deadline and provide a new expected completion date.

10.0 If the system impact study shows that facility modifications are needed to accommodate the SGF, then within 10 business days following transmittal of the system impact study report, the Utility shall send the Interconnection Customer a Facilities Study Agreement, including an outline of the scope of the study.

11.0 Governing law, regulatory authority, and rules. The validity, interpretation, and enforcement of this Agreement and each of its provisions shall be governed by the laws of the Commonwealth of Virginia, without regard to its conflicts of law principles. This Agreement is subject to all applicable laws and regulations. Each Party expressly reserves the right to seek changes in, appeal, or otherwise contest any laws, orders, or regulations of a governmental authority.

12.0 Amendment. The Parties may amend this Agreement by a written instrument duly executed by both Parties.

13.0 No third-party beneficiaries. This Agreement is not intended to and does not create rights, remedies, or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, and the obligations pursuant to this Agreement assumed are solely for the use and benefit of the Parties, their successors in interest, and where permitted, their assigns.

14.0 Waiver.

14.1 The failure of a Party to this Agreement to insist, on any occasion, upon strict performance of any provision of this Agreement will not be considered a waiver of any obligation, right, or duty of or duty imposed upon such Party.

14.2 Any waiver at any time by either Party of its rights with respect to this Agreement shall not be deemed a continuing waiver or a waiver with respect to any other failure to comply with any other obligation, right, or duty of this Agreement. Termination or default of this Agreement for any reason by Interconnection Customer shall not constitute a waiver of the Interconnection Customer's legal rights to obtain an interconnection from the Utility. Any waiver of this Agreement shall if requested, be provided in writing.

15.0 Entire agreement. This Agreement, including all attachments, constitutes the entire agreement between the Parties with reference to the subject matter hereof and supersedes all prior and contemporaneous understandings or agreements, oral or written, between the Parties with respect to the subject matter of this Agreement. There are no other agreements, representations, warranties, or covenants that constitute any part of the consideration for, or any condition to, either Party's compliance with its obligations under this Agreement.

16.0 Multiple counterparts. This Agreement may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

17.0 No partnership. This Agreement shall not be interpreted or construed to create an association, joint venture, agency relationship, or partnership between the Parties or to impose any partnership obligation or partnership liability upon either Party. Neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

18.0 Severability. If any provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction or other governmental authority, (i) such portion or provision shall be deemed separate and independent, (ii) the Parties shall negotiate in good faith to restore insofar as practicable the benefits to each Party that were affected by such ruling, and (iii) the remainder of this Agreement shall remain in full force and effect.

19.0 Subcontractors. Nothing in this Agreement shall prevent a Party from utilizing the services of any subcontractor as it deems appropriate to perform its obligations under this Agreement; however, each Party shall require its subcontractors to comply with all applicable terms and conditions of this Agreement in providing such services, and each Party shall remain primarily liable to the other Party for the performance of such subcontractor.

19.1 The creation of any subcontract relationship shall not relieve the hiring Party of any of its obligations under this Agreement. The hiring Party shall be fully responsible to the other Party for the acts or omissions of any subcontractor the hiring Party hires as if no subcontract had been made; provided that in no event shall the Utility be liable for the actions or inactions of the Interconnection Customer or its subcontractors with respect to obligations of the Interconnection Customer under this Agreement. Any applicable obligation imposed by this Agreement upon the hiring Party shall be equally binding upon and shall be construed as having application to any subcontractor of such Party.

19.2 The obligations under this Section 19.0 of this Agreement will not be limited in any way by any limitation of subcontractor's insurance.

20.0 Reservation of rights. The Utility shall have the right to make a unilateral filing with the State Corporation Commission to modify this Agreement with respect to any rates, terms and conditions, charges, or classifications of service, and the Interconnection Customer shall have the right to make a unilateral filing with the State Corporation Commission to modify this Agreement; provided that each Party shall have the right to protest any such filing by the other Party and to participate fully in any proceeding before the State Corporation Commission in which such modifications may be considered. Nothing in this Agreement shall limit the rights of the Parties except to the extent that the Parties otherwise agree as provided in this Agreement.

IN WITNESS THEREOF, the Parties have caused this Agreement to be duly executed by their duly authorized officers or agents on the day and year of this Agreement.

(Insert name of Utility) (Insert name of Interconnection Customer)

_____
_____

Signed: _____ Signed:
_____

Name (Printed): Name (Printed):

_____
_____

Title: _____ Title:
_____

System Impact Study Due Date:

_____

Schedule 9

LEVEL 3 FACILITIES STUDY AGREEMENT FOR SMALL GENERATING FACILITIES

This Agreement is made and entered into this _____day of_____20___ by and between_____
_____, a _____organized and existing under the laws of the state of_____, ("Interconnection Customer,") and_____
_____, a_____existing under the laws of the state of_____
_____, ("Utility"). Interconnection Customer and Utility each may be referred to as a "Party," or collectively as the "Parties."

RECITALS

WHEREAS, the Interconnection Customer is proposing to develop an SGF or generating capacity addition to an existing SGF consistent with the interconnection request completed by the Interconnection Customer on_____; and

WHEREAS, the Interconnection Customer desires to interconnect the SGF with the Utility's system; and

WHEREAS, the Utility has completed a system impact study and provided the results of the study to the Interconnection Customer; and

WHEREAS, the Interconnection Customer has requested the Utility to perform a facilities study to specify and estimate the cost of the equipment, engineering, procurement, and construction work needed to implement the conclusions of the system impact study in accordance with Good Utility Practice to physically and electrically connect the SGF with the Utility's system.

NOW, THEREFORE, in consideration of and subject to the mutual covenants contained in this Agreement the Parties agreed as follows:

1.0 The terms defined in Schedule 1 of 20VAC5-314-170 shall apply to this Schedule 9 of 20VAC 5-314-170.

2.0 The Interconnection Customer elects and the Utility shall cause a facilities study consistent with the standard small generator interconnection procedures.

3.0 The scope of the facilities study shall be subject to data provided in Attachment A to this Agreement.

4.0 The facilities study shall specify and estimate the cost of the equipment, engineering, procurement, and construction work needed to implement the conclusions of the feasibility study or system impact study and to allow the SGF to be interconnected and operate safely and reliably.

5.0 Facilities study costs will be deducted from the interconnection request study deposit, as set forth in Schedule 6 of 20VAC5-314-170.

5.1 Study cost shall be the Utility's actual incremental costs and will be invoiced to the Interconnection Customer no later than 60 business days after the study is completed and delivered and will include a summary of professional time. Actual study costs may be reconciled during the final accounting process described in Article 6 of the Interconnection Agreement, as applicable.

5.2 The Interconnection Customer shall pay any study costs that exceed the deposit within 20 business days on receipt of the invoice or resolution of any dispute. If the deposit exceeds the invoiced fees, the Utility shall refund the excess within 20 business days of the invoice without interest.

6.0 Design for any required customer's interconnection facilities, attachment facilities, or distribution upgrades shall be performed under the facilities study. The Utility may contract with consultants to perform activities required under the facilities study. The Interconnection Customer and the Utility may agree to allow the Interconnection Customer to separately arrange for the design of some of the customer's interconnection facilities. In such cases, facilities design will be reviewed or modified prior to acceptance by the Utility, under the provisions of the facilities study. If the Parties agree to separately arrange for design and construction, and provided security and confidentiality requirements can be met, the Utility shall make sufficient information available to the Interconnection Customer in accordance with confidentiality and critical infrastructure requirements, to permit the Interconnection Customer to obtain an independent design and cost estimate for any necessary facilities.

7.0 The facilities study shall also identify (i) the electrical switching configuration of the equipment, including transformer, switchgear, meters, and other station equipment; (ii) the nature and estimated cost of the attachment facilities and distribution upgrades necessary to accomplish the interconnection; and (iii) an estimate of the time required to complete the construction and installation of such facilities.

8.0 The Utility may propose to group facilities required for more than one Interconnection Customer in order to minimize facilities costs through economies of scale, but any Interconnection Customer may require the installation of facilities required for its own SGF if it is willing to pay the costs of those facilities.

9.0 In cases where system upgrades are required, the Utility shall transmit the facilities study report within 45 business days after receipt of the complete Facilities Study Agreement and the deposit. In cases where no system upgrades are necessary, and the required facilities are limited to customer's interconnection facilities and attachment facilities only, the Utility shall transmit the facilities study report within 30 business days after receipt of this Agreement and the deposit. The Utility reserves the right to request additional technical information from the Interconnection Customer as may reasonably become necessary consistent with Good Utility Practice during the course of the facilities study. If the information requested by the Utility is not provided by the Interconnection Customer within a reasonable timeframe to be identified by the Utility in writing, the Utility shall provide the Interconnection Customer written notice providing an opportunity to cure such failure by the close of business on the 10th business day following the posted date of such notice, where failure to provide the information requested within this period shall result in the study being terminated, and the interconnection request being deemed withdrawn. The period of time for the Utility to complete the facilities study shall be tolled during any period that the Utility has requested information in

writing from the Interconnection Customer necessary to complete the study and such request is outstanding. If the Utility expects to miss the 45-business-day or 30-business-day deadline, it must notify the Interconnection Customer in writing at least five business days before the deadline and provide a new expected completion date.

10.0 Governing law, regulatory authority, and rules. The validity, interpretation, and enforcement of this Agreement and each of its provisions shall be governed by the laws of the Commonwealth of Virginia, without regard to its conflicts of law principles. This Agreement is subject to all applicable laws and regulations. Each Party expressly reserves the right to seek changes in, appeal, or otherwise contest any laws, orders, or regulations of a governmental authority.

11.0 Amendment. The Parties may amend this Agreement by a written instrument duly executed by both Parties.

12.0 No third-party beneficiaries. This Agreement is not intended to and does not create rights, remedies, or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, and the obligations assumed in this Agreement are solely for the use and benefit of the Parties, their successors in interest and where permitted, their assigns.

13.0 Waiver.

13.1 The failure of a Party to this Agreement to insist, on any occasion, upon strict performance of any provision of this Agreement will not be considered a waiver of any obligation, right, or duty of or duty imposed upon such Party.

13.2 Any waiver at any time by either Party of its rights with respect to this Agreement shall not be deemed a continuing waiver or a waiver with respect to any other failure to comply with any other obligation, right, or duty of this Agreement. Termination or default of this Agreement for any reason by the Interconnection Customer shall not constitute a waiver of the Interconnection Customer's legal rights to obtain an interconnection from the Utility. Any waiver of this Agreement shall, if requested, be provided in writing.

14.0 Entire agreement. This Agreement, including all attachments, constitutes the entire agreement between the Parties with reference to the subject matter hereof and supersedes all prior and contemporaneous understandings or agreements, oral or written, between the Parties with respect to the subject matter of this Agreement. There are no other agreements, representations, warranties, or covenants that constitute any part of the consideration for, or any condition to, either Party's compliance with its obligations under this Agreement.

15.0 Multiple counterparts. This Agreement may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

16.0 No partnership. This Agreement shall not be interpreted or construed to create an association, joint venture, agency relationship, or partnership between the Parties or to impose any partnership obligation or partnership liability upon either Party. Neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

17.0 Severability. If any provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction or other governmental authority, (i) such portion or provision shall be deemed separate and independent, (ii) the Parties shall negotiate in good faith to restore insofar as practicable the benefits to each Party that were affected by such ruling, and (iii) the remainder of this Agreement shall remain in full force and effect.

18.0 Subcontractors. Nothing in this Agreement shall prevent a Party from utilizing the services of any subcontractor as it deems appropriate to perform its obligations under this Agreement; however, each Party shall require its subcontractors to comply with all applicable terms and conditions of this Agreement in providing such services, and each Party shall remain primarily liable to the other Party for the performance of such subcontractor.

18.1 The creation of any subcontract relationship shall not relieve the hiring Party of any of its obligations under this Agreement. The hiring Party shall be fully responsible to the other Party for the acts or omissions of any subcontractor the hiring Party hires as if no subcontract had been made; provided that in no event shall the Utility be liable for the actions or inactions of the Interconnection Customer or its subcontractors with respect to obligations of the Interconnection Customer under this Agreement. Any applicable obligation imposed by this Agreement upon the hiring Party shall be equally binding upon and shall be construed as having application to any subcontractor of such Party.

18.2 The obligations under this Section 18.0 of this Agreement will not be limited in any way by any limitation of subcontractor's insurance.

19.0 Reservation of rights. The Utility shall have the right to make a unilateral filing with the State Corporation Commission to modify this Agreement with respect to any rates, terms and conditions, charges, or classifications of service, and the Interconnection Customer shall have the right to make a unilateral filing with the State Corporation Commission to modify this Agreement; provided that each Party shall have the right to protest any such filing by the other Party and to participate fully in any proceeding before the State Corporation Commission in which such modifications may be considered. Nothing in this Agreement shall limit the rights of the Parties except to the extent that the Parties otherwise agree as provided in this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by their duly authorized officers or agents on the day and year of this Agreement.

