



# Virginia Register of Regulations

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# THE VIRGINIA REGISTER INFORMATION PAGE

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

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

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

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

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

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

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

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

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

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

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

## **FAST-TRACK RULEMAKING PROCESS**

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

## **EMERGENCY REGULATIONS**

If an agency demonstrates that (i) there is an immediate threat to the public's health or safety; or (ii) Virginia statutory law, the appropriation act, federal law, or federal regulation requires a regulation to take effect no later than (a) 280 days from the enactment in the case of Virginia or federal law or the appropriation act, or (b) 280 days from the effective date of a federal regulation, it then requests the Governor's approval to adopt an emergency regulation. The emergency regulation becomes operative upon its adoption and filing with the Registrar of Regulations, unless a later date is specified. Emergency regulations are limited to addressing specifically defined situations and may not exceed 12 months in duration. Emergency regulations are published as soon as possible in the *Register*.

During the time the emergency status is in effect, the agency may proceed with the adoption of permanent regulations through the usual procedures. To begin promulgating the replacement regulation, the agency must (i) file the Notice of Intended Regulatory Action with the Registrar within 60 days of the effective date of the emergency regulation and (ii) file the proposed regulation with the Registrar within 180 days of the effective date of the emergency regulation. If the agency chooses not to adopt the regulations, the emergency status ends when the prescribed time limit expires.

## **STATEMENT**

The foregoing constitutes a generalized statement of the procedures to be followed. For specific statutory language, it is suggested that Article 2 (§ 2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia be examined carefully.

## **CITATION TO THE VIRGINIA REGISTER**

The *Virginia Register* is cited by volume, issue, page number, and date. **23:7 VA.R. 1023-1140 December 11, 2006**, refers to Volume 23, Issue 7, pages 1023 through 1140 of the *Virginia Register* issued on December 11, 2006.

*The Virginia Register of Regulations* is published pursuant to Article 6 (§ 2.2-4031 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia.

Members of the Virginia Code Commission: **R. Steven Landes**, Chairman; **John S. Edwards**, Vice Chairman; **Ryan T. McDougle**; **Robert Hurt**; **Robert L. Calhoun**; **Frank S. Ferguson**; **E.M. Miller, Jr.**; **Thomas M. Moncure, Jr.**; **James F. Almand**; **S. Bernard Goodwyn**.

Staff of the Virginia Register: **Jane D. Chaffin**, Registrar of Regulations; **June T. Chandler**, Assistant Registrar.

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## PUBLICATION SCHEDULE AND DEADLINES

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This schedule is available on the *Register's* Internet home page (<http://register.state.va.us>).

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### November 2007 through September 2008

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
24:5	October 24, 2007	November 12, 2007
24:6	November 7, 2007	November 26, 2007
24:7	November 20, 2007 ( <b>Tuesday</b> )	December 10, 2007
<b>INDEX 1 Volume 24</b>		<b>January 2008</b>
24:8	December 5, 2007	December 24, 2007
24:9	December 18, 2007 ( <b>Tuesday</b> )	January 7, 2008
24:10	January 2, 2008	January 21, 2008
24:11	January 16, 2008	February 4, 2008
24:12	January 30, 2008	February 18, 2008
24:13	February 13, 2008	March 3, 2008
24:14	February 27, 2008	March 17, 2008
<b>INDEX 2 Volume 24</b>		<b>April 2008</b>
24:15	March 12, 2008	March 31, 2008
24:16	March 26, 2008	April 14, 2008
24:17	April 9, 2008	April 28, 2008
24:18	April 23, 2008	May 12, 2008
24:19	May 7, 2008	May 26, 2008
24:20	May 21, 2008	June 9, 2008
<b>INDEX 3 Volume 24</b>		<b>July 2008</b>
24:21	June 4, 2008	June 23, 2008
24:22	June 18, 2008	July 7, 2008
24:23	July 2, 2008	July 21, 2008
24:24	July 16, 2008	August 4, 2008
24:25	July 30, 2008	August 18, 2008
24:26	August 13, 2008	September 1, 2008

\*Filing deadlines are Wednesdays unless otherwise specified.

# CUMULATIVE TABLE OF VIRGINIA ADMINISTRATIVE CODE SECTIONS ADOPTED, AMENDED, OR REPEALED

The table printed below lists regulation sections, by Virginia Administrative Code (VAC) title, that have been amended, added or repealed in the *Virginia Register* since the regulations were originally published or last supplemented in VAC (the Fall 2007 VAC Supplement includes final regulations published through *Virginia Register* Volume 23, Issue 21, dated June 25, 2007). Emergency regulations, if any, are listed, followed by the designation "emer," and errata pertaining to final regulations are listed. Proposed regulations are not listed here. The table lists the sections in numerical order and shows action taken, the volume, issue and page number where the section appeared, and the effective date of the section.

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
<b>Title 1. Administration</b>			
1 VAC 55-30-10 through 1 VAC 55-30-90	Added	23:26 VA.R. 4413-4416	10/3/07
<b>Title 2. Agriculture</b>			
2 VAC 5-110 (Forms)	Amended	23:26 VA.R. 4452	--
2 VAC 5-580-10 through 2 VAC 5-580-310	Repealed	24:2 VA.R. 72	10/16/07
2 VAC 5-585-10 through 2 VAC 5-585-4070	Added	24:2 VA.R. 72-133	10/16/07
<b>Title 3. Alcoholic Beverages</b>			
3 VAC 5-50-40	Amended	23:25 VA.R. 4107	*
3 VAC 5-50-50	Amended	23:25 VA.R. 4108	*
3 VAC 5-50-80	Amended	23:25 VA.R. 4108	*
3 VAC 5-50-100	Amended	23:25 VA.R. 4108	*
3 VAC 5-50-130	Amended	23:25 VA.R. 4109	*
3 VAC 5-50-140	Amended	23:25 VA.R. 4110	*
<b>Title 4. Conservation and Natural Resources</b>			
4 VAC 20-252-90	Amended	24:4 VA.R. 471	10/1/07
4 VAC 20-252-100	Amended	24:4 VA.R. 471	10/1/07
4 VAC 20-260-10	Amended	24:4 VA.R. 472	10/1/07
4 VAC 20-260-20	Amended	24:4 VA.R. 472	10/1/07
4 VAC 20-260-30	Amended	24:4 VA.R. 473	10/1/07
4 VAC 20-260-35	Added	24:4 VA.R. 474	10/1/07
4 VAC 20-260-40	Amended	24:4 VA.R. 474	10/1/07
4 VAC 20-260-60	Amended	24:4 VA.R. 474	10/1/07
4 VAC 20-650-20	Amended	24:4 VA.R. 474	10/1/07
4 VAC 20-650-30	Amended	24:4 VA.R. 475	10/1/07
4 VAC 20-650-40	Amended	24:4 VA.R. 475	10/1/07
4 VAC 20-720-20	Amended	24:4 VA.R. 475	10/1/07
4 VAC 20-720-40 through 4VAC20-720-80	Amended	24:4 VA.R. 478-480	10/1/07
4 VAC 20-720-95	Added	24:4 VA.R. 480	10/1/07
4 VAC 20-720-110	Amended	24:4 VA.R. 480	10/1/07
4 VAC 20-755-10	Amended	24:2 VA.R. 133	9/1/07
4 VAC 20-755-20	Amended	24:2 VA.R. 133	9/1/07
4 VAC 20-755-30	Amended	24:2 VA.R. 136	9/1/07
4 VAC 20-1120-20	Amended	23:23 VA.R. 3871	6/28/07
4 VAC 25-20 (Forms)	Amended	23:24 VA.R. 3968	--
4 VAC 25-50-10 through 4 VAC 25-50-110	Repealed	23:22 VA.R. 3696	8/8/07
4 VAC 25-130-777.17	Amended	23:22 VA.R. 3696	8/8/07
<b>Title 5. Corporations</b>			
5 VAC 5-30-10	Amended	23:23 VA.R. 3872	7/1/07