(Insert name of Utility) (Insert name of Interconnection Customer)

_____
_____

Signed_____
Signed_____

Name (Printed): Name (Printed):

_____
_____

Title_____
Title_____

Facilities Study Due Date: _____

Attachment A to Schedule 9

Facilities Study Agreement

Data to Be Provided by the Interconnection Customer with the Facilities Study Agreement

1. Provide a location plan and simplified one-line diagram of the plant and station facilities. For staged projects, indicate future generation, future transmission circuits, and other major future facilities. On the one-line diagram, show (i) each generator, its electric connection configuration, and its generation capacity; (ii) the location and capacity of auxiliary power; and (iii) minimum load on CT/PT.

2. One set of metering is required for each generation connection to the new ring bus or existing Utility station. Indicate the number of generation connections requiring a metering set:_____

3. Indicate whether an alternate source of auxiliary power will be available during CT/PT maintenance. Yes_____ No_____

4. Indicate whether a transfer bus on the generation side of the metering will require that each meter set be designed for the total plant generation. Indicate such on the one-line diagram.

5. State the type of control system or programmable logic controller (PLC) that will be located at the SGF.

_____
_____
_____

6. State the protocol used by the control system or PLC.

_____
_____
_____

7. Describe the operation sequence and timing of the protection scheme during disconnection and reconnection to the Utility by the SGF.

_____
_____
_____

8. Provide a 7.5-minute quadrangle map of the site. Indicate the plant, station, transmission line, and property lines.

9. State the physical dimensions of the proposed interconnection station.

_____
_____
_____

10. State the bus length from generation to interconnection station.

_____
_____
_____

11. Provide a diagram or description of the point of interconnection desired by the Interconnection Customer that is to be the point of interconnection in the system impact study report.

_____
_____
_____

12. State the line length from interconnection station to Utility system.

_____
_____
_____

13. State the pole or tower number observed in the field affixed to the pole or tower leg.

_____
_____
_____

14. State the number of third-party easements required for distribution or transmission lines.

_____
_____
_____

15. Provide the following proposed schedule dates:

a. Date Interconnection Customer to begin construction: _____

b. Date generator step-up transformers to receive back feed power: _____

c. Date Interconnection Customer will test SGF: _____

d. Date Interconnection Customer will place SGF into commercial operation: _____

Schedule 10

SMALL GENERATOR INTERCONNECTION AGREEMENT (SGIA)

This Small Generator Interconnection Agreement ("Agreement") is made and entered into this _____ day of _____, 20__, by _____ ("Utility"), and _____ ("Interconnection Customer" or "IC"), each sometimes referred to individually as "Party" or both referred to collectively as the "Parties."

Utility Information

Utility:_____
_____

Attention:_____
_____

Address:_____
_____

City, State, Zip:_____

Phone:_____
Fax:_____

Interconnection Customer Information

Interconnection Customer:_____

Attention:_____
_____

Site Address:_____
__

City, State, Zip:_____

Phone:_____
Fax:_____

Interconnection Customer Application No:_____

If not available prior to the completion of the Agreement, the Interconnection Customer must provide an address for the small generating facility ("small generating facility" or "SGF") that has been issued conforming to the 911 emergency response group for the area to the Utility within 15 business days of issuance.

In consideration of the mutual covenants set forth in this Agreement, the Parties agree as follows:

Article 1. Scope and Limitations of Agreement

1.1 This Agreement shall be used for all interconnection requests for generators in excess of 500 kW submitted pursuant to the Regulations Governing Interconnection of Small Electrical Generators (20VAC5-314).

1.2 This Agreement governs the terms and conditions under which the Interconnection Customer's small generating facility will interconnect with and operate in parallel with the Utility system.

1.3 This Agreement does not constitute an agreement to purchase or deliver the IC's power. The purchase or delivery of power and other services, including station service or backup power, that the IC may require will be covered under separate agreements, possibly with other parties. The IC will be responsible for separately making all necessary arrangements (including scheduling) for delivery of electricity with the applicable Utility and provider of transmission service.

1.4 Nothing in this Agreement is intended to affect any other agreement between the Utility and the IC.

1.5 Responsibilities of the Parties.

1.5.1 The Parties shall perform all obligations of this Agreement in accordance with all applicable laws and regulations, operating requirements, and Good Utility Practice.

1.5.2 The IC shall construct, interconnect, operate, and maintain its SGF and construct, operate, and maintain its customer's interconnection facilities in accordance with the applicable manufacturer's recommended maintenance schedule, all applicable operating requirements, and in accordance with this Agreement and with Good Utility Practice.

1.5.3 The Utility shall construct, operate, and maintain its distribution and transmission system and attachment facilities in accordance with this Agreement and with Good Utility Practice.

1.5.4 The IC agrees to construct its facilities in accordance with applicable specifications that meet or exceed those provided by the National Electrical Safety Code, American National Standards Institute, Institute of Electrical and Electronics Engineers (IEEE), Underwriter's Laboratory, and operating requirements in effect at the time of construction and other applicable national and state codes and standards. The IC agrees to design, install, maintain, and operate its SGF so as to reasonably minimize the likelihood of a disturbance adversely affecting or impairing the system or equipment of the Utility or affected systems and to otherwise maintain and operate its SGF in accordance with the

specifications and certifications under which the SGF was initially installed and interconnected.

1.5.5 Each Party shall operate, maintain, repair, and inspect and shall be fully responsible for the facilities that it now or subsequently may own unless otherwise specified in the Attachments to this Agreement. Each Party shall be responsible for the safe installation, maintenance, repair, and condition of their respective lines and appurtenances on their respective sides of the point of change of ownership. The Utility and the IC, as appropriate, shall provide attachment facilities and customer's interconnection facilities that adequately protect the Utility's personnel and other persons from damage and injury. The allocation of responsibility for the design, installation, operation, maintenance, and ownership of attachment facilities and Interconnection Customer's interconnection facilities shall be delineated in the Attachments to this Agreement. The design, installation, operation, and maintenance of such facilities shall be the responsibility of the owner except as otherwise provided for in this Agreement.

1.5.6 The Utility shall coordinate with all affected systems to support the interconnection.

1.5.7 The IC shall ensure "frequency ride through" capability and "voltage ride through" capability of its SGF. At the discretion of the Utility, the IC shall enable these capabilities such that its SGF shall not disconnect automatically or instantaneously from the system or equipment of the Utility and any affected systems for a defined under-frequency or over-frequency condition or for an under-voltage or over-voltage condition. The defined conditions shall be in accordance with Good Utility Practice and consistent with any standards and guidelines that are applied to other generating facilities in the balancing authority area on a comparable basis. The SGF's protective equipment settings shall comply with the Utility's automatic load-shed program. The Utility shall review the protective equipment settings to confirm compliance with the automatic load-shed program. The term "ride through" as used in this Agreement shall mean the ability of an SGF to stay connected to and synchronized with the system or equipment of the Utility and any affected systems during system disturbances within a range of conditions, in accordance with Good Utility Practice and consistent with any standards and guidelines that are applied to other generating facilities in the balancing authority on a comparable basis. The term "frequency ride through" as used in this Agreement shall mean the ability of an SGF to stay connected to and synchronized with the system or equipment of the Utility and any affected systems during system disturbances within a range of under-frequency and over-frequency conditions, in accordance with Good Utility Practice and consistent with any standards and guidelines that are applied to other generating facilities in the balancing authority area on a comparable basis. The term "voltage ride through" as used in this Agreement shall mean the ability of an SGF to stay connected to and synchronized with the system or equipment of the Utility and any affected systems during system disturbances within a range of under-voltage and over-voltage conditions, in accordance with Good Utility Practice and consistent with any standards and guidelines that are applied to other generating facilities in the balancing authority area on a comparable basis.

1.5.8 The IC shall not operate the SGF in such a way that the SGF would exceed the maximum generating capacity.

1.6 Parallel operation obligations. Once the SGF has been authorized to commence parallel operation, the IC shall abide by all rules and procedures pertaining to the parallel operation of the SGF in the applicable control area, including (i) any rules and procedures concerning the operation of generation set forth in commission-approved tariffs or by the applicable system operator for the Utility's system and (ii) the operating requirements set forth in Attachment 5 of this Agreement.

1.7 Metering. The IC shall be responsible for the Utility's reasonable and necessary cost for the purchase, installation, operation, maintenance, testing, repair, and replacement of metering and data acquisition equipment specified in Attachments 2 and 3 of this Agreement. The IC's metering (and data acquisition, as required) equipment and reporting shall conform to applicable industry rules and operating requirements.

1.8 Reactive power.

1.8.1 The IC shall design its SGF to maintain a composite power delivery at continuous rated power output at the point of interconnection at a power factor within the range of 0.95 leading to 0.95 lagging, unless mutually agreed upon or the Utility has established different requirements that apply to all similarly situated generators in the control area on a comparable basis. The requirements of this article shall not apply to wind generators.

1.8.2 The Utility is required to pay the IC for reactive power that the IC provides or absorbs from the SGF when the Utility requests the IC to operate its SGF outside the range specified in Section 1.8.1 of this Agreement, unless mutually agreed upon by the Parties. In addition, if the Utility pays its own or affiliated generators for reactive power service within the specified range, it must similarly pay the IC.

1.8.3 Payments shall be in accordance with the IC's applicable rate schedule as may be in effect and accepted by the appropriate government authority. To the extent that no rate schedule is in effect at the time the IC is required to provide or absorb reactive power under this Agreement, the IC may expeditiously file such rate schedule with the appropriate government authority, and

the Utility agrees to support any request for waiver of any prior notice requirement of such authority in order to permit compensation to the IC from the time service commenced.

1.9 Terms used in this Agreement shall have the meanings specified in the definitions in Attachment 1 of this Agreement.

Article 2. Inspection, Testing, Authorization, and Right of Access

2.1 Equipment testing and inspection.

2.1.1 The IC shall test and inspect its SGF and interconnection facilities prior to interconnection. The IC shall notify the Utility of such activities no fewer than 10 business days (or as may be agreed to by the Parties) prior to such testing and inspection. Testing and inspection shall occur on a business day, unless otherwise agreed to by the Parties. The Utility may, at its own expense, send qualified personnel to the SGF site to inspect the interconnection and observe the testing. The IC shall provide the Utility a written test report when such testing and inspection is completed.

2.1.2 The Utility shall provide the IC written acknowledgment that it has received the IC's written test report. Such written acknowledgment shall not be deemed to be or construed as any representation, assurance, guarantee, or warranty by the Utility of the safety, durability, suitability, or reliability of the SGF or any associated control, protective, and safety devices owned or controlled by the IC or the quality of power produced by the SGF.

2.1.3 In addition to the Utility's observation of this IC's testing and inspection of its SGF and interconnection facilities pursuant to this Agreement, the Utility may also require inspection and testing of interconnection facilities that can impact the integrity or safety of the Utility's system or otherwise cause adverse operating effects, as described in Section 3.4.4 of this Agreement and in accordance to Good Utility Practice. Such inspection and testing activities will be performed by the Utility or a third-party independent contractor approved by the Utility and at a time mutually agreed to with the IC and will be performed at the IC's expense. The scope of required inspection and testing will be consistent across similar types of generating facilities.

2.2 Authorization required prior to parallel operation.

2.2.1 The Utility shall make reasonable efforts to list applicable parallel operation requirements in Attachment 5 of this Agreement. Additionally, the Utility shall notify the IC of any changes to these requirements as soon as they are known. The Utility shall make reasonable efforts to cooperate with the IC in meeting requirements necessary for the IC to commence parallel operations by the in-service date.

2.2.2 The IC shall not operate its SGF in parallel with the Utility's system without prior written authorization of the Utility. The Utility will provide such authorization once the Utility receives notification that the IC has complied with all applicable parallel operation requirements. Such authorization shall not be unreasonably withheld, conditioned, or delayed.

2.3 Right of access.

2.3.1 Upon reasonable notice, the Utility may send a qualified person to the premises of the IC at or before the time the SGF first produces energy to inspect the interconnection, and observe the commissioning of the SGF (including any required testing), startup, and operation for a period of up to three business days after initial start-up of the unit. In addition, the IC shall notify the Utility at least five business days prior to conducting any on-site verification testing of the SGF.

2.3.2 Following the initial inspection process described in Section 2.3 of this Agreement at reasonable hours and upon reasonable notice or at any time without notice in the event of an emergency or hazardous condition, the Utility shall have access to the IC's premises for any reasonable purpose in connection with the performance of the obligations imposed on it by this Agreement or if necessary to meet its legal obligation to provide service to its customers.

2.3.3 Each Party shall be responsible for its own costs associated with this article.

Article 3. Effective Date, Term, Termination, and Disconnection

3.1 Effective date. This Agreement shall become effective upon execution by the Parties.

3.2 Term of agreement. This Agreement shall remain in effect for a period of 10 years from the effective date or such other longer period as the IC may request and shall be automatically renewed for each successive one-year period thereafter, unless terminated earlier in accordance with Section 3.3 of this Agreement.

3.3 Termination. No termination shall become effective until the Parties have complied with all laws and regulations applicable to such termination, such as any local or Virginia Department of Environmental Quality decommissioning requirements.

3.3.1 The IC may terminate this Agreement at any time by giving the Utility 20 business days written notice and physically and permanently disconnecting the SGF from the Utility's system.