\* Objection to Fast-Track Rulemaking 24:1

## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
5 VAC 5-30-20	Amended	23:23 VA.R. 3872	7/1/07
5 VAC 5-30-30	Amended	23:23 VA.R. 3873	7/1/07
5 VAC 5-30-40	Amended	23:23 VA.R. 3873	7/1/07
5 VAC 5-30-50	Amended	23:23 VA.R. 3874	7/1/07
5 VAC 5-30-60	Amended	23:23 VA.R. 3874	7/1/07
5 VAC 5-30-70	Amended	23:23 VA.R. 3875	7/1/07
<b>Title 6. Criminal Justice and Corrections</b>			
6 VAC 15-20-10 through 6 VAC 15-20-230	Amended	23:22 VA.R. 3697-3703	8/9/07
6 VAC 20-120-40	Amended	23:25 VA.R. 4177	9/19/07
6 VAC 35-20-37 emer	Amended	23:25 VA.R. 4178	8/1/07-7/31/08
6 VAC 35-190-10 through 6VAC35-190-110	Added	24:2 VA.R. 137-139	10/31/07
6 VAC 40-50-10 through 6VAC40-50-80 emer	Added	23:23 VA.R. 3876	7/1/06-12/29/07
<b>Title 8. Education</b>			
8 VAC 20-21-10 through 8 VAC 20-21-730	Repealed	23:25 VA.R. 4179	9/21/07
8 VAC 20-22-10 through 8 VAC 20-22-760	Added	23:25 VA.R. 4179-4214	9/21/07
8 VAC 20-160-10	Amended	23:23 VA.R. 3876	8/27/07
8 VAC 20-160-20	Amended	23:23 VA.R. 3878	8/27/07
8 VAC 20-160-30	Amended	23:23 VA.R. 3878	8/27/07
8 VAC 20-160-40	Amended	23:23 VA.R. 3879	8/27/07
8 VAC 20-160-50	Amended	23:23 VA.R. 3879	8/27/07
8 VAC 20-160-60	Amended	23:23 VA.R. 3879	8/27/07
8 VAC 20-541-10 through 8 VAC 20-541-60	Repealed	23:25 VA.R. 4214	9/21/07
8 VAC 20-542-10 through 8 VAC 20-542-600	Added	23:25 VA.R. 4214-4270	9/21/07
8 VAC 35-60-10	Added	24:1 VA.R. 25	8/28/07
8 VAC 35-60-20	Added	24:1 VA.R. 25	8/28/07
8 VAC 35-60-30	Added	24:1 VA.R. 25	8/28/07
8 VAC 40-140-10 through 8 VAC 40-140-90	Added	23:22 VA.R. 3704-3706	7/1/07
<b>Title 9. Environment</b>			
9 VAC 20-130-10	Amended	24:4 VA.R. 480	11/28/07
9 VAC 20-130-40	Amended	24:4 VA.R. 484	11/28/07
9 VAC 20-130-60	Amended	24:4 VA.R. 484	11/28/07
9 VAC 20-130-70	Amended	24:4 VA.R. 484	11/28/07
9 VAC 20-130-90	Amended	24:4 VA.R. 485	11/28/07
9 VAC 20-130-110	Amended	24:4 VA.R. 485	11/28/07
9 VAC 20-130-120	Amended	24:4 VA.R. 486	11/28/07
9 VAC 20-130-125	Added	24:4 VA.R. 488	11/28/07
9 VAC 20-130-130	Amended	24:4 VA.R. 489	11/28/07
9 VAC 20-130-140	Repealed	24:4 VA.R. 489	11/28/07
9 VAC 20-130-150	Repealed	24:4 VA.R. 489	11/28/07
9 VAC 20-130-165	Amended	24:4 VA.R. 489	11/28/07
9 VAC 20-130-175 through 9VAC20-130-230	Amended	24:4 VA.R. 490-493	11/28/07
9 VAC 25-31-100	Amended	24:3 VA.R. 313	11/14/07
9 VAC 25-31-120	Amended	24:3 VA.R. 309	11/14/07
9 VAC 25-31-165	Amended	24:3 VA.R. 333	11/14/07
9 VAC 25-260-5	Amended	24:4 VA.R. 536	8/14/07
9 VAC 25-260-30	Amended	24:2 VA.R. 139	9/11/07
9 VAC 25-260-30	Amended	24:2 VA.R. 140	9/11/07
9 VAC 25-260-50	Amended	24:4 VA.R. 536	8/14/07
9 VAC 25-260-187	Added	24:4 VA.R. 536	8/14/07
9 VAC 25-260-310	Amended	24:4 VA.R. 536	8/14/07
9 VAC 25-260-480	Amended	24:4 VA.R. 536	8/14/07

## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
9 VAC 25-720-50	Amended	23:23 VA.R. 3881	10/22/07
9 VAC 25-720-50	Amended	23:23 VA.R. 3888	10/22/07
9 VAC 25-720-50	Amended	23:23 VA.R. 3895	10/22/07
9 VAC 25-720-50	Amended	24:2 VA.R. 140	11/15/07
9 VAC 25-720-80	Amended	23:23 VA.R. 3901	10/22/07
9 VAC 25-720-90	Amended	24:2 VA.R. 147	11/15/07
<b>Title 12. Health</b>			
12 VAC 5-125-10	Added	23:23 VA.R. 3904	9/1/07
12 VAC 5-125-20	Added	23:23 VA.R. 3906	9/1/07
12 VAC 5-125-30	Added	23:23 VA.R. 3906	9/1/07
12 VAC 5-125-40	Added	23:23 VA.R. 3906	9/1/07
12 VAC 5-125-50	Added	23:23 VA.R. 3907	9/1/07
12 VAC 5-125-60	Added	23:23 VA.R. 3908	9/1/07
12 VAC 5-125-70	Added	23:23 VA.R. 3908	9/1/07
12 VAC 5-125-80	Added	23:23 VA.R. 3908	9/1/07
12 VAC 5-125-90	Added	23:23 VA.R. 3908	9/1/07
12 VAC 5-125-100	Added	23:23 VA.R. 3916	9/1/07
12 VAC 5-125-110	Added	23:23 VA.R. 3917	9/1/07
12 VAC 5-125-120	Added	23:23 VA.R. 3917	9/1/07
12 VAC 5-125-130	Added	23:23 VA.R. 3917	9/1/07
12 VAC 5-125-140	Added	23:23 VA.R. 3918	9/1/07
12 VAC 5-125-150	Added	23:23 VA.R. 3918	9/1/07
12 VAC 5-125-160	Added	23:23 VA.R. 3918	9/1/07
12 VAC 5-125-170	Added	23:23 VA.R. 3918	9/1/07
12 VAC 5-125-180	Added	23:23 VA.R. 3919	9/1/07
12 VAC 5-421-10	Amended	24:2 VA.R. 149	10/16/07
12 VAC 5-421-90	Amended	24:2 VA.R. 157	10/16/07
12 VAC 5-421-100	Amended	24:2 VA.R. 157	10/16/07
12 VAC 5-421-120	Amended	24:2 VA.R. 158	10/16/07
12 VAC 5-421-140	Amended	24:2 VA.R. 158	10/16/07
12 VAC 5-421-160	Amended	24:2 VA.R. 159	10/16/07
12 VAC 5-421-170	Amended	24:2 VA.R. 159	10/16/07
12 VAC 5-421-180	Amended	24:2 VA.R. 159	10/16/07
12 VAC 5-421-190	Amended	24:2 VA.R. 159	10/16/07
12 VAC 5-421-200	Amended	24:2 VA.R. 160	10/16/07
12 VAC 5-421-230	Amended	24:2 VA.R. 160	10/16/07
12 VAC 5-421-250	Amended	24:2 VA.R. 160	10/16/07
12 VAC 5-421-270	Amended	24:2 VA.R. 160	10/16/07
12 VAC 5-421-295	Added	24:2 VA.R. 160	10/16/07
12 VAC 5-421-300	Amended	24:2 VA.R. 160	10/16/07
12 VAC 5-421-330	Amended	24:2 VA.R. 161	10/16/07
12 VAC 5-421-340	Amended	24:2 VA.R. 161	10/16/07
12 VAC 5-421-350	Amended	24:2 VA.R. 161	10/16/07
12 VAC 5-421-360	Amended	24:2 VA.R. 161	10/16/07
12 VAC 5-421-430	Amended	24:2 VA.R. 162	10/16/07
12 VAC 5-421-440	Amended	24:2 VA.R. 162	10/16/07
12 VAC 5-421-450	Amended	24:2 VA.R. 162	10/16/07
12 VAC 5-421-460	Added	24:2 VA.R. 162	10/16/07
12 VAC 5-421-500	Amended	24:2 VA.R. 162	10/16/07
12 VAC 5-421-520	Amended	24:2 VA.R. 163	10/16/07

## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 5-421-530	Amended	24:2 VA.R. 163	10/16/07
12 VAC 5-421-550	Amended	24:2 VA.R. 163	10/16/07
12 VAC 5-421-560	Amended	24:2 VA.R. 163	10/16/07
12 VAC 5-421-570	Amended	24:2 VA.R. 163	10/16/07
12 VAC 5-421-580	Amended	24:2 VA.R. 163	10/16/07
12 VAC 5-421-590	Amended	24:2 VA.R. 164	10/16/07
12 VAC 5-421-600	Amended	24:2 VA.R. 164	10/16/07
12 VAC 5-421-620	Amended	24:2 VA.R. 164	10/16/07
12 VAC 5-421-670	Amended	24:2 VA.R. 164	10/16/07
12 VAC 5-421-680	Amended	24:2 VA.R. 164	10/16/07
12 VAC 5-421-700	Amended	24:2 VA.R. 164	10/16/07
12 VAC 5-421-720	Amended	24:2 VA.R. 166	10/16/07
12 VAC 5-421-760	Amended	24:2 VA.R. 166	10/16/07
12 VAC 5-421-765	Added	24:2 VA.R. 166	10/16/07
12 VAC 5-421-780	Amended	24:2 VA.R. 166	10/16/07
12 VAC 5-421-790	Amended	24:2 VA.R. 166	10/16/07
12 VAC 5-421-800	Amended	24:2 VA.R. 167	10/16/07
12 VAC 5-421-820	Amended	24:2 VA.R. 167	10/16/07
12 VAC 5-421-830	Amended	24:2 VA.R. 167	10/16/07
12 VAC 5-421-840	Amended	24:2 VA.R. 169	10/16/07
12 VAC 5-421-850	Amended	24:2 VA.R. 169	10/16/07
12 VAC 5-421-860	Amended	24:2 VA.R. 170	10/16/07
12 VAC 5-421-870	Amended	24:2 VA.R. 170	10/16/07
12 VAC 5-421-880	Added	24:2 VA.R. 171	10/16/07
12 VAC 5-421-890	Added	24:2 VA.R. 171	10/16/07
12 VAC 5-421-900	Added	24:2 VA.R. 171	10/16/07
12 VAC 5-421-910	Added	24:2 VA.R. 171	10/16/07
12 VAC 5-421-920	Added	24:2 VA.R. 171	10/16/07
12 VAC 5-421-930	Added	24:2 VA.R. 171	10/16/07
12 VAC 5-421-940	Amended	24:2 VA.R. 172	10/16/07
12 VAC 5-421-950	Amended	24:2 VA.R. 172	10/16/07
12 VAC 5-421-960	Amended	24:2 VA.R. 173	10/16/07
12 VAC 5-421-970	Amended	24:2 VA.R. 173	10/16/07
12 VAC 5-421-990	Amended	24:2 VA.R. 173	10/16/07
12 VAC 5-421-1000	Amended	24:2 VA.R. 173	10/16/07
12 VAC 5-421-1010	Amended	24:2 VA.R. 173	10/16/07
12 VAC 5-421-1020	Amended	24:2 VA.R. 173	10/16/07
12 VAC 5-421-1030	Amended	24:2 VA.R. 173	10/16/07
12 VAC 5-421-1040	Amended	24:2 VA.R. 173	10/16/07
12 VAC 5-421-1070	Amended	24:2 VA.R. 174	10/16/07
12 VAC 5-421-1090	Amended	24:2 VA.R. 174	10/16/07
12 VAC 5-421-1120	Amended	24:2 VA.R. 174	10/16/07
12 VAC 5-421-1200	Amended	24:2 VA.R. 174	10/16/07
12 VAC 5-421-1260	Amended	24:2 VA.R. 174	10/16/07
12 VAC 5-421-1270	Amended	24:2 VA.R. 174	10/16/07
12 VAC 5-421-1300	Amended	24:2 VA.R. 174	10/16/07
12 VAC 5-421-1310	Amended	24:2 VA.R. 174	10/16/07
12 VAC 5-421-1320	Amended	24:2 VA.R. 175	10/16/07
12 VAC 5-421-1330	Amended	24:2 VA.R. 175	10/16/07
12 VAC 5-421-1340	Amended	24:2 VA.R. 175	10/16/07
12 VAC 5-421-1350	Amended	24:2 VA.R. 175	10/16/07

## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 5-421-1360	Amended	24:2 VA.R. 175	10/16/07
12 VAC 5-421-1370	Amended	24:2 VA.R. 176	10/16/07
12 VAC 5-421-1460	Amended	24:2 VA.R. 176	10/16/07
12 VAC 5-421-1510	Amended	24:2 VA.R. 176	10/16/07
12 VAC 5-421-1520	Amended	24:2 VA.R. 176	10/16/07
12 VAC 5-421-1530	Amended	24:2 VA.R. 177	10/16/07
12 VAC 5-421-1540	Amended	24:2 VA.R. 177	10/16/07
12 VAC 5-421-1620	Amended	24:2 VA.R. 177	10/16/07
12 VAC 5-421-1640	Amended	24:2 VA.R. 177	10/16/07
12 VAC 5-421-1660	Amended	24:2 VA.R. 177	10/16/07
12 VAC 5-421-1670	Amended	24:2 VA.R. 178	10/16/07
12 VAC 5-421-1680	Amended	24:2 VA.R. 178	10/16/07
12 VAC 5-421-1690	Amended	24:2 VA.R. 178	10/16/07
12 VAC 5-421-1700	Amended	24:2 VA.R. 178	10/16/07
12 VAC 5-421-1710	Amended	24:2 VA.R. 179	10/16/07
12 VAC 5-421-1720	Amended	24:2 VA.R. 179	10/16/07
12 VAC 5-421-1730	Amended	24:2 VA.R. 179	10/16/07
12 VAC 5-421-1750	Amended	24:2 VA.R. 179	10/16/07
12 VAC 5-421-1760	Amended	24:2 VA.R. 179	10/16/07
12 VAC 5-421-1780	Amended	24:2 VA.R. 179	10/16/07
12 VAC 5-421-1810	Amended	24:2 VA.R. 180	10/16/07
12 VAC 5-421-1820	Amended	24:2 VA.R. 180	10/16/07
12 VAC 5-421-1880	Amended	24:2 VA.R. 180	10/16/07
12 VAC 5-421-1890	Amended	24:2 VA.R. 180	10/16/07
12 VAC 5-421-1900	Amended	24:2 VA.R. 180	10/16/07
12 VAC 5-421-1960	Amended	24:2 VA.R. 181	10/16/07
12 VAC 5-421-2010	Amended	24:2 VA.R. 181	10/16/07
12 VAC 5-421-2080	Amended	24:2 VA.R. 181	10/16/07
12 VAC 5-421-2190	Amended	24:2 VA.R. 181	10/16/07
12 VAC 5-421-2200	Amended	24:2 VA.R. 181	10/16/07
12 VAC 5-421-2210	Amended	24:2 VA.R. 181	10/16/07
12 VAC 5-421-2270	Amended	24:2 VA.R. 181	10/16/07
12 VAC 5-421-2310	Amended	24:2 VA.R. 182	10/16/07
12 VAC 5-421-2320	Amended	24:2 VA.R. 182	10/16/07
12 VAC 5-421-2520	Amended	24:2 VA.R. 182	10/16/07
12 VAC 5-421-2630	Amended	24:2 VA.R. 182	10/16/07
12 VAC 5-421-2680	Amended	24:2 VA.R. 182	10/16/07
12 VAC 5-421-2710	Amended	24:2 VA.R. 182	10/16/07
12 VAC 5-421-2790	Amended	24:2 VA.R. 182	10/16/07
12 VAC 5-421-2810	Amended	24:2 VA.R. 182	10/16/07
12 VAC 5-421-2820	Amended	24:2 VA.R. 183	10/16/07
12 VAC 5-421-2840	Amended	24:2 VA.R. 183	10/16/07
12 VAC 5-421-2850	Amended	24:2 VA.R. 183	10/16/07
12 VAC 5-421-2870	Amended	24:2 VA.R. 183	10/16/07
12 VAC 5-421-2880	Amended	24:2 VA.R. 183	10/16/07
12 VAC 5-421-2930	Amended	24:2 VA.R. 183	10/16/07
12 VAC 5-421-2990	Amended	24:2 VA.R. 184	10/16/07
12 VAC 5-421-3040	Amended	24:2 VA.R. 184	10/16/07
12 VAC 5-421-3120	Amended	24:2 VA.R. 184	10/16/07
12 VAC 5-421-3200	Amended	24:2 VA.R. 184	10/16/07



## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 5-421-3210	Amended	24:2 VA.R. 184	10/16/07
12 VAC 5-421-3230	Amended	24:2 VA.R. 184	10/16/07
12 VAC 5-421-3310	Amended	24:2 VA.R. 184	10/16/07
12 VAC 5-421-3370	Amended	24:2 VA.R. 185	10/16/07
12 VAC 5-421-3380	Amended	24:2 VA.R. 185	10/16/07
12 VAC 5-421-3450	Amended	24:2 VA.R. 185	10/16/07
12 VAC 5-421-3510	Amended	24:2 VA.R. 185	10/16/07
12 VAC 5-421-3560	Amended	24:2 VA.R. 185	10/16/07
12 VAC 5-421-3580	Amended	24:2 VA.R. 185	10/16/07
12 VAC 5-421-3590	Amended	24:2 VA.R. 186	10/16/07
12 VAC 5-421-3620	Amended	24:2 VA.R. 186	10/16/07
12 VAC 5-421-3660	Amended	24:2 VA.R. 186	10/16/07
12 VAC 5-421-3700	Amended	24:2 VA.R. 186	10/16/07
12 VAC 5-421-3750	Amended	24:2 VA.R. 187	10/16/07
12 VAC 5-421-3760	Amended	24:2 VA.R. 188	10/16/07
12 VAC 5-421-3800	Amended	24:2 VA.R. 188	10/16/07
12 VAC 5-421-3815	Added	24:2 VA.R. 188	10/16/07
12 VAC 5-421-3860	Amended	24:2 VA.R. 188	10/16/07
12 VAC 5-421-3900	Amended	24:2 VA.R. 188	10/16/07
12 VAC 5-421-3960	Amended	24:2 VA.R. 189	10/16/07
12 VAC 5-421-3970	Amended	24:2 VA.R. 189	10/16/07
12 VAC 5-421-4000	Amended	24:2 VA.R. 189	10/16/07
12 VAC 5-421-4035	Added	24:2 VA.R. 190	10/16/07
12 VAC 5-421-4050	Amended	24:2 VA.R. 191	10/16/07
12 VAC 5-421-4070	Amended	24:2 VA.R. 191	10/16/07
12 VAC 5-585-760 through 12 VAC 5-585-830	Added	23:25 VA.R. 4298-4301	10/1/07
12 VAC 30-10-820	Added	24:2 VA.R. 191	10/31/07
12 VAC 30-60-500 emer	Added	23:26 VA.R. 4427	8/8/07-8/7/08
12 VAC 30-80-40 emer	Amended	24:3 VA.R. 377	10/1/07-9/30/08
12 VAC 30-120	Erratum	23:24 VA.R. 4080	--
12 VAC 30-120-370 emer	Amended	23:24 VA.R. 4029	9/1/07-8/31/08
12 VAC 30-120-380 emer	Amended	23:24 VA.R. 4032	9/1/07-8/31/08
12 VAC 30-135-100 through 12VAC30-135-360	Added	24:2 VA.R. 196-218	12/1/07
12 VAC 35-115-10 through 12 VAC 35-115-250	Amended	23:25 VA.R. 4301-4340	9/19/07
12 VAC 35-115-145	Added	23:25 VA.R. 4329	9/19/07
12 VAC 35-115-146	Added	23:25 VA.R. 4330	9/19/07
12 VAC 35-115-160	Repealed	23:25 VA.R. 4332	9/19/07
<b>Title 13. Housing</b>			
13 VAC 5-31	Erratum	23:24 VA.R. 4079	--
13 VAC 5-91	Erratum	23:24 VA.R. 4080	--
<b>Title 14. Insurance</b>			
14 VAC 5-215-20	Amended	23:22 VA.R. 3768	7/1/07
14 VAC 5-215-30	Amended	23:22 VA.R. 3768	7/1/07
14 VAC 5-215-50	Amended	23:22 VA.R. 3769	7/1/07
14 VAC 5-215-60	Amended	23:22 VA.R. 3770	7/1/07
14 VAC 5-215-80	Amended	23:22 VA.R. 3770	7/1/07
<b>Title 16. Labor and Employment</b>			
16 VAC 15-21-30	Amended	23:23 VA.R. 3933	8/23/07
16 VAC 25-90-1910.6	Amended	24:1 VA.R. 26	12/15/07
16 VAC 25-90-1910.66 Appendix D	Amended	24:1 VA.R. 26	12/15/07