3.3.2 The Utility may terminate this Agreement upon the IC's failure to timely make the payment required by

Section 6.1 of this Agreement pursuant to the milestones specified in Attachment 4 to this Agreement, or to comply with the requirements of Section 7.1.2 or 7.1.3 of this Agreement.

3.3.3 Either Party may terminate this Agreement after default pursuant to Section 7.6 of this Agreement.

3.3.4 Upon termination of this Agreement, the small generating facility will be disconnected from the Utility system. The termination of this Agreement shall not relieve either Party of its liabilities and obligations, owed or continuing, at the time of the termination.

3.4 Temporary disconnection. Temporary disconnection shall continue only for so long as reasonably necessary under Good Utility Practice.

3.4.1 "Emergency conditions" means a condition or situation that (i) in the judgment of the Party making the claim is imminently likely to endanger life or property; (ii) in the case of the Utility, is imminently likely (as determined in a nondiscriminatory manner) to cause a material adverse effect on the security of or damage to the utility system, the attachment facilities, or the electrical facilities of others to which the utility system is directly connected; or (iii) in the case of the IC, is imminently likely (as determined in a nondiscriminatory manner) to cause a material adverse effect on the security of or damage to the SGF or the customer's interconnection facilities. Under emergency conditions, the Utility may immediately suspend interconnection service and temporarily disconnect the SGF. The Utility shall notify the IC promptly when it becomes aware of an emergency condition that may reasonably be expected to affect the IC's operation of the SGF. The IC shall notify the Utility promptly when it becomes aware of an emergency condition that may reasonably be expected to affect the utility system or other affected systems. To the extent information is known, the notification shall describe the emergency condition, the extent of the damage or deficiency, the expected effect on the operation of both Parties' facilities and operations, its anticipated duration, and the necessary corrective action.

3.4.2 Routine maintenance, construction, and repair. The Utility may interrupt interconnection service or curtail the output of the SGF and temporarily disconnect the SGF from the Utility's system when necessary for routine maintenance, construction, and repairs on the Utility system. The Utility shall provide the IC with at least five business days' notice prior to such interruption unless circumstances require shorter notice. The Utility shall use reasonable efforts to coordinate such reduction or temporary disconnection with the IC.

3.4.3 Forced outages. During any forced outage, the Utility may suspend interconnection service to effect immediate repairs on the Utility system. The Utility shall use reasonable efforts to provide the IC with prior notice. If prior notice is not given, the Utility shall, upon request, provide the IC written documentation after the fact explaining the circumstances of the disconnection.

3.4.4 Adverse operating effects. The Utility shall notify the IC as soon as practicable if based on Good Utility Practice, operation of the SGF may cause disruption or deterioration of service to other customers served from the Utility system or affected systems or if operating the SGF could cause damage to the Utility system or affected systems. Supporting documentation used to reach the decision to disconnect shall be provided to the IC upon request. If, after notice, the IC fails to remedy the adverse operating effect within a reasonable time, the Utility may disconnect the SGF. The Utility shall provide the IC with a five-business-day notice of such disconnection, unless the provisions of Section 3.4.1 of this Agreement apply.

3.4.5 Modification of the small generating facility. The IC must receive written authorization from the Utility before making changes to the SGF or mode of operations that may have a material impact on the safety or reliability of the utility system or affected system. Such authorization shall not be unreasonably withheld. Modifications shall be done in accordance with Good Utility Practice. If the IC makes such modifications without the Utility's prior written authorization, the latter shall have the right to temporarily disconnect the SGF.

3.4.6 Reconnection. The Parties shall cooperate with each other to restore the SGF, interconnection facilities, and the utility system to their normal operating state as soon as reasonably practicable following a temporary disconnection.

Article 4. Cost Responsibility for Interconnection Customer's Interconnection Facilities, Attachment Facilities, and Distribution Upgrades

4.1 Customer's interconnection facilities. The IC shall be responsible for the costs associated with owning, operating, maintaining, repairing, and replacing the customer's interconnection facilities.

4.2 Attachment facilities. The IC shall pay for one-time and ongoing costs of installing, owning, operating, maintaining, and replacing the attachment facilities itemized in Attachment 2 of this Agreement. The Utility shall provide an estimated cost for the purchase and construction of the attachment facilities and provide a detailed itemization of such costs. Costs associated with attachment facilities may be shared with other entities that may benefit from such facilities by agreement of the IC, such other entities, and the Utility.

4.3 Distribution upgrades. The Utility shall design, procure, construct, install, and own the distribution upgrades described in Attachment 6 of this Agreement. The actual cost of the distribution upgrades shall be directly assigned to the IC. If the Utility and the IC agree, the IC may construct distribution upgrades that are located on land owned by the IC.

Article 5. Transmission System

5.1 Transmission system upgrades.

5.1.1 No portion of Section 5.1 of this Agreement shall apply unless the interconnection of the SGF requires transmission system upgrades.

5.1.2 The Utility shall design, procure, construct, install, and own the transmission system upgrades described in Attachment 6 of this Agreement. If the Utility and the IC agree, the IC may construct transmission system upgrades that are located on land owned by the IC. The costs of the transmission system upgrades shall be borne by the IC.

5.1.3 Notwithstanding any other provision of Section 5.1 of Agreement, in the event and to the extent an RTE has rules, tariffs, agreements, or procedures properly applying to transmission system upgrades, the provisions of Section 5.2 of this Agreement shall apply to such upgrades.

5.2 Regional transmission entities. Notwithstanding any other provision of this Agreement, if the Utility's transmission system is under the control of an RTE and the RTE has rules, tariffs, agreements, or procedures properly governing operation of the SGF, transmission of the output of the SGF, sale of the output of the SGF, system upgrades required for interconnection of the SGF, or other aspects of the interconnection and operation of the SGF, the IC and the Utility shall comply with the applicable agreements, rules, tariffs, or procedures.

5.3 Rights under other agreements. Notwithstanding any other provision of this Agreement, nothing in this Agreement shall be construed as relinquishing or foreclosing any rights, including firm transmission rights, capacity rights, transmission congestion rights, or transmission credits, that the IC shall be entitled to now or in the future under any other agreement or tariff as a result of or otherwise associated with system upgrades, including the right to obtain cash reimbursements or transmission credits for transmission service that is not associated with the SGF.

Article 6. Billing, Payment, Milestones, and Financial Security

6.1 Billing and payment procedures and final accounting. The IC shall be responsible for pre-payment of all estimated Interconnection Facilities, Attachment Facilities, and Upgrade costs identified in Attachment 2 and Attachment 6 to this Agreement, or the provision of financial security, if acceptable to the Utility as provided for in Section 6.3. Payment or financial security must be received by close of business 30 business days after the date the SGIA is delivered to the IC for signature. Failure to comply with the requirements of this section after an opportunity to cure shall result in the interconnection request being deemed withdrawn. Within 120 business days of the Utility completing the construction and installation of the attachment facilities or distribution upgrades described in the Attachments to this Agreement, the Utility shall provide the IC with a final accounting report of any difference between (i) the IC's cost responsibility for the actual cost of such facilities or upgrades and (ii) the IC's previous aggregate payments to the Utility for such facilities or upgrades. The Utility shall make reasonable efforts to meet the timeframe for issuance of the Final Accounting Report. If the Utility is unable to timely issue the Final Accounting Report, the Utility shall provide written notice to the IC explaining the reason or reasons for the delay and provide an estimated time by which it can issue the Final Accounting Report. If the IC's cost responsibility exceeds its previous aggregate payments, the Utility shall invoice the IC for the amount due, and the IC shall make payment to the Utility within 20 business days. If the IC's previous aggregate payments exceed its cost responsibility under this Agreement, the Utility shall refund to the IC an amount equal to the difference within 20 business days of the final accounting report.

6.2 Milestones. The Parties shall agree on milestones for which each Party is responsible, and such milestone shall be listed in Attachment 4 of this Agreement. A Party's milestones obligations may be modified by agreement. If a Party anticipates that it will be unable to meet a milestone for any reason other than a force majeure event, it shall immediately (i) notify the other Party of the reason for not meeting the milestone, (ii) propose the earliest reasonable alternate date by which it can attain this and future milestones, and (iii) request appropriate amendments to Attachment 4. The Party affected by the failure to meet a milestone shall not withhold agreement to such an amendment unless it will suffer uncompensated economic or operational harm from the delay, the delay will materially affect the schedule of another IC with subordinate queue position, attainment of the same milestone has previously been delayed, or it has reason to believe that the delay in meeting the milestone is intentional or unwarranted notwithstanding the circumstances explained by the Party proposing the amendment.

6.3 Financial security arrangements. Within the timeframe provided for in Section 6.1, the IC may provide the Utility, at the IC's option, in lieu of prepayment, a guarantee, a surety bond, letter of credit, or other form of security that is reasonably acceptable to the Utility and is consistent with the Uniform Commercial Code of Virginia. Such security for payment shall be accepted prior to the Utility's commencement of the design, procurement, installation, or construction of a discrete portion of the attachment facilities and distribution upgrades and shall be in an amount sufficient to cover the costs for designing, procuring, installing, and constructing the applicable portion of the attachment facilities and distribution upgrades. The IC's financial security under this provision shall be reduced on a dollar-for-dollar basis for payments made to the Utility

under this Agreement during its term pursuant to the milestone schedule established in Appendix 4. In addition:

6.3.1 The guarantee must be made by an entity that meets the creditworthiness requirements of the Utility and contain terms and conditions that guarantee payment of any amount that may be due from the IC, up to an agreed-to maximum amount.

6.3.2 The letter of credit or surety bond must be issued by a financial institution or insured reasonably acceptable to the Utility and must specify a reasonable expiration date.

Article 7. Assignment, Liability, Indemnity, Force Majeure, Consequential Damages, and Default

7.1 Assignment.

7.1.1 The IC shall notify the Utility of the pending sale of an existing SGF in writing. The IC shall provide the Utility with information regarding whether the sale is a change of ownership of the SGF to a new legal entity or a change of control of the existing legal entity.

7.1.2 The IC shall promptly notify the Utility of the final date of sale and transfer date of ownership in writing. The purchaser of the SGF shall confirm to the Utility the final date of sale and transfer date of ownership in writing.

7.1.3 This Agreement shall not survive the transfer of ownership of the SGF to a new legal entity owner. The new owner shall submit a new interconnection request along with a processing fee of $500 to the Utility within 20 business days of the transfer of ownership or, if the facility has been constructed, the Utility's interconnection facilities shall be removed or disabled and the SGF disconnected from the Utility's system. The Utility shall not study or inspect the SGF unless the new owner's interconnection request indicates that a material modification has occurred or is proposed.

7.1.4 This Agreement shall survive a change of control of the SGF's legal entity owner, where only the contact information in the interconnection agreement must be modified. The new owner shall submit a new interconnection request along with a processing fee of $500 to the Utility within 20 business days of the change of control and provide the new contact information. The Utility shall not study or inspect the SGF unless the new owner's interconnection request indicates that a material modification has occurred or is proposed.

7.1.5 The IC shall have the right to assign this Agreement, without the consent of the Utility, for collateral security purposes to aid in providing financing for the SGF, provided that the IC will promptly notify the Utility of any such assignment. Assignment shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reason thereof.

7.1.6 Any attempted assignment that violates this article is void and ineffective.

7.2 Limitation of liability. Each Party's liability to the other Party for any loss, cost, claim, injury, liability, or expense, including reasonable attorney fees, relating to or arising from any act or omission in its performance of this Agreement shall be limited to the amount of direct damage actually incurred. In no event shall either Party be liable to the other Party for any indirect, special, incidental, consequential, or punitive damages of any kind, except as authorized by this Agreement.

7.3 Indemnity.

7.3.1 This provision protects each Party from liability incurred to third parties as a result of carrying out the provisions of this Agreement. Liability under this provision is exempt from the general limitations on liability found in Section 7.2 of this Agreement.

7.3.2 The Parties shall at all times indemnify, defend, and hold the other Party harmless from all damages; losses; claims, including claims and actions relating to injury to or death of any person or damage to property; demand; suits; recoveries; costs and expenses; court costs; attorney fees; and all other obligations by or to third parties arising out of or resulting from the other Party's action or failure to meet its obligations under this Agreement on behalf of the indemnifying Party, except in cases of gross negligence or intentional wrongdoing by the indemnified Party.

7.3.3 If an indemnified Party is entitled to indemnification under this Article 7 of this Agreement as a result of a claim by a third party, and the indemnifying Party fails, after notice and reasonable opportunity, to proceed under this Article 7 of this Agreement to assume the defense of such claim, such indemnified person may at the expense of the indemnifying Party contest, settle, or consent to the entry of any judgment with respect to, or pay in full, such claim.

7.3.4 If an indemnifying Party is obligated to indemnify and hold any indemnified person harmless under this Article 7 of this Agreement, the amount owing to the indemnified person shall be the amount of such indemnified person's actual loss, net of any insurance or other recovery.

7.3.5 Promptly after receipt by an indemnified person of any claim or notice of the commencement of any action or administrative or legal proceeding or small generator investigation as to which the indemnity provided for in this Article 7 of this Agreement may apply, the indemnified person shall notify the indemnifying Party of such fact. Any failure of or delay in such notification shall not affect a Party's indemnification obligation unless such failure or delay is materially prejudicial to the indemnifying Party.

7.4 Consequential damages. Other than as expressly provided for in this Agreement, neither Party shall be liable under any provision of this Agreement for any losses,

damages, costs, or expenses for any special, indirect, incidental, consequential, or punitive damages, including loss of profit or revenue; loss of the use of equipment; cost of capital; cost of temporary equipment or services, whether based in whole or in part in contract; in tort, including negligence, strict liability; or any other theory of liability; provided that damages for which a Party may be liable to the other Party under another agreement will not be considered to be special, indirect, incidental, or consequential damages.

7.5 Force majeure.

7.5.1 As used in this article, "force majeure event" means any act of God; labor disturbance; act of the public enemy; war; insurrection; riot; fire; storm or flood; explosion; breakage or accident to machinery or equipment; any order, regulation, or restriction imposed by governmental, military, or lawfully established civilian authorities; or any other cause beyond a Party's control. A "force majeure event" does not include an act of negligence or intentional wrongdoing.

7.5.2 If a force majeure event prevents a Party from fulfilling any obligation under this Agreement, the Party affected by the force majeure event ("Affected Party") shall promptly notify the other Party, either in writing or via the telephone, of the existence of the force majeure event. The notification must specify in reasonable detail the circumstances of the force majeure event, its expected duration, and the steps that the Affected Party is taking to mitigate the effects of the event on its performance. The Affected Party shall keep the other Party informed on a continuing basis of developments relating to the force majeure event until the event ends. The Affected Party will be entitled to suspend or modify its performance of obligations under this Agreement (other than the obligation to make payments) only to the extent that the effect of the force majeure event cannot be mitigated by the use of reasonable efforts. The Affected Party will use reasonable efforts to resume its performance as soon as possible.

7.6 Default.

7.6.1 No default shall exist where such failure to discharge an obligation (other than the payment of money) is the result of a force majeure event as defined in this Agreement or the result of an act or omission of the other Party. Upon a default, the nondefaulting Party shall give written notice of such default to the defaulting Party. Except as provided in Section 7.6.2 of this Agreement, the defaulting Party shall have 40 business days from receipt of the default notice within which to cure the default; however, if the default is not capable of cure within 40 business days, the defaulting Party shall commence the cure within 10 business days after notice and continuously and diligently complete the cure within six months from receipt of the default notice, and if cured within such time, the default specified in such notice shall cease to exist.

7.6.2 If a default is not cured as provided in this Article 7 of this Agreement or if a default is not capable of being cured within the period provided for in this Article 7 of this Agreement, the nondefaulting Party shall have the right to terminate this Agreement by written notice at any time until cure occurs and be relieved of any further obligation in this Agreement, and whether or not that Party terminates this Agreement, to recover from the defaulting Party all amounts due pursuant to this Agreement, plus all other damages and remedies to which it is entitled at law or in equity. The provisions of this Article 7 of this Agreement will survive termination of this Agreement.

Article 8. Insurance

8.1 The IC shall, at its own expense, maintain in force general liability insurance without any exclusion for liabilities related to the interconnection undertaken pursuant to this Agreement. The amount of such insurance shall be in accordance with 20VAC5-314-160. The IC shall obtain additional insurance only if necessary as a function of owning and operating a generating facility. Insurance shall be obtained from an insurance provider authorized to conduct business in the Commonwealth of Virginia. Certification that such insurance is in effect shall be provided upon request of the Utility~~, except that the IC shall show proof of insurance to the Utility no later than 10 business days prior to the anticipated commercial operation date of the SGF~~. An IC of sufficient creditworthiness may propose to self-insure for such liabilities, and such a proposal shall not be unreasonably rejected.

8.2 The Utility agrees to maintain general liability insurance or self-insurance consistent with the Utility's commercial practice. Such insurance or self-insurance shall not exclude coverage for the Utility's liabilities undertaken pursuant to this Agreement.

8.3 The Parties further agree to notify each other whenever an accident or incident occurs resulting in any injuries or damages that are included within the scope of coverage of such insurance, whether or not such coverage is sought.

Article 9. Confidentiality

9.1 Confidential information shall mean any confidential or proprietary information provided by one Party to the other Party that is clearly marked or otherwise designated "Confidential." For purposes of this Agreement all design, operating specifications, and metering data provided by the IC shall be deemed confidential information regardless of whether it is clearly marked or otherwise designated as such.

9.2 Confidential information does not include information previously in the public domain, required to be publicly submitted or divulged by governmental authorities (after notice to the other Party and after exhausting any opportunity to oppose such publication or release), or necessary to be divulged in an action to enforce this

Agreement. Each Party receiving confidential information shall hold such information in confidence and shall not disclose it to any third party or the public without the prior written authorization from the Party providing that information, except to fulfill obligations under this Agreement or to fulfill legal or regulatory requirements.

9.2.1 Each Party shall employ at least the same standard of care to protect confidential information obtained from the other Party as it employs to protect its own confidential information.

9.2.2 Each Party is entitled to equitable relief, by injunction or otherwise, to enforce its rights under this provision to prevent the release of confidential information without bond or proof of damages and may seek other remedies available at law or in equity for breach of this provision.

9.3 Notwithstanding anything in this Agreement to the contrary, if the Virginia State Corporation Commission ("Commission"), during the course of an investigation or otherwise, requests information from one of the Parties that is otherwise required to be maintained in confidence, the Party shall provide the requested information to the commission, within the time provided for in the request for information. In providing the information to the commission, the Party may request that the information be treated as confidential and nonpublic by the commission and that the information be withheld from public disclosure. Parties are prohibited from notifying the other Party prior to the release of the confidential information to the commission. A Party shall notify the other Party when it is notified by the commission that a request to release confidential information has been received by the commission, at which time either Party may respond to the commission before such information would be made public.

Article 10. Disputes

10.1 The Parties agree to attempt to resolve all disputes arising out of the interconnection process according to the provisions of this Article 10 of this Agreement.

10.2 In the event of a dispute, either Party shall provide the other Party with a written notice of dispute. Such notice shall describe in detail the nature of the dispute. The Parties shall make a good faith effort to resolve the dispute informally within 10 business days.

10.3 If the dispute has not been resolved within 10 business days after receipt of the notice, either Party may seek resolution assistance from the Division of Public Utility Regulation where the matter will be handled as an informal complaint.

Alternatively, either Party may, upon mutual agreement, seek resolution through the assistance of a dispute resolution service. The dispute resolution service will assist the Parties in either resolving the dispute or in selecting an appropriate dispute resolution venue (e.g., mediation, settlement judge, early neutral evaluation, or technical expert) to assist the Parties in resolving their dispute. Each Party shall conduct all negotiations in good faith and shall be responsible for one-half of any costs paid to neutral third parties.

10.4 If the dispute remains unresolved, either Party may petition the commission to handle the dispute as a formal complaint or may exercise whatever rights and remedies it may have in equity or law consistent with the terms of this Agreement.

Article 11. Taxes

11.1 The Parties agree to follow all applicable tax laws and regulations.

11.2 Each Party shall cooperate with the other to maintain the other Party's tax status. Nothing in this Agreement is intended to adversely affect the Utility's tax exempt status with respect to the issuance of bonds including local furnishing bonds.

Article 12. Miscellaneous

12.1 Governing law, regulatory authority, and rules. The validity, interpretation, and enforcement of this Agreement and each of its provisions shall be governed by the laws of the Commonwealth of Virginia without regard to its conflicts of law principles. This Agreement is subject to all applicable laws and regulations. Each Party expressly reserves the right to seek changes in, appeal, or otherwise contest any laws, orders, or regulations of a governmental authority.

12.2 Amendment. The Parties may amend this Agreement by a written instrument duly executed by both Parties.

12.3 No third-party beneficiaries. This Agreement is not intended to and does not create rights, remedies, or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, and the obligations in this Agreement assumed are solely for the use and benefit of the Parties, their successors in interest, and where permitted, their assigns.

12.4 Waiver.

12.4.1 The failure of a Party to this Agreement to insist, on any occasion, upon strict performance of any provision of this Agreement will not be considered a waiver of any obligation, right, or duty of or duty imposed upon such Party.

12.4.2 Any waiver at any time by either Party of its rights with respect to this Agreement shall not be deemed to be a continuing waiver or a waiver with respect to any other failure to comply with any other obligation, right, or duty of this Agreement. Termination or default of this Agreement for any reason by the IC shall not constitute a waiver of the IC's legal rights to obtain an interconnection

from the Utility. Any waiver of this Agreement shall, if requested, be provided in writing.

12.5 Entire agreement. This Agreement, including all Attachments to this Agreement, constitutes the entire agreement between the Parties with reference to the subject matter hereof and supersedes all prior and contemporaneous understandings or agreements, oral or written, between the Parties with respect to the subject matter of this Agreement. There are no other agreements, representations, warranties, or covenants that constitute any part of the consideration for, or any condition to, either Party's compliance with its obligations under this Agreement.

12.6 Multiple counterparts. This Agreement may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

12.7 No partnership. This Agreement shall not be interpreted or construed to create an association, joint venture, agency relationship, or partnership between the Parties or to impose any partnership obligation or partnership liability upon either Party. Neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

12.8 Severability. If any provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction or other governmental authority, (i) such portion or provision shall be deemed separate and independent, (ii) the Parties shall negotiate in good faith to restore insofar as practicable the benefits to each Party that were affected by such ruling, and (iii) the remainder of this Agreement shall remain in full force and effect.

12.9 Environmental releases. Each Party shall notify the other Party, first orally and then in writing, of the release of any hazardous substances, any asbestos or lead abatement activities, or any type of remediation activities related to the SGF, the customer's interconnection facilities, or attachment facilities, each of which may reasonably be expected to affect the other Party. The notifying Party shall (i) provide the notice as soon as practicable, provided such Party makes a good faith effort to provide the notice no later than 24 hours after such Party becomes aware of the occurrence, and (ii) promptly furnish to the other Party copies of any publicly available reports filed with any governmental authorities addressing such events.

12.10 Subcontractors. Nothing in this Agreement shall prevent a Party from utilizing the services of any subcontractor as it deems appropriate to perform its obligations under this Agreement; however, each Party shall require its subcontractors to comply with all applicable terms and conditions of this Agreement in providing such services, and each Party shall remain primarily liable to the other Party for the performance of such subcontractor.

12.10.1 The creation of any subcontract relationship shall not relieve the hiring Party of any of its obligations under this Agreement. The hiring Party shall be fully responsible to the other Party for the acts or omissions of any subcontractor the hiring Party hires as if no subcontract had been made; however, in no event shall the Utility be liable for the actions or inactions of the IC or its subcontractors with respect to obligations of the IC under this Agreement. Any applicable obligation imposed by this Agreement upon the hiring Party shall be equally binding upon and shall be construed as having application to any subcontractor of such Party.

12.10.2 The obligations under this article will not be limited in any way by any limitation of subcontractor's insurance.

12.11 Reservation of rights. The Utility shall have the right to make a unilateral filing with the commission to modify this Agreement with respect to any rates, terms and conditions, charges, classifications of service, rule, or regulation, and the IC shall have the right to make a unilateral filing with the commission to modify this Agreement; provided that each Party shall have the right to protest any such filing by the other Party and to participate fully in any proceeding before the commission in which such modifications may be considered. Nothing in this Agreement shall limit the rights of the Parties except to the extent that the Parties otherwise agree as provided in this Agreement.

Article 13. Notices

13.1 General. Unless otherwise provided in this Agreement, any written notice, demand, or request required or authorized in connection with this Agreement shall be deemed properly given if delivered in person, delivered by recognized national courier service, or sent by first class mail, postage prepaid, to the person listed:

If to the Interconnection Customer:

Interconnection Customer:_____

Attention:_____

_____

Address:_____

_____

City, State, Zip:_____

__

Phone:_____

Fax:_____

If to the Utility:

Utility:_____
___
Attention:_____
_____
Address:_____
_____
City, State,
Zip:_____
__
Phone:_____
Fax:_____

13.2 Billing and payment.

Billings and payments shall be sent to the addresses listed:

If to the Interconnection Customer:

Interconnection
Customer:_____

Attention:_____
_____
Address:_____
_____
City, State,
Zip:_____
__

If to the Utility:

Utility:_____
___
Attention:_____
_____
Address:_____
_____
City, State,
Zip:_____
__

13.3 Alternative forms of notice. Any notice or request required or permitted to be given by either Party to the other and not required by this Agreement to be given in writing may be so given by telephone, facsimile, or email to the telephone numbers and email addresses listed:

If to the Interconnection Customer:

Interconnection
Customer:_____

Attention:_____
_____
Address:_____
_____
City, State,
Zip:_____
__

Phone:_____
Fax:_____

If to the Utility:

Utility:_____
___
Attention:_____
_____
Address:_____
_____
City, State,
Zip:_____
__
Phone:_____
Fax:_____

13.4 Designated operating representative. The Parties may also designate operating representatives to conduct the communications that may be necessary or convenient for the administration of this Agreement. This person will also serve as the point of contact with respect to operations and maintenance of the Party's facilities.