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
16 VAC 25-90-1910.302 through 16 VAC 25-90-1910.308	Amended	24:1 VA.R. 26	12/15/07
16 VAC 25-90-1910.399 Subpart S Appendix A	Amended	24:1 VA.R. 26	12/15/07
<b>Title 18. Professional and Occupational Licensing</b>			
18 VAC 41-70-10 through 18 VAC 41-70-280	Added	23:25 VA.R. 4349-4359	9/20/07
18 VAC 50-30-10	Amended	24:3 VA.R. 416	11/15/07
18 VAC 50-30-40	Amended	24:3 VA.R. 418	11/15/07
18 VAC 50-30-90	Amended	24:3 VA.R. 419	11/15/07
18 VAC 50-30-100	Amended	24:3 VA.R. 419	11/15/07
18 VAC 50-30-120	Amended	24:3 VA.R. 419	11/15/07
18 VAC 50-30-130	Amended	24:3 VA.R. 420	11/15/07
18 VAC 50-30-190	Amended	24:3 VA.R. 421	11/15/07
18 VAC 50-30-200	Amended	24:3 VA.R. 422	11/15/07
18 VAC 50-30-220	Amended	24:3 VA.R. 422	11/15/07
18 VAC 60-20-17	Amended	24:3 VA.R. 424	11/29/07
18 VAC 60-20-71	Amended	23:23 VA.R. 3934	8/22/07
18 VAC 65-10-10 through 18VAC65-10-80	Amended	24:2 VA.R. 226-228	11/15/07
18 VAC 65-10-100	Amended	24:2 VA.R. 228	11/15/07
18 VAC 65-10-110	Amended	24:2 VA.R. 228	11/15/07
18 VAC 65-10-120	Amended	24:2 VA.R. 228	11/15/07
18 VAC 85-20-140	Amended	24:1 VA.R. 27	10/17/07
18 VAC 85-20-235	Amended	23:25 VA.R. 4360	9/20/07
18 VAC 85-20-235	Amended	23:25 VA.R. 4361	9/20/07
18 VAC 85-20-290	Amended	23:23 VA.R. 3934	8/22/07
18 VAC 85-20-400 through 18 VAC 85-20-420	Adding	23:25 VA.R. 4362-4363	9/20/07
18 VAC 85-40-61	Amended	24:1 VA.R. 28	10/17/07
18 VAC 85-40-61	Amended	24:1 VA.R. 29	10/18/07
18 VAC 85-40-65	Amended	24:1 VA.R. 28	10/17/07
18 VAC 85-50-58	Amended	24:1 VA.R. 29	10/18/07
18 VAC 85-80-72	Amended	24:1 VA.R. 29	10/18/07
18 VAC 85-101-152	Amended	24:1 VA.R. 30	10/18/07
18 VAC 85-110-155	Amended	24:1 VA.R. 30	10/18/07
18 VAC 85-120-130	Amended	24:2 VA.R. 229	10/31/07
18 VAC 90-20-30	Amended	23:25 VA.R. 4363	10/1/07
18 VAC 90-20-225	Added	23:25 VA.R. 4364	10/1/07
18 VAC 90-30-240	Added	24:3 VA.R. 427	11/29/07
18 VAC 90-60-100	Amended	24:3 VA.R. 429	11/29/07
18 VAC 95-10-10 through 18VAC95-10-80	Amended	24:2 VA.R. 231-232	11/15/07
18 VAC 95-10-100	Amended	24:2 VA.R. 232	11/15/07
18 VAC 95-10-110	Amended	24:2 VA.R. 232	11/15/07
18 VAC 95-10-120	Amended	24:2 VA.R. 232	11/15/07
18 VAC 105-20-10	Amended	23:22 VA.R. 3791	9/24/07
18 VAC 110-20-180	Erratum	24:3 VA.R. 444	--
18 VAC 110-40-10 through 18VAC110-40-50	Amended	24:3 VA.R. 430-431	11/14/07
18 VAC 112-20-81 emer	Added	24:4 VA.R. 497	11/1/07-10/31/08
18 VAC 112-20-90 emer	Amended	24:4 VA.R. 497	11/1/07-10/31/08
18 VAC 112-20-130 emer	Amended	24:4 VA.R. 498	11/1/07-10/31/08
18 VAC 112-20-131 emer	Amended	24:4 VA.R. 498	11/1/07-10/31/08
18 VAC 112-20-150 emer	Amended	24:4 VA.R. 499	11/1/07-10/31/08
18 VAC 120-40-10	Amended	23:24 VA.R. 4038	9/5/07
18 VAC 120-40-15	Added	23:24 VA.R. 4039	9/5/07

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 120-40-20	Amended	23:24 VA.R. 4039	9/5/07
18 VAC 120-40-60	Repealed	24:3 VA.R. 433	12/29/07
18 VAC 120-40-80 through 18VAC120-40-360	Amended	23:24 VA.R. 4040-4052	9/5/07
18 VAC 120-40-221	Added	23:24 VA.R. 4043	9/5/07
18 VAC 120-40-222	Added	23:24 VA.R. 4043	9/5/07
18 VAC 120-40-295	Added	23:24 VA.R. 4048	9/5/07
18 VAC 120-40-342	Added	23:24 VA.R. 4050	9/5/07
18 VAC 120-40-370	Repealed	23:24 VA.R. 4052	9/5/07
18 VAC 120-40-380	Repealed	23:24 VA.R. 4052	9/5/07
18 VAC 120-40-385	Added	23:24 VA.R. 4052	9/5/07
18 VAC 120-40-390	Amended	23:24 VA.R. 4053	9/5/07
18 VAC 120-40-400	Repealed	23:24 VA.R. 4053	9/5/07
18 VAC 120-40-410	Amended	23:24 VA.R. 4053	9/5/07
18 VAC 120-40-411	Added	23:24 VA.R. 4053	9/5/07
18 VAC 120-40-411.1 through 18VAC120-40-411.21	Added	23:24 VA.R. 4054-4064	9/5/07
18 VAC 120-40-415	Added	23:24 VA.R. 4064	9/5/07
18 VAC 120-40-415.1	Added	23:24 VA.R. 4065	9/5/07
18 VAC 120-40-415.2	Added	23:24 VA.R. 4065	9/5/07
18 VAC 120-40-415.3	Added	23:24 VA.R. 4065	9/5/07
18 VAC 120-40-420	Amended	23:24 VA.R. 4066	9/5/07
18 VAC 120-40-430	Amended	23:24 VA.R. 4066	9/5/07
18 VAC 135-30 (Forms)	Amended	24:1 VA.R. 41	--
18 VAC 135-40 (Forms)	Amended	24:1 VA.R. 43	--
18 VAC 135-50-10	Amended	23:22 VA.R. 3794	9/22/07
18 VAC 135-50-20	Amended	23:22 VA.R. 3795	9/22/07
18 VAC 135-50-220	Amended	23:22 VA.R. 3795	9/22/07
18 VAC 135-50-400	Amended	23:22 VA.R. 3795	9/22/07
18 VAC 150-10-10	Amended	23:23 VA.R. 3937	10/7/07
18 VAC 150-10-20	Amended	23:23 VA.R. 3937	10/7/07
18 VAC 150-10-30	Amended	23:23 VA.R. 3937	10/7/07
18 VAC 150-10-40	Amended	23:23 VA.R. 3938	10/7/07
18 VAC 150-10-50	Amended	23:23 VA.R. 3938	10/7/07
18 VAC 150-10-60	Amended	23:23 VA.R. 3938	10/7/07
18 VAC 150-10-70	Amended	23:23 VA.R. 3938	10/7/07
18 VAC 150-10-80	Amended	23:23 VA.R. 3938	10/7/07
18 VAC 150-10-100	Amended	23:23 VA.R. 3939	10/7/07
18 VAC 150-10-110	Amended	23:23 VA.R. 3939	10/7/07
18 VAC 150-10-120	Amended	23:23 VA.R. 3939	10/7/07
18 VAC 150-20-30	Amended	24:3 VA.R. 436	11/29/07
18 VAC 150-20-100	Amended	24:3 VA.R. 436	11/29/07
18 VAC 150-20-140	Amended	24:3 VA.R. 437	11/29/07
18 VAC 150-20-220	Added	24:3 VA.R. 438	11/29/07
18 VAC 150-20-230	Added	24:3 VA.R. 438	11/29/07
18 VAC 150-20-240	Added	24:3 VA.R. 438	11/29/07
<b>Title 19. Public Safety</b>			
19 VAC 30-170-15	Amended	24:2 VA.R. 233	10/1/07
19 VAC 30-170-50	Amended	24:2 VA.R. 233	10/1/07
<b>Title 20. Public Utilities and Telecommunications</b>			
20 VAC 5-417-10	Amended	24:4 VA.R. 513	10/9/07
20 VAC 5-417-50	Amended	24:4 VA.R. 513	10/9/07
<b>Title 21. Securities and Retail Franchising</b>			

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
21 VAC 5-10-40	Amended	23:23 VA.R. 3940	7/1/07
21 VAC 5-20-65	Added	23:23 VA.R. 3942	7/1/07
21 VAC 5-20-95	Added	23:23 VA.R. 3942	7/1/07
21 VAC 5-20-280	Amended	23:23 VA.R. 3943	7/1/07
21 VAC 5-20-330	Amended	23:23 VA.R. 3947	7/1/07
21 VAC 5-80-65	Added	23:23 VA.R. 3949	7/1/07
21 VAC 5-80-160	Amended	23:23 VA.R. 3950	7/1/07
21 VAC 5-80-200	Amended	23:23 VA.R. 3954	7/1/07
21 VAC 5-110	Erratum	23:24 VA.R. 4079	--
21 VAC 5-110-65	Added	23:23 VA.R. 3959	7/1/07
21 VAC 5-110-75	Added	23:23 VA.R. 3960	7/1/07
<b>Title 22. Social Services</b>			
22 VAC 40-35-10	Amended	23:23 VA.R. 3962	9/1/07
22 VAC 40-35-80	Amended	23:23 VA.R. 3965	9/1/07
22 VAC 40-35-90	Amended	23:23 VA.R. 3965	9/1/07
22 VAC 40-35-100	Amended	23:23 VA.R. 3966	9/1/07
22 VAC 40-41-10 through 22 VAC 40-41-50	Amended	23:22 VA.R. 3796-3799	9/1/07
22 VAC 40-41-55	Amended	23:22 VA.R. 3799	9/1/07
22 VAC 40-41-60	Amended	23:22 VA.R. 3799	9/1/07
22 VAC 40-72-930	Amended	24:1 VA.R. 38	11/1/07
22 VAC 40-72-960	Amended	24:1 VA.R. 39	11/1/07
22 VAC 40-770-10 through 22 VAC 40-770-160	Repealed	24:2 VA.R. 234	11/1/07
22 VAC 40-771-10 through 22 VAC 40-771-160	Added	24:2 VA.R. 234-242	11/1/07
<b>Title 23. Taxation</b>			
23 VAC 10-210-485	Amended	23:24 VA.R. 4069	9/6/07
23 VAC 10-210-693 emer	Amended	23:25 VA.R. 4364	7/26/07-07/25/08
23 VAC 10-210-6041	Amended	23:24 VA.R. 4068	9/6/07
23 VAC 10-210-6042	Amended	23:24 VA.R. 4069	9/6/07
23 VAC 10-210-6043	Amended	23:24 VA.R. 4069	9/6/07
23 VAC 10-240-20 through 23 VAC 10-240-60	Repealed	23:25 VA.R. 4372-4373	10/04/07
23 VAC 10-240-100	Repealed	23:25 VA.R. 4373	10/04/07
23 VAC 10-240-130	Repealed	23:25 VA.R. 4373	10/04/07
23 VAC 10-240-140	Repealed	23:25 VA.R. 4373	10/04/07
23 VAC 10-240-150	Repealed	23:25 VA.R. 4373	10/04/07
23 VAC 10-240-200	Repealed	23:25 VA.R. 4373	10/04/07
23 VAC 10-240-210	Repealed	23:25 VA.R. 4373	10/04/07
23 VAC 10-240-240	Repealed	23:25 VA.R. 4373	10/04/07
23 VAC 10-240-270	Repealed	23:25 VA.R. 4373	10/04/07
23 VAC 10-240-280	Repealed	23:25 VA.R. 4373	10/04/07
23 VAC 10-240-300	Repealed	23:25 VA.R. 4374	10/04/07
23 VAC 10-240-310	Repealed	23:25 VA.R. 4374	10/04/07
23 VAC 10-240-330	Repealed	23:25 VA.R. 4374	10/04/07
23 VAC 10-240-340	Repealed	23:25 VA.R. 4374	10/04/07
23 VAC 10-240-360	Repealed	23:25 VA.R. 4374	10/04/07
23 VAC 10-240-380	Repealed	23:25 VA.R. 4374	10/04/07
23 VAC 10-240-400	Repealed	23:25 VA.R. 4375	10/04/07
23 VAC 10-240-420	Repealed	23:25 VA.R. 4375	10/04/07
23 VAC 10-240-430	Repealed	23:25 VA.R. 4375	10/04/07
23 VAC 10-240-450	Repealed	23:25 VA.R. 4375	10/04/07
23 VAC 10-240-460	Repealed	23:25 VA.R. 4375	10/04/07