Interconnection Customer's Operating Representative:

Interconnection
Customer:_____
__
Attention:_____
_____
Address:_____
_____
City, State,
Zip:_____
__
Phone:_____
Fax:_____

Utility's Operating Representative:

Utility:_____
Attention:_____
_____
Address:_____
_____
City, State,
Zip:_____
__
Phone:_____
Fax:_____

13.5 Changes to the notice information. Either Party may change this information by giving five business days' written notice prior to the effective date of the change.

Article 14. Signatures

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized representatives.

For the Utility

Name:_____

_____

Title:_____

_____

Date:_____

For the Affected System Utility

Name:_____

_____

Title:_____

_____

Date:_____

For the Interconnection Customer

Name:_____

_____

Title:_____

_____

Date:_____

Attachment 1 to Schedule 10

Glossary of Terms

The following terms when used in Schedule 10 of 20VAC5-314-170 will have the following meanings:

"Affected system" means an electric utility system other than that of the Utility that may be affected by the proposed interconnection.

"Affected system operator" means an entity that operates an affected system, or if the affected system is under the operational control of an independent system operator or a regional transmission entity, such independent entity.

"Applicable laws and regulations" means all duly promulgated applicable federal, state, and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders; permits; and other duly authorized actions of any governmental authority.

"Attachment facilities" means the facilities and equipment owned, operated, and maintained by the Utility that are built new in order to physically connect the customer's interconnection facilities to the Utility system. Attachment facilities shall not include distribution upgrades or previously existing distribution and transmission facilities.

"Balancing authority" means the responsible entity that integrates resource plans ahead of time, maintains load-interchange-generation balance within a balancing authority area, and supports interconnection frequency in real time.

"Balancing authority area" means the collection of generation, transmission, and loads within the metered boundaries of the balancing authority. The balancing authority maintains load-resource balance within this area.

"Business day" means Monday through Friday, excluding federal holidays.

"Calendar day" means Sunday through Saturday, including all holidays.

"Certified" has the meaning ascribed to it in Schedule 2 of 20VAC5-314-170.

"Commission" means the Virginia State Corporation Commission.

"Customer's interconnection facilities" means all the facilities and equipment owned, operated and maintained by the IC, between the SGF and the point of interconnection necessary to physically and electrically interconnect the SGF to the utility system.

"Default" means the failure of a breaching Party to cure its breach under the Small Generator Interconnection Agreement.

"Distribution system" means the Utility's facilities and equipment generally delivering electricity to ultimate customers from substations supplied by higher voltages (usually at transmission level). For purposes of this Agreement, all portions of the Utility's transmission system regulated by the commission for which interconnections are not within Federal Energy Regulatory Commission jurisdiction are considered also to be subject to commission regulations.

"Distribution upgrades" means the additions, modifications, and enhancements made to the Utility's distribution system on the Utility's side of the point of interconnection necessary to ensure continued system reliability and power quality on the Utility's distribution system caused by the interconnection of the small generating facility. Distribution upgrades do not include network upgrades or the customer's interconnection facilities or the Utility's attachment facilities.

"Facilities study" has the meaning ascribed to it in 20VAC5-314-70 E.

"Feasibility study" has the meaning ascribed to it in 20VAC5-314-70 C.

"FERC" means the Federal Energy Regulatory Commission.

"Good Utility Practice" means any of the practices, methods, and acts engaged in or approved by a significant portion of the electric industry during the relevant time period, or any of the practices, methods, and acts that, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost, consistent with good business

practices, reliability, safety, and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others but rather to include practices, methods, or acts generally accepted in the region.

"Governmental authority" means any federal, state, local, or other governmental regulatory or administrative agency, court, commission, department, board, or other governmental subdivision or legislature or rulemaking board, tribunal, or other governmental authority having jurisdiction over the Parties, their respective facilities, or the respective services they provide and exercising or entitled to exercise any administrative, executive, police, or taxing authority or power; provided that such term does not include the IC, the Utility, or a Utility affiliate.

"Interconnection Customer" or "IC" means any entity proposing to interconnect a new SGF with the utility system.

"Interconnection request" means the IC's request, in accordance with the Regulations Governing Interconnection of Small Electrical Generators (20VAC5-314), to interconnect a new small generating facility or to increase the capacity of or make a material modification to the operating characteristics of an existing small generating facility that is interconnected with the Utility system.

"Interconnection studies" means the studies conducted by the Utility or a third party agreed to by the Utility and the IC in order to determine the interaction of the SGF with the Utility system and the affected systems in order to specify any modifications to the SGF or the electric systems studied to ensure safe and reliable operation of the SGF in parallel with the Utility system.

"Material modification" has the meaning ascribed to it in 20VAC5-314-39.

"Maximum generating capacity" means the maximum continuous electrical output of the SGF at any time as measured at the point of interconnection or the maximum kW delivered to the Utility during any metering period, whichever is greater. Requested maximum generating capacity will be specified by the IC in the interconnection request and an approved maximum generating capacity will subsequently be included as a limitation in the interconnection agreement.

"Network upgrades" means additions, modifications, and enhancements to the Utility's transmission system that are required in order to accommodate the interconnection of the small generating facility with the Utility's system. Network upgrades do not include distribution system upgrades.

"Operating requirements" means any operating and technical requirements that may be applicable due to regional transmission entity, independent system operator, control area, or the Utility's requirements, including those set forth in this Small Generator Interconnection Agreement.

"Party" means the Utility or the IC.

"Point of interconnection" means the point where the customer's interconnection facilities connect physically and electrically to the Utility system.

"Processing fee" means a nonrefundable cost to administer or file an application.

"Queue number" refers to the number assigned by the Utility that establishes a customer's interconnection request's position in the study queue relative to all other valid interconnection requests. A lower queue number will be studied prior to a higher queue number, except in the case of interdependent projects. The queue number of each interconnection request shall be used to determine the cost responsibility for the upgrades necessary to accommodate the interconnection.

"Queue position" means the order of a valid interconnection request relative to all other pending valid interconnection request based on queue number.

"Regional Transmission Entity" or "RTE" shall refer to an entity having the management and control of a Utility's transmission system as further set forth in § 56-579 of the Code of Virginia.

"Small generating facility" or "generating facility" or "generator" or "SGF" means the IC's equipment used for the production of electricity, as identified in the interconnection request.

"Small Generator Interconnection Agreement" or "SGIA" means the agreement between the Utility and the IC as set forth in this Schedule 10 of 20VAC5-314-170.

"Supplemental review" has the meaning ascribed to it in 20VAC5-314-60 H.

"System" or "Utility system" means the distribution and transmission facilities owned, controlled, or operated by the Utility that are used to deliver electricity.

"System impact study" has the meaning ascribed to it in 20VAC5-314-70 D.

"Tariff" means the rates, terms, and conditions filed by the Utility with the commission for the purpose of providing commission-regulated electric service to retail customers.

"Transmission system" means the Utility's facilities and equipment delivering electric energy to the distribution system; such facilities usually being operated at voltage levels above the Utility's typical distribution system voltage levels.

"Utility" means the public utility company subject to regulation by the Commission pursuant to Chapter 10 (§ 56-232 et seq.) of Title 56 of the Code of Virginia with regard to rates or service quality to whose system the IC proposes to interconnect a small generating facility.

Attachment 2 to Schedule 10

Description and Costs of the Small Generating Facility, Customer's

Interconnection Facilities, Attachment Facilities, and Metering Equipment

The following shall be provided in this exhibit:

1. An itemization of the major equipment components owned by the IC and the Utility, including components of the SGF, the customer's interconnection facilities, attachment facilities, and metering equipment. Such itemization shall identify the owner of each item listed.

2. The Utility's estimated itemized cost of its attachment facilities and its metering equipment.

3. The Utility's estimated cost of its annual operation and maintenance expenses associated with attachment facilities and metering equipment to be charged to the IC.

Attachment 3 to Schedule 10

One-line Diagram Depicting the Small Generating Facility, Customer's

Interconnection Facilities, Attachment Facilities, Metering Equipment, and Distribution Upgrades

(Diagram and description to be provided by IC unless the Utility elects to prepare this schedule. If this schedule is prepared by the Utility, the IC shall provide a one-line diagram of the SGF and IC's interconnection facilities for the Utility to use as a data source for preparing this schedule.)

Attachment 4 to Schedule 10

Milestones

In-Service Date:_____

Critical milestones and responsibility as agreed to by the Parties:

Milestone/Date	Responsible Party
1.	
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10.	

Agreed to by:

For the Utility_____ Date_____

For the Transmission Owner (if applicable)_____ Date_____

For the Interconnection Customer_____ Date_____

Attachment 5 to Schedule 10

Additional Operating Requirements for the Utility System

and Affected Systems Needed to Support the Interconnection Customer's Needs

The Utility shall provide requirements that must be met by the IC prior to initiating parallel operation with the utility system.

Attachment 6 to Schedule 10

Utility's Description of its Distribution and Transmission Upgrades and Estimate of Upgrade Costs

The Utility shall provide the following in this attachment:

1. An itemized list of the upgrades required to be constructed by the Utility prior to interconnection of the SGF, with transmission and distribution related upgrades shown separately.

2. An estimate of the cost of each item listed pursuant to Item 1 of this Attachment.

3. An estimate of annual operation and maintenance expenses associated with such upgrades that are to be charged to the IC, shown separately for transmission and distribution related items.

DOCUMENTS INCORPORATED BY REFERENCE (20VAC5-314)

IEEE Standard for Interconnection and Interoperability of Distributed Energy Resources with Associated Electric Power Systems Interfaces, The Institute of Electrical and Electronics Engineers, Inc., Standard 1547, 2018.

IEEE Standard Conformance Test Procedures for Equipment Interconnecting Distributed Resources with Electric Power Systems, The Institute of Electrical and Electronics Engineers, Inc., Standard 1547.1, July 1, 2005.

IEEE Standard 1547.3, Guide for Cybersecurity of Distributed Energy Resources Interconnected with Electric Power Systems, June 5, 2023

National Association of Regulatory Utility Commissioners Cybersecurity Baselines for Electric Distribution Systems and DER, February 2024

VA.R. Doc. No. R25-8227; Filed April 15, 2025, 11:11 a.m.

TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Fast-Track Regulation

Title of Regulation: **22VAC40-880. Child Support Enforcement Program (amending 22VAC40-880-10, 22VAC40-880-90, 22VAC40-880-240, 22VAC40-880-250, 22VAC40-880-350, 22VAC40-880-430, 22VAC40-880-480; repealing 22VAC40-880-320).**

Statutory Authority: § 63.2-217 of the Code of Virginia; 42 USC § 651 et seq.

Public Hearing Information: No public hearing is currently scheduled.

Public Comment Deadline: June 4, 2025.

Effective Date: June 19, 2025.

Agency Contact: Matthew Gomez, Director, Program Initiatives, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7437, or email matthew.gomez@dss.virginia.gov.

Basis: Section 63.2-217 of the Code of Virginia requires the State Board of Social Services to promulgate rules and regulations to administer child support enforcement in the Commonwealth under Chapter 19 (§ 63.2-1900 et seq.) of Title 63.2 of the Code of Virginia. Sections 63.2-1914, 63.2-1918, and 63.2-1946 of the Code of Virginia authorize the board to adopt regulations related to specific aspects of the child support enforcement program. In addition, the updates in 22VAC40-880-240 are made to align with 45 CFR § 302.56(c)(1).

Purpose: This action is essential to protect the welfare of the public because clear regulations help parents, courts, and the Department of Social Services participate in the child support process and support participants in understanding their rights and responsibilities. The goal of the amendments is to make technical and clarifying amendments to the regulation.

Rationale for Using Fast-Track Rulemaking Process: The board believes this action will be noncontroversial and therefore appropriate for the fast-track rulemaking process because the amendments improve consistency with federal and state law.

Substance: The amendments (i) modernize definitions to be consistent with technological and legal changes, (ii) conform 22VAC40-88-240 to federal regulations on imputation; (iii) remove an obsolete threshold for when parents may request review of child support obligations, and (iv) clarify language.

Issues: The board is unaware of any disadvantages to the public or the Commonwealth. The primary advantage to the public and the Commonwealth is that the amendments will improve the effectiveness of the child support enforcement program. The primary advantage to the agency is that improved definitions and an expanded description of services provided will improve the agency's service delivery.

Department of Planning and Budget Economic Impact Analysis:

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia and Executive Order 19. The analysis presented represents DPB's best estimate of the potential economic impacts as of the date of this analysis.[1]

Summary of the Proposed Amendments to Regulation. As the result of a 2019 periodic review, the Board of Social Services (board) seeks to make technical corrections and updates to the regulation governing the Child Support Enforcement Program.[2]

Background. The Department of Social Services (DSS) Child Support Enforcement Program promotes the efficient and accurate collection, accounting, and receipt of financial support for dependent children and custodial parents. The regulation governing this program, 22VAC40-880, specifies the processes and requirements for DSS Division of Child Support Enforcement (DCSE) as well as for custodial and noncustodial parents. The board seeks to update the regulation to enhance consistency with the Code of Virginia and applicable federal law and to reflect current practice. The most substantive changes are summarized below.