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
<b>Title 24. Transportation and Motor Vehicles</b>			
24 VAC 20-120-10 through 24VAC20-120-180	Repealed	24:4 VA.R. 516	1/1/08
24 VAC 20-121-10 through 24 VAC 20-121-220	Adding	24:4 VA.R. 516-529	1/1/08
24 VAC 22-20-10	Amended	24:3 VA.R. 439	12/1/07
24 VAC 22-20-20	Amended	24:3 VA.R. 440	12/1/07
24 VAC 27-10-10 through 24VAC27-10-120	Added	23:24 VA.R. 4071-4075	9/20/07
24 VAC 30-45-10	Added	24:2 VA.R. 243	10/1/07
24 VAC 30-45-20	Added	24:2 VA.R. 243	10/1/07
24 VAC 30-45-30	Added	24:2 VA.R. 244	10/1/07
24 VAC 30-200-10	Amended	24:4 VA.R. 529	11/28/07
24 VAC 30-200-20	Amended	24:4 VA.R. 530	11/28/07
24 VAC 30-200-30	Amended	24:4 VA.R. 531	11/28/07
24 VAC 30-200-35	Added	24:4 VA.R. 532	11/28/07
24 VAC 30-200-40	Amended	24:4 VA.R. 533	11/28/07

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# PETITIONS FOR RULEMAKING

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## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF MEDICINE

#### Initial Agency Notice

Title of Regulation: **18VAC85-20. Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry and Chiropractic.**

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

Name of Petitioner: Dr. Dale Tidaback.

Nature of Petitioner's Request: Reduce the cost and continuing education requirements for persons reactivating or reinstating a license.

Agency's Plan for Disposition of Request: The board will receive public comment on the petition for rulemaking and will consider any public comment and the petition at a meeting of the Executive Committee on December 7, 2007.

Comments may be submitted until December 6, 2007.

Agency Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4621, FAX (804) 527-4426, or email [william.harp@dhp.virginia.gov](mailto:william.harp@dhp.virginia.gov).

VA.R. Doc. No. R08-02; Filed October 18, 2007, 8:44 a.m.

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# NOTICES OF INTENDED REGULATORY ACTION

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## TITLE 12. HEALTH

### DEPARTMENT OF HEALTH

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with §2.2-4007.01 of the Code of Virginia that the State Board of Health intends to consider amending the following regulations: **12VAC5- 90, Regulations for Disease Reporting and Control.** The purpose of the proposed action is to require reporting by laboratories of MRSA infections confirmed from specimens taken from normally sterile sites of the body.

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

Statutory Authority: §32.1-35 of the Code of Virginia.

Public comments: Public comments may be submitted until 5 p.m. on December 14, 2007.

Agency Contact: Diane Woolard, PhD, Department of Health, 109 Governor Street, Richmond, VA 23219, telephone 804-864-8124, or email [diane.woolard@vdh.virginia.gov](mailto:diane.woolard@vdh.virginia.gov).

VA.R. Doc. No. R08-1024; Filed October 24, 2007, 11:57 a.m.



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# REGULATIONS

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

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## Symbol Key

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

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## TITLE 4. CONSERVATION AND NATURAL RESOURCES

### MARINE RESOURCES COMMISSION

#### Final Regulation

**REGISTRAR'S NOTICE:** The following regulation filed by the Marine Resources Commission is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 12 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

**Title of Regulation:** **4VAC20-20. Pertaining to the Licensing of Fixed Fishing Devices (amending 4VAC20-20-50).**

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

**Effective Date:** November 1, 2007.

**Agency Contact:** Brandy L. Battle, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Ave., 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or email [brandy.battle@mrc.virginia.gov](mailto:brandy.battle@mrc.virginia.gov).

**Summary:**

*The amendment exempts licensed pound net fishermen from having to fish their pound nets or establish a complete system of nets and poles in 2007 in order to renew their licenses or maintain their priority rights to such locations for 2008.*

**4VAC20-20-50. Priority rights; renewal by current licensee.**

A. Applications for renewal of license for existing fixed fishing devices may be accepted by the officer beginning at 9 a.m. on December 1 of the current license year through noon on January 10 of the next license year providing the applicant has met all requirements of law and this chapter. Any location not relicensed during the above period of time shall be considered vacant and available to any qualified applicant after noon on January 10.

B. Except as provided in subsections C and D of this section, a currently licensed fixed fishing device must have been fished during the current license year in order for the licensee to maintain his priority right to such location. It shall be mandatory for the licensee to notify the officer, on forms provided by the commission, when the fixed fishing device is

ready to be fished in the location applied for, by a complete system of nets and poles, except as provided in subsection D of this section, for the purpose of visual inspection by the officer. Either the failure of the licensee to notify the officer when the fixed fishing device is ready to be fished or the failure by the licensee actually to fish the licensed device, by use of a complete system of nets and poles, except as provided in subsection D of this section, shall terminate his right or privilege to renew the license during the period set forth in subsection A of this section of this chapter, and he shall not become a qualified applicant for such location until 9 a.m. on February 1. Any application received from an unqualified applicant under this subsection shall be considered as received at 9 a.m. on February 1; however, in the event of the death of a current license holder, the priority right to renew the currently held locations of the deceased licensee shall not expire by reason of failure to fish said locations during the year for which they were licensed, but one additional year shall be and is hereby granted to the personal representative or lawful beneficiary of the deceased licensee to license the location in the name of the estate of the deceased licensee for purposes of fishing said location or making valid assignment thereof.

C. During the effective period of 4VAC20-530, which establishes a moratorium on the taking and possession of American shad in the Chesapeake Bay and its tributaries, any person licensed during 1993 to set a staked gill net who chooses not to set that net during the period of the moratorium may maintain his priority right to the stake net's 1993 location by completing an application for a fixed fishing device and submitting it to the officer. No license fee shall be charged for the application.

D. Current pound net licensees shall not be required to fish their pound nets or establish a complete system of nets and poles in ~~2006~~ 2007 in order to renew their licenses or maintain their priority rights to such locations for ~~2007~~ 2008.

V.A.R. Doc. No. R08-1001; Filed October 26, 2007, 9:36 a.m.