1. Section 240, Administrative deviation from the child support guideline. This section would be updated to reflect changes in federal law (45 CFR § 302.56(c)(1)), which now requires that if actual income information is not available, this information will be imputed based on several factors. The current language uses the federal minimum wage to establish the noncustodial parent's wage. The proposed language would specify that "imputation shall take into consideration the specific circumstances of the noncustodial parent to the extent known, including such factors as the noncustodial parent's assets, residence, employment and earnings history, job skills, educational attainment, literacy, age, health, criminal record and other employment barriers, and record of seeking work, as well as the local job market, the availability of employers willing to hire the noncustodial parent, prevailing earnings level in the local community, and other relevant background factors in the case."[3]

2. Section 250, Periodic reviews of the child support obligation. The regulation currently allows the child support obligation to be changed in order to require the natural or adoptive parents to share the costs of unreimbursed medical or dental expenses exceeding $250 per child per year. The $250 threshold was removed by the 2014 Acts of Assembly, which instead refers to any reasonable and necessary unreimbursed medical or dental expenses.[4] Accordingly, the board proposes to replace that limit with any reasonable and necessary unreimbursed medical or dental expenses for the child.

3. Section 320, Initiated withholding of income. This section would be repealed in its entirety based on a recommendation by the Office of the Attorney General (OAG). The language

currently in this section was considered redundant, since the Code of Virginia provides for income withholding by DCSE.[5]

4. Section 430, Validity of the appeal. The proposed changes to this section also result from a recommendation by the OAG. All of the current text containing the deadlines and other requirements for an appeal to be considered valid was considered redundant, since these requirements are contained in state and federal code and also in forms received by DCSE customers.

5. Section 480, Cooperation with other state IV-D agencies. The proposed changes would clarify DSS authority to pursue direct enforcement when a parent lives in another state by removing language requiring coordination with the other state's Title IV-D agency in all such cases. DSS reports that direct enforcement is often faster in obtaining support for the custodial parent and child living in Virginia, and these orders are routine for employers.

All other changes to the proposed text, including in Sections 10, 90, and 350, appear to be merely clarifying in nature.

Estimated Benefits and Costs. Since the proposed changes all reflect current practice and would conform the regulation to state and federal law, the primary benefit would be to provide readers of the regulation with accurate and current information regarding the child support enforcement program. The proposed changes would not create new costs either to DSS or to custodial or noncustodial parents.

Businesses and Other Entities Affected. This regulation pertains to the processes used by DCSE to establish and enforce child support payments made to custodial parents of dependent children by noncustodial parents. Accordingly, the proposed changes would primarily affect DCSE and the families they serve. In addition, all of the proposed changes have already been implemented, and no entity would be newly affected by the proposed changes. The following table provided by DSS indicates the rates at which income has been imputed since federal fiscal year 2020; these imputations occur when actual income information is not available and are performed in obligation calculation worksheets.

FFY	Imputations	All OCWs	Rate
2020	243	18,369	1.32%
2021	851	17,477	4.87%
2022	208	16,265	1.28%
2023	33	19,056	0.17%

The proposed changes would indirectly affect certain employers in other states who would be contacted to collect child support payments. However, these changes have been implemented in practice because all states have adopted the 2008 Uniform Family Support Act, which allows direct income withholding.[6] DSS also notes that direct income withholding has been found to be more cost-effective than requesting another state's assistance.[7] The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.[8] 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.[9] Because the proposed changes would conform the regulation to federal and state law and reflect current practice, an adverse impact is not indicated.

Small Businesses[10] Affected.[11] The proposed amendments would not create any new costs for small businesses.

Localities[12] Affected.[13] The proposed changes would not disproportionately affect any particular locality and would not affect costs for local governments.

Projected Impact on Employment. The proposed amendments are not likely to have a substantive impact on total employment.

Effects on the Use and Value of Private Property. The proposed amendments would not affect the value of private property or real estate development costs.

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[1] Section 2.2-4007.04 of the Code of Virginia requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

[2] See https://townhall.virginia.gov/l/ViewPReview.cfm?PRid=1753.

[3] See https://www.law.cornell.edu/cfr/text/45/302.56. The proposed changes are identical to the language in the federal regulation.

[4] See https://lis.virginia.gov/cgi-bin/legp604.exe?ses=141&typ=bil&val=ch667.

[5] See https://townhall.virginia.gov/l/GetFile.cfm?File=73\5858\10059\AGmemo_DSS_10059_v1.pdf.

[6] See https://www.uniformlaws.org/committees/community-home?CommunityKey=71d40358-8ec0-49ed-a516-93fc025801fb. Virginia's version appears in § 20-88.32 et seq of the Code of Virginia.

[7] A detailed discussion of this topic appears at Office of Child Support Services, Interstate Child Support Payment Processing (2017) at https://www.acf.hhs.gov/sites/default/files/documents/ocse/at_17_07_a.pdf.

[8] Pursuant to § 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," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

[9] Statute does not define "adverse impact," state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation. As a result, DPB has adopted a definition of adverse impact that assesses changes in net costs and benefits for each affected Virginia entity that directly results from discretionary changes to the regulation.

[10] 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."

[11] If the proposed regulatory action may have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses

include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to § 2.2-4007.1 of the Code of Virginia, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

[12] "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.

[13] Section 2.2-4007.04 defines "particularly affected" as bearing disproportionate material impact.

Response to Economic Impact Analysis: The State Board of Social Services has reviewed the economic impact analysis prepared by the Department of Planning and Budget and concurs.

Summary:

In response to a periodic review, the amendments (i) modernize definitions to be consistent with technological and legal changes, (ii) conform 22VAC40-88-240 to federal regulations on imputation, (iii) remove an obsolete threshold for when parents can request review of child support obligations, and (iv) clarify language.

22VAC40-880-10. Definitions.

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

"Administrative referral" means when a unit of the department or executive branch makes a referral for a parent or case.

"Appeal" means a request for a review of an administrative action taken by the division~~,~~ or an action taken to contest a court order.

"Applicant" or "applicant/recipient" means a party who applies for and receives services from the division.

"Application" means a written ~~document requesting~~ or electronic request for child support enforcement services~~, which~~ on a form that the department provides to the individual or agency applying for services and ~~which~~ that is signed by the applicant, including by electronic means.

"Arrearage" means unpaid child or medical support payments, interest, and other costs for past periods owed by a parent to the state or obligee. This may include unpaid spousal support when child support is also being enforced.

"Bad check" means a check not honored by the bank on which it is drawn.

"Case management services" means individualized services provided by a trained case manager.

"Case summary" means a written statement outlining the actions taken by the department on a case that has been appealed.

"Child support guideline" means a method for calculating a child support obligation as set out in § 20-108.2 of the Code of Virginia.

"Delinquency" means an unpaid child or medical support obligation. The obligation may include spousal support when child support is also being enforced.

"Department" means the Virginia Department of Social Services.

"District office" means a local office of the Division of Child Support Enforcement responsible for the operation of the child support enforcement program.

"Division" means the Division of Child Support Enforcement of the Virginia Department of Social Services, also known as a IV-D agency.

"Enforcement" means ensuring the payment of child support through the use of administrative or judicial means.

"Family engagement services" means services through which the department identifies barriers to providing support and provides case management services to address those barriers.

"Federal foster care" means foster care that is established under Title IV-E of the Social Security Act. This is a category of financial assistance paid on behalf of children who otherwise meet the eligibility criteria for TANF and who are in the custody of local social service agencies.

"Financial statement" means the provision of financial information from the natural or adoptive parents.

"Good cause" means, as it pertains to ~~TANF~~ public assistance applicants and recipients, an agency determination that the individual is not required to cooperate with the division in its efforts to collect child support.

"Hearing officer" means an impartial person charged by the Commissioner of the Department of Social Services to hear appeals and decide if an agency followed its policy and procedures.

"IV-D agency" means a governmental entity administering the child support enforcement program under Title IV-D of the Social Security Act. In Virginia, the IV-D agency is the Division of Child Support Enforcement.

"Locate services" means obtaining information that is sufficient and necessary to take action on a child support case, including information concerning (i) the physical whereabouts of the obligor or the obligor's employer or (ii) other sources of income or assets, as appropriate. Certain individuals and entities, such as courts and other state child support enforcement agencies, can receive locate-only services from the department.

"Medicaid-only" means a category of public assistance whereby a family receives Medicaid but is not eligible for or receiving TANF.

"Medical support services" means the establishment of a medical support order and the enforcement of health insurance coverage or, if court ordered, medical expenses.

"Obligation" means the amount and frequency of payments that the obligor is legally bound to pay as set out in a court or administrative support order.

"Occupational license" means any license, certificate, registration, or other authorization to engage in a business, trade, profession, or occupation issued by the Commonwealth pursuant to Title 22.1, 38.2, 46.2, or 54.1 of the Code of Virginia or any other provision of law.

"Parent" means any natural or adoptive parent; the natural or adoptive parent with whom the child resides; a stepparent or other person who has physical custody of the child and with whom the child resides; a local board that has legal custody of a child in foster care; or a responsible person who is or may be obligated under Virginia law for support of a dependent child or child's caretaker.

"Past due support" means support payments determined under a court or administrative order that have not been paid.

"Pendency of an appeal" means the period of time after an administrative appeal has been made and before the final disposition by an administrative hearing officer, or between the time a party files an appeal with the court and the court renders a decision.

"Putative father" means a person alleged to be the father of a child whose paternity has not been established.

"Recipient" means a person or agency that has applied for or receives public assistance or child support enforcement services.

"Recreational license" means any license, certificate, or registration used for the purpose of participation in games, sports, or hobbies or for amusement or relaxation.

"Referral" means when one entity or organization formally or informally requests action by another with respect to an item.

"Service of process" means the delivery to or leaving of a child support document, in a manner prescribed by state statute, giving the party reasonable notice of the action being taken.

"Summons" means a document notifying a parent or other person that the parent or other person must appear at a time and place named in the document to provide information needed to pursue child support actions.

22VAC40-880-90. Case assessment.

After establishing a case record, the department shall (i) assess the case information to determine if sufficient information to establish or enforce a child support obligation is available and verified, (ii) attempt to obtain additional case information if the information is not sufficient, (iii) gather all relevant documents, and (iv) ~~verify case information which is not verified~~ initiate verification of unverified case information.

22VAC40-880-240. Administrative deviation from the child support guideline.

There shall be a rebuttable presumption that the amount of child support that results from the application of the guidelines is the correct amount of child support pursuant to §§ 20-108.1, 20-108.2, and 63.2-1918 of the Code of Virginia. Deviations from the guidelines shall be allowed as follows:

1. When either natural or adoptive parent is found to be voluntarily unemployed or fails to provide financial information upon request, income shall be imputed ~~except~~ as indicated in this subdivision. A natural or adoptive parent is determined to be voluntarily unemployed when the parent quits a job without good cause or is fired for cause.

a. The current or last available monthly income shall be used to determine the obligation if that income is representative of what the natural or adoptive parent could earn or otherwise receive.

b. If actual income is not available, ~~use the federal minimum wage multiplied by 40 hours per week and converted to a monthly amount by multiplying the result by 4.333~~ imputation shall take into consideration the specific circumstances of the noncustodial parent to the extent known, including such factors as the noncustodial parent's assets, residence, employment and earnings history, job skills, educational attainment, literacy, age, health, criminal record and other employment barriers, and record of seeking work, as well as the local job market, the availability of employers willing to hire the noncustodial parent, prevailing earnings level in the local community, and other relevant background factors in the case.

2. In non-TANF cases~~,~~ where there is a signed, written agreement for child support, the child support obligation may be set at the agreed amount but at no less than the statutory minimum pursuant to § 20-108.2 of the Code of Virginia.

3. No other deviations from the child support guidelines may be made in establishing or adjusting administrative support orders or reviewing court orders. Should potential deviation factors exist, as stated in § 20-108.1 of the Code of Virginia, refer the case to court for additional action.

22VAC40-880-250. Periodic reviews of the child support obligation.

A. Either parent may request a review of the child support obligation once every three years. Additional requests may be made earlier by providing documentation that a material change of circumstance has occurred that potentially affects the child support obligation. Such changes shall be limited to the following:

1. An additional child needs to be added to the order;

2. A child is no longer eligible to receive current support due to a change of custody or emancipation and needs to be removed from an existing order that includes other children;

3. A provision for health care coverage needs to be added;

4. A provision ordering the natural or adoptive parents to share the costs of ~~all~~ any reasonable and necessary unreimbursed ~~medical/dental~~ medical or dental expenses ~~exceeding $250 per~~ for the child ~~per year~~ covered by the order needs to be added; or

5. A change of at least 25% can be documented by the requesting parent in the following circumstances:

a. Income of either natural or adoptive parent;

b. Amount of medical insurance; or

c. Cost of employment-related child-care costs.

B. The department shall adjust an administrative obligation when the results of the review indicate a change of at least 10% in the monthly obligation but not less than $25.

22VAC40-880-320. ~~Initiated withholding of income.~~ (Repealed.)

~~In all initial and modified administrative support orders, the department shall initiate an income withholding order unless the parties agree to a written alternative payment arrangement. The department shall initiate an income withholding order to the noncustodial parent's employer requiring the withholding of the child support obligation from the noncustodial parent's income under the following circumstances:~~

~~1. When a payment is delinquent in an amount equal to or exceeding one month's child support obligation, or~~

~~2. When either parent requests that withholding begin regardless of whether past due support is owed.~~

22VAC40-880-350. Distraint, seizure, and sale.

A. The department may use distraint, including booting of vehicle, seizure, and sale, against the real or personal property of a noncustodial parent when:

1. There is an arrearage of at least $1,000 for a case with a current support obligation and at least $500 for an arrearage-only case;

2. Conventional enforcement remedies have failed or are not appropriate; and

3. A lien has been filed pursuant to § 63.2-1927 of the Code of Virginia.

B. Assets that may be targeted for distraint, including booting of vehicle, seizure, and sale, are:

1. Solely owned by the noncustodial parent.

2. Co-owned by the noncustodial parent and current spouse.

3. Owned by a business in which the noncustodial parent is the sole proprietor. Assets owned by business partnerships or corporations ~~which~~ that are co-owned with someone other than a noncustodial parent's current spouse do not qualify for booting of vehicle~~,~~ or seizure and sale.

C. The director of the division or ~~his~~ the director's designee shall give final approval for the use of distraint, seizure, and sale. This includes immobilizing a vehicle using vehicle boots.

D. When initiating booting~~,~~ or seizure and sale of vehicle, the department shall check with the Department of Motor Vehicles for vehicles registered in the noncustodial parent's name, the address on the vehicle registration, and the name of any lien holder on the vehicle.

E. Once a lien has been filed pursuant to § 63.2-1927 of the Code of Virginia, the department shall send a notice of intent to the noncustodial parent before initiating distraint, including booting of vehicle, seizure, and sale action.

F. If the noncustodial parent contacts the department in response to the intent notice, the department shall request payment of the arrearage in full. The department shall negotiate a settlement if the noncustodial parent cannot pay the arrearage in full. The least acceptable settlement is 5.0% of the arrearage owed or $500, whichever is greater, with additional monthly payments ~~towards~~ toward the arrearage that will satisfy the arrearage within 10 years. The department may initiate distraint, including booting of vehicle, seizure, and sale, without further notice to the noncustodial parent if the noncustodial parent defaults on the payments as agreed.

G. The department shall send a fieri facias request to each county or city where a lien is filed and a levy is being executed if the noncustodial parent does not contact the department in response to the intent notice.

H. The department shall set a target date for seizure or booting and have the sheriff levy the property or boot the vehicle.

I. Once property has been seized or booted by the sheriff, the department must (i) reach a payment agreement with the noncustodial parent of 5.0% of the arrearage owed or $500, whichever is greater, with additional monthly payments ~~towards~~ toward the arrearage that will satisfy the arrearage within 10 years and release the vehicle to the owner; (ii) proceed with the sale of the vehicle pursuant to § 63.2-1933 of

the Code of Virginia; or (iii) at the end of 90 days from the issuance of the writ of fieri facias, release the vehicle to the owner.

J. The department shall send a cancellation notice to the sheriff if a decision is made to terminate the seizure action before the asset is actually seized.

K. If the department sells an asset and it is a motor vehicle, the department shall notify the Department of Motor Vehicles to issue clear title to the new owner of the vehicle.

22VAC40-880-430. Validity of the appeal.

~~A. The department shall determine the validity of an administrative appeal.~~

~~1. The appeal must be in writing.~~

~~2. If the appeal is personally delivered, the appeal must be received within 10 business days of service of process of the notice of the proposed action on the appellant.~~

~~3. If mailed, the postmark must be within 10 business days from the date of service of process of the notice of the proposed action on the appellant.~~

~~B. For appeals of federal and state tax intercepts, the appellant shall have 30 days to note an appeal to the department.~~

To the extent not otherwise provided for in state or federal law, requests for administrative hearings and appeals shall be in writing and shall be deemed timely filed if postmarked or if received by the department within the applicable deadline.

22VAC40-880-480. Cooperation with other state IV-D agencies.

A. When the parents reside in different states, cooperation between these state agencies may be necessary.

B. The department shall provide the same services to other state IV-D cases that it provides to its own cases with the following conditions:

1. The request for services ~~must~~ shall be in writing; and

2. The request for services ~~must~~ shall list the specific services needed.

~~C. The department shall request in writing the services of other state IV-D agencies when one parent resides in Virginia, but the other parent resides in another state.~~

~~D.~~ C. Other department responsibilities in providing services to other state IV-D cases and obtaining services from other state IV-D agencies are defined in 45 CFR 303.7 and ~~§§ 63.2-1902 and~~ Chapter 5.3 (§ 20-88.32 ~~through 20-88.82~~ et seq.) of Title 20 and § 63.2-1902 of the Code of Virginia.

VA.R. Doc. No. R23-6081; Filed April 2, 2025, 2:26 p.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, General Assembly Building, 201 North Ninth Street, Fourth Floor, Richmond, Virginia 23219.

DEPARTMENT FOR AGING AND REHABILITATIVE SERVICES

Title of Document: Title IX Policy and Procedure Manual.

Public Comment Deadline: June 4, 2025.

Effective Date: June 5, 2025.

Agency Contact: Charlotte Arbogast, Senior Policy Analyst and Regulatory Coordinator, Department of Aging and Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, VA 23299, telephone (804) 662-7093, or email charlotte.arbogast@dars.virginia.gov.

STATE BOARD OF EDUCATION

Title of Document: Definition of Students with Limited or Interrupted Formal Education.

Public Comment Deadline: June 4, 2025.

Effective Date: June 5, 2025.

Agency Contact: Jim Chapman, Director of Board Relations, Department of Education, James Monroe Building, 101 North 14th Street, 25th Floor, Richmond, VA 23219, telephone (804) 750-8750, or email jim.chapman@doe.virginia.gov.

DEPARTMENT OF ENERGY

Title of Document: Mineral Mine Operator's Manual.

Public Comment Deadline: June 4, 2025.

Effective Date: June 5, 2025.

Agency Contact: Larry Corkey, Energy and Regulatory Program Manager, Department of Energy, 1100 Bank Street, Eighth Floor, Richmond, VA 23219-3402, telephone (804) 692-3239, or email larry.corkey@energy.virginia.gov.

REAL ESTATE BOARD

Title of Document: Real Estate Board Application Review Matrix.

Public Comment Deadline: June 4, 2025.

Effective Date: June 5, 2025.

Agency Contact: Joseph Haughwout, Regulatory Affairs Manager, Department of Professional and Occupational Regulation, Perimeter Center, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8566, or email joseph.haughwout@dpor.virginia.gov.

COMMONWEALTH TRANSPORTATION BOARD

Title of Document: Virginia Official State Transportation Map Policy and Procedures.

Public Comment Deadline: June 4, 2025.

Effective Date: June 5, 2025.

Agency Contact: Steven Jack, Regulatory Manager, Department of Transportation, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-3886, or email steven.jack@vdot.virginia.gov.

Guidance Documents

The following guidance documents have been submitted for deletion and the listed agency has opened up a 30-day public comment period. The listed agency previously identified these documents as certified guidance documents, pursuant to § 2.2-4002.1 of the Code of Virginia. Online users of this issue of the Virginia Register of Regulations may click on the name of a guidance document to view the deleted document and comment. This information is also available on the Virginia Regulatory Town Hall (http://www.townhall.virginia.gov) or from the agency contact.

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Titles of Documents: Answering Telephone Requests for Pesticide Applicator or Pesticide Business License Examination Scores.

Certification of Individuals Treating Cooling Towers or Swimming Pools.

Commercial Carpet Cleaners Who Apply Pesticides for Flea and Tick Control.

Production Registration - Submission of Labels.

Registration Label Review.

Public Comment Deadline: June 4, 2025.

Effective Date: June 5, 2025.

Agency Contact: Nicole Wilkins, Program Manager, Office of Pesticide Services, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 371-6559, or email nicole.wilkins@vdacs.virginia.gov.

STATE AIR POLLUTION CONTROL BOARD

Titles of Documents: Air Compliance Guidance for Violations of 9VAC5 Chapter 40 Part II Article 37 and Related Federal Rules in Accordance with EPA Letters regarding No Action Assurance dated September 13, 2018.

Inspections.

Particulate Testing: Role of Agency Observer.

Public Comment Deadline: June 4, 2025.

Effective Date: June 5, 2025.

Agency Contact: Sam Jasinski, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 659-2655, or email samuel.jasinski@deq.virginia.gov.

BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS, CERTIFIED INTERIOR DESIGNERS AND LANDSCAPE ARCHITECTS

VIRGINIA BOARD FOR ASBESTOS, LEAD, AND HOME INSPECTORS

AUCTIONEER'S BOARD

BOARD FOR BARBERS AND COSMETOLOGY

BOARD FOR BRANCH PILOTS

CEMETERY BOARD

COMMON INTEREST COMMUNITY BOARD

BOARD FOR CONTRACTORS

FAIR HOUSING BOARD

BOARD FOR HEARING AID SPECIALISTS AND OPTICIANS

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

BOARD FOR PROFESSIONAL SOIL SCIENTISTS, WETLAND PROFESSIONALS, AND GEOLOGISTS

REAL ESTATE APPRAISER BOARD

REAL ESTATE BOARD

BOARD FOR WASTE MANAGEMENT FACILITY OPERATORS

BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS AND ONSITE SEWAGE SYSTEM PROFESSIONALS

Titles of Documents: Employee Use of Social Media.

Ethics.

Gifts and Honoraria.

Purchasing.

Public Comment Deadline: June 4, 2025.

Effective Date: June 5, 2025.

Agency Contact: Joe Haughwout, Regulatory Affairs Manager, Department of Professional and Occupational Regulation, Perimeter Center, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8566, or email joseph.haughwout@dpor.virginia.gov.

BOARD FOR BARBERS AND COSMETOLOGY

Title of Document: Random Inspections of Board for Barbers and Cosmetology Licensees.

Public Comment Deadline: June 4, 2025.

Effective Date: June 5, 2025.

Agency Contact: Joe Haughwout, Regulatory Affairs Manager, Department of Professional and Occupational Regulation, Perimeter Center, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8566, or email joseph.haughwout@dpor.virginia.gov.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Titles of Documents: Pharmacy Manual, Appendix D.

Pharmacy Manual, Appendix E.

Public Comment Deadline: June 4, 2025.

Effective Date: June 5, 2025.

Agency Contact: Syreeta Stewart, Regulatory Coordinator, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 298-3863, or email syreeta.stewart@dmas.virginia.gov.

STATE MILK COMMISSION

Title of Document: Virginia State Milk Commission Monthly Report Audit Manual.

Public Comment Deadline: June 4, 2025.

Effective Date: June 5, 2025.

Agency Contact: Crafton Wilkes, Administrator for the State Milk Commission, Department of Agriculture and Consumer Services, Oliver Hill Building, 102 Governor Street, Room 206, Richmond, VA 23219, telephone (804) 786-2013, or email crafton.wilkes@vdacs.virginia.gov.

COMMONWEALTH TRANSPORTATION BOARD

Title of Document: Interagency Scenic Roads Map Advisory Committee Policy and Selection Criteria.

Public Comment Deadline: June 4, 2025.

Effective Date: June 5, 2025.

Agency Contact: Steven Jack, Regulatory Manager, Department of Transportation, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-3886, or email steven.jack@vdot.virginia.gov.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Proposed Enforcement Action for 6th Street Solar 1 LLC

The Virginia Department of Environmental Quality (DEQ) is proposing an enforcement action for 6th Street Solar 1 LLC for violations of State Water Control Law and regulations at Poorhouse Road Solar in Victoria, Virginia. The proposed order is available from the DEQ contact or at https://www.deq.virginia.gov/permits/public-notices/enforcement-actions. The DEQ contact will accept written comments from May 5, 2025, to June 4, 2025.

Contact Information: Kristen Sadtler, Interim Director of Enforcement; Water Enforcement Coordinator, Department of Environmental Quality, Central Office, P.O. Box 1105, Richmond, VA 23218, or email kristen.sadtler@deq.virginia.gov.

Proposed Enforcement Action for Crown Auto Parts and Recycling

The Virginia Department of Environmental Quality (DEQ) is proposing an enforcement action for Crown Auto Parts and Recycling for violations of State Water Control Law and regulations in Elkton, Virginia. The proposed order is available from the DEQ contact or at https://www.deq.virginia.gov/permits/public-notices/enforcement-actions. The DEQ contact will accept written comments from May 5, 2025, through June 5, 2025.

Contact Information: Russell Deppe, Enforcement Specialist, Department of Environmental Quality, 5636 Southern Boulevard, Virginia Beach, VA 23462, or email russell.deppe@deq.virginia.gov.