#### Final Regulation

**REGISTRAR'S NOTICE:** The following regulation filed by the Marine Resources Commission is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 12 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

**Title of Regulation:** **4VAC20-910. Pertaining to Scup (Porgy) (amending 4VAC20-910-45).**



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# Regulations

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

Effective Date: November 1, 2007.

Agency Contact: Brandy L. Battle, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Ave., 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or email [brandy.battle@mrc.virginia.gov](mailto:brandy.battle@mrc.virginia.gov).

Summary:

*This amendment lowers the commercial possession limit for scup from 6,500 pounds to 3,500 pounds from November 1 through December 31 of each year.*

**4VAC20-910-45. Possession limits and harvest quotas.**

A. During the period January 1 through April 30 of each year, it shall be unlawful for any person to do any of the following:

1. Possess aboard any vessel in Virginia more than 30,000 pounds of scup.
2. Land in Virginia more than a total of 30,000 pounds of scup during each consecutive 14-day landing period, with the first 14-day period beginning on January 2.

B. When it is projected and announced that 80% of the coastwide quota for this period has been attained, it shall be unlawful for any person to possess aboard any vessel or to land in Virginia more than a total of 1,000 pounds of scup.

C. During the period November 1 through December 31 of each year, it shall be unlawful for any person to possess aboard any vessel or to land in Virginia more than ~~6,500~~ 3,500 pounds of scup.

D. During the period May 1 through October 31 of each year, the commercial harvest and landing of scup in Virginia shall be limited to 7,862 pounds.

E. For each of the time periods set forth in this section, the Marine Resources Commission will give timely notice to the industry of calculated poundage possession limits and quotas and any adjustments thereto. It shall be unlawful for any person to possess or to land any scup for commercial purposes after any winter period coastwide quota or summer period Virginia quota has been attained and announced as such.

F. It shall be unlawful for any buyer of seafood to receive any scup after any commercial harvest or landing quota has been attained and announced as such.

G. It shall be unlawful for any person fishing with hook and line, rod and reel, spear, gig or other recreational gear to possess more than 50 scup. When fishing is from a boat or vessel where the entire catch is held in a common hold or container, the possession limit shall be for the boat or vessel and shall be equal to the number of persons on board legally

eligible to fish multiplied by 50. The captain or operator of the boat or vessel shall be responsible for any boat or vessel possession limit. Any scup taken after the possession limit has been reached shall be returned to the water immediately.

VA.R. Doc. No. R08-999; Filed October 26, 2007, 9:36 a.m.

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**TITLE 6. CRIMINAL JUSTICE AND  
CORRECTIONS**

**STATE BOARD OF JUVENILE JUSTICE**

**Final Regulation**

Title of Regulation: **6VAC35-180. Regulations Governing Mental Health Services Transition Plans for Incarcerated Juveniles (adding 6VAC35-180-10 through 6VAC35-180-170).**

Statutory Authority: §§16.1-293.1 and 66-10 of the Code of Virginia.

Effective Date: January 1, 2008.

Agency Contact: Deron M. Phipps, Regulatory Coordinator, Department of Juvenile Justice, 700 E. Franklin Street, P. O. Box 1110, Richmond, VA 23218-1110, telephone 804-786-6407, FAX 804-371-0773, or email [deron.phipps@djj.virginia.gov](mailto:deron.phipps@djj.virginia.gov).

Summary:

*The regulations provide the framework for creating a mental health services transition plan for the provision of mental health, substance abuse, or other therapeutic treatment services for persons returning to the community following commitment to a juvenile correctional center or postdispositional detention.*

*The changes made after publication of the proposed regulation are primarily technical for ease in implementation and future interpretation. These changes include adding citations and definitions, deleting duplicative language, and changing language as necessary for consistency throughout the regulation. Specific criteria are added to address the different release circumstances, qualified mental health professionals are added to the list of participants in the facility case review, and the required attendees and invitees are changed to mirror the language in the Code of Virginia.*

Summary of Public Comments and Agency's Response: A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

## CHAPTER 180

REGULATIONS GOVERNING MENTAL HEALTH  
SERVICES TRANSITION PLANS FOR INCARCERATED  
JUVENILES

## Part I

## General Provisions

**6VAC35-180-10. Definitions.**

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

[ "Department" means the Virginia Department of Juvenile Justice. ]

"Direct discharge" means the release of a [ juvenile resident ] from commitment to the [ Department of Juvenile Justice department ] with no supervision conditions imposed upon the [ juvenile resident ] by the department or a court.

"Facility" means a juvenile correctional center operated by the [ Department of Juvenile Justice department ], an alternative placement for [ juveniles residents ] under the direct custody of the [ Department of Juvenile Justice department ], or [ a detention home operating ] a postdispositional detention program serving [ juveniles residents ] sentenced under [ subdivision A 16 of §16.1-278.8 and subsection B of ] §16.1-284.1 of the Code of Virginia.

"Identified as having a recognized mental health, substance abuse, or other therapeutic treatment need" means a [ juvenile resident ] who meets established criteria [ , set forth in 6VAC35-180-30. ] based on objective assessment or diagnosis by a qualified mental health professional, as provided for in this regulation.

"Incarceration" means confinement in a [ detention home operating a ] postdispositional detention program pursuant to [ subdivision A 16 of §16.1-278.8 and subsection B of ] §16.1-284.1 of the Code of Virginia or in a juvenile [ correctional center residential facility or a secure facility as defined in §16.1-228 of the Code of Virginia operated or contracted for by the department ] or [ in an ] alternative placement as a result of a commitment to the [ Department of Juvenile Justice department ] pursuant to subdivision A 14 [ , A 16, or A 17 ] of §16.1-278.8 or §16.1-285.1 of the Code of Virginia.

[ "Indeterminately committed" means commitment to the department pursuant to subdivision A 14 of §16.1-278.8 of the Code of Virginia with the resident's length of stay calculated in accordance with §16.1-285 of the Code of Virginia and the department's Length of Stay Guidelines. ]

"Juvenile" means an individual [ who was committed to the Department of Juvenile Justice pursuant to §16.1-285.1 or subdivision A 14 of §16.1-278.8 of the Code of Virginia or

placed in a postdispositional detention program pursuant to subsection B of §16.1-284.1 of the Code of Virginia. For purposes of this regulation, the term includes wards being released from incarceration that are 18 years old or older, regardless of age, who has been confined in a detention home operating a postdispositional detention program pursuant to subdivision A 16 of §16.1-278.8 and subsection B of §16.1-284.1 of the Code of Virginia or in a juvenile residential facility or a secure facility as defined in §16.1-228 of the Code of Virginia operated or contracted for by the department or in an alternative placement as a result of a commitment to the department pursuant to subdivision A 14, A 16, or A 17 of §16.1-278.8 or §16.1-285.1 of the Code of Virginia or an individual, regardless of age, who is under the supervision of or receiving services from a court service unit. ]

[ "Mental health initiative funds" means funds appropriated by the General Assembly to the Department of Mental Health, Mental Retardation and Substance Abuse Services for mental health and substance abuse services for children and adolescents with serious emotional disturbances who are not mandated for services under the Comprehensive