Proposed Enforcement Action for DF Lunsford Construction LLC

The Virginia Department of Environmental Quality (DEQ) is proposing an enforcement action for DF Lunsford Construction LLC for violations of State Water Control Law and regulations in Prince George County, Virginia. The proposed order is available from the DEQ contact listed or at https://www.deq.virginia.gov/permits/public-notices/enforcement-actions. The DEQ contact will accept written comments from May 5, 2025, through June 4, 2025.

Contact Information: Gary Wooldridge, Enforcement Specialist, Department of Environmental Quality, 1111 East Main Street, Richmond, VA 23219, or email gary.wooldridge@deq.virginia.gov.

Proposed Enforcement Action for Aaron and Mary Stoltzfus

The Department of Environmental Quality (DEQ) is proposing an enforcement action for Aaron and Mary Stoltzfus for alleged violations of the State Water Control Law at the Peacock Hill Cheese House, 917 Calvary Church Road, Warsaw, Virginia. The proposed order is available from the DEQ contact listed at https://www.deq.virginia.gov/permits/public-notices/enforcement-actions. The DEQ contact will accept comments by email or postal mail from May 5, 2025, to June 4, 2025.

Contact Information: Cara Witte, Enforcement Specialist, Department of Environmental Quality, 4949 Cox Road, Suite A, Glen Allen, VA 23060, telephone (804) 712-4192, or email cara.witte@deq.virginia.gov.

Horus Virginia 1 LLC Notice of Intent for a Small Renewable Energy Project (Solar) - Clarke County

Horus Virginia 1 LLC has provided the Department of Environmental Quality (DEQ) a notice of intent to submit the necessary documents for a permit by rule for a small renewable energy project (solar) in Clarke County pursuant to 9VAC15-60. The proposed Bellringer Solar Project will be located at 1030 Bellringer Lane, Town of Berryville, Clarke County, Virginia, on Clarke County Parcel No. 13-A-13. The project area includes approximately 390 acres, and the geographic information system (GIS) centroid is Latitude 39.156816, Longitude -78.009956. The DEQ project number is RE0000348. The facility is proposed as a 50-megawatt alternating current solar energy generation project and is anticipated to utilize approximately 117,740 solar panels.

Contact Information: Matthew Snow, Small Renewable Energy Permit by Rule Program Specialist, Department of Environmental Quality, 1111 East Main Street, Suite 1400, Richmond VA 23233, telephone (804) 718-9569, or email matthew.a.snow@deq.virginia.gov.

Withdrawn: Notice of Intent for Gateway Grid Battery Storage Facility

The notice of intent submitted September 25, 2024, by Gateway Grid LLC for a 100-megawatt rated capacity permit by rule for a small renewable energy project (energy storage) off Lee Highway, Botetourt County has been withdrawn. The DEQ project number was RE0000329. The notice of intent was published on the Virginia Regulatory Town Hall on September 25, 2024, and published in the Virginia Register of Regulations on October 21, 2024.

Contact Information: Amber Foster, Renewable Energy Permit by Rule Coordinator, Department of Environmental Quality, 1111 East Main Street, Suite 1400, Richmond, VA 23219, telephone (804) 774-8474, or email amber.foster@deq.virginia.gov.

Public Comment Opportunity for Air Quality Plan

Notice of action: The Department of Environmental Quality (DEQ) is announcing an opportunity for public comment on a proposed plan to attain and maintain the national ambient air quality standards (NAAQS). The Commonwealth intends to submit the plan as a revision to the Commonwealth of Virginia state implementation plan (SIP) in accordance with the requirements of § 110(a) of the federal Clean Air Act (42 USC § 7401 et seq.). The SIP is the plan developed by the Commonwealth in order to fulfill its responsibilities under the Clean Air Act to attain and maintain the NAAQS promulgated by the U.S. Environmental Protection Agency (EPA).

Purpose of notice: DEQ is seeking comment on the issue of whether certain regulatory amendments that implement requirements for transfer of authority and requests for certain public hearings (Regulation Revision D22) should be submitted as a revision to the SIP. The regulatory action has not been amended; the revision consists of corrected SIP-specific materials.

Public comment period: May 5, 2025, to June 4, 2025.

Public hearing: A public hearing will be conducted if a request is made in writing to the contact listed in this notice. In order to be considered, the request must include the full name, address, and telephone number of the person requesting the hearing and be received by DEQ by the last day of the comment period. Notice of the date, time, and location of any requested public hearing will be announced in a separate notice, and another 30-day comment period will be conducted.

Public comment stage: The amendments that are necessary to conform to Virginia statute are exempt from the standard regulatory adoption process by § 2.2-4006 A 4 a of the Code of Virginia. The technical corrections are exempt by the provisions of § 2.2-4006 A 3 of the Code of Virginia. Because the amendments have already been adopted and are exempt from administrative procedures for the adoption of regulations, DEQ is accepting comment only on the issue cited under "purpose of notice" and not on the content of the amendments.

Description of proposal: Chapter 356 of the 2022 Acts of Assembly limits the authority of the State Air Pollution Control Board to the issuance of regulations and transfers the board's existing authority to issue permits, orders, and variances to DEQ. The regulations were amended accordingly under Regulation Revision D22; additional information is available from the Virginia Regulatory Town Hall at https://townhall.virginia.gov/L/ViewStage.cfm?stageid=9789.

As a proposed SIP revision, the adopted D22 amendments originally underwent public comment in accordance with 40 CFR 51.102(a); no comments were received, and the SIP revision was submitted on July 7, 2023. Subsequently, EPA determined that the SIP submittal incorrectly identified what provisions were intended to be part of the SIP and what provisions were not intended to be part of the SIP. The original submittal was withdrawn, and a corrected version of the SIP submittal is now undergoing a new public comment period prior to a new final submittal.

This comment period and the new SIP submittal are administrative in nature; no changes to the adopted regulations are proposed, and there is no impact to the environment.

Federal information: This notice is being given to satisfy the public participation requirements of federal regulations (40 CFR 51.102). The proposal will be submitted as a revision to the Commonwealth of Virginia SIP under § 110(a) of the Clean Air Act in accordance with 40 CFR 51.104. Provisions that are not pertinent to the SIP and, therefore, not being submitted as part of the SIP revision are identified.

How to comment: DEQ accepts written comments by email and postal mail. In order to be considered, comments must include the full name, address, and telephone number of the person commenting and be received by DEQ by the last day of the comment period. All materials received are part of the public record.

To review proposal: The proposal and any supporting documents are available on the DEQ Air Public Notices website at https://www.deq.virginia.gov/permits/public-notices/air. The documents may also be obtained by contacting the DEQ contact listed in this notice. Members of the public may schedule an appointment to review the documents between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period at the following DEQ locations:

1. Main Street Office, 22nd Floor, 1111 East Main Street, Richmond, VA 23219, telephone (804) 698-4000;

2. Southwest Regional Office, 355-A Deadmore Street, Abingdon, VA 24210, telephone (540) 676-4800;

3. Blue Ridge Regional Office, 3901 Russell Drive, Salem, VA 24153, telephone (540) 562-6700;

4. Valley Regional Office, 4411 Early Road, Harrisonburg, VA 22801, telephone (540) 574-7800;

5. Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, telephone (804) 527-5020;

6. Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, telephone (703) 583-3800; and

7. Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA 23462, (757) 518-2000.

Contact Information: Karen G. Sabasteanski, Policy Analyst, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 659-1973, or email karen.sabasteanski@deq.virginia.gov.

DEPARTMENT OF GENERAL SERVICES

Revision to Fees for Drinking Water Laboratory Certification - Final Notice -

The Department of General Services, Division of Consolidated Laboratory Services (DCLS) published a general notice in 41:15 VA.R. 1719-1720 March 10, 2025, seeking comment on the revision to fees charged for certifying drinking water laboratories under 1VAC30-41-270 as required by subdivision I 2 of 1VAC30-41-270.

No comments were received on the revision to the fees. The revision to the fees will stand as published. The following fees are effective May 1, 2025, through April 30, 2026, for drinking water laboratory certification under 1VAC30-41.

TESTING CATEGORY	FEE ($)
Microbiological Testing	
1 - 2 methods	808
3 - 5 methods	942
6+ methods	1076
Inorganic Chemistry, Nonmetals Testing	
1 - 2 methods	874
3 - 5 methods	1141
6 - 8 methods	1413
9+ methods	1679
Inorganic Chemistry, Metals Testing	
1 - 2 methods	1413
3 - 5 methods	1679
6 - 8 methods	1949
9+ methods	2219
Radiochemistry	
1 - 2 methods	1479
3 - 5 methods	1747
6+ methods	2016
Asbestos	
1 - 2 methods	1209
3 - 5 methods	1479
6+ methods	1747

How fees are calculated: DCLS calculates a laboratory's total fee by adding the fees for the number of test methods in each category in the fee table for which the laboratory is certified or applies to be certified. Contact lab_cert@dgs.virginia.gov for more information about the fee category for a specific method.

Additional fees apply when a laboratory:

1. Applies for modification of certification under 1VAC30-41-110;

2. Moves location, if the move requires DCLS to perform an onsite assessment; or

3. Requests reinstatement of certification when DCLS requires an onsite assessment.

Hourly review fee and calculation of total fee: The fee to be charged is the sum of the total hourly charges for all reviewers and any onsite assessment costs incurred. The hourly charge per reviewer is $82. The charge per reviewer is determined by multiplying the number of hours expended in the review by $82.

Onsite review and travel expenses: If an onsite review is required, travel time and onsite review time will be charged at the same hourly rate of $82 and any travel expenses will be added.

When to pay: Payment is due when the initial application is processed or annually thereafter upon receipt of the invoice from DCLS. Annual billing precedes the expiration of the current certificate.

How to pay: Fees may be paid by check or credit card via an electronic payment portal provided by DCLS, or other payment arrangements may be made by contacting lab_cert@dgs.virginia.gov. All payments are made after an invoice is issued by DCLS in accordance with instructions on the invoice or in accordance with special arrangements made by contacting DCLS.

Contact Information: Kimberly Freiberger, Policy Planning Specialist III, Department of General Services, 1100 Bank Street, Suite 420, Richmond, VA 23219, telephone (804) 786-3311, or email kimberly.freiberger@dgs.virgnia.gov.

BOARD OF PHARMACY

Notice of Scheduling Chemicals in Schedule I pursuant to § 54.1-3443 of the Code of Virginia

Pursuant to subsection D of § 54.1-3443 of the Code of Virginia, the Board of Pharmacy is giving notice of a public hearing to consider placement of chemical substances in Schedule I of the Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia). The public hearing will be conducted at 9:05 a.m. on May 19, 2025. Instructions will be included in the agenda for the board meeting, also on May 19. Public comment

may also be submitted electronically or in writing prior to May 19, 2025, to the contact listed at the end of this notice.

Pursuant to article § 54.1-3443 D of the Code of Virginia, the Virginia Department of Forensic Science (DFS) has identified two compounds for recommended inclusion into Schedule I of the Drug Control Act.

1. Based on its chemical structure, the following compound is expected to have hallucinogenic properties. Compounds of this type have been placed in Schedule I (subdivision 3 of § 54.1-3446 of the Code of Virginia) in previous legislative sessions.

N,N-dipropyl-1H-indole-3-ethanamine (other names: Dipropyltryptamine; N,N-DPT), its salts, isomers (optical, position, and geometric), and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

2. The following compound is classified as a cannabimimetic agent. Compounds of this type have been placed in Schedule I (subdivision 6 of § 54.1-3446 of the Code of Virginia) in previous legislative sessions.

N-(1-amino-3-methyl-1-oxobutan-2-yl)-3-(dimethylsulfamoyl)-4-methylbenzamide (other name: AB-MDMSBA), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

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

VIRGINIA CODE COMMISSION
Notice to State Agencies

Contact Information: *Mailing Address:* Virginia Code Commission, Pocahontas Building, 900 East Main Street, 8th Floor, Richmond, VA 23219; *Telephone:* (804) 698-1810; *Email:* varegs@dls.virginia.gov.

Meeting Notices: Section 2.2-3707 C of the Code of Virginia requires state agencies to post meeting notices on their websites and on the Commonwealth Calendar at https://commonwealthcalendar.virginia.gov.

Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed: A table listing regulation sections that have been amended, added, or repealed in the *Virginia Register of Regulations* since the regulations were originally published or last supplemented in the print version of the Virginia Administrative Code is available at http://register.dls.virginia.gov/documents/cumultab.pdf.

Filing Material for Publication in the *Virginia Register of Regulations:* Agencies use the Regulation Information System (RIS) to file regulations and related items for publication in the *Virginia Register of Regulations*. The Registrar's office works closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.

ERRATA

BOARD OF AGRICULTURE AND CONSUMER SERVICES

Title of Regulation: **2VAC5-510. Rules and Regulations Governing the Production, Processing, and Sale of Ice Cream, Frozen Desserts, and Similar Products.**

Publication: 41:10 VA.R. 1125-1152 December 30, 2024.

Correction to Fast-Track Regulation:

Page 1150, 2VAC5-510-550 B 2, line 4, after "suitable;" delete "or" and insert "and"

VA.R. Doc. No. R25-7817; Filed April 15, 2025, 3:27 p.m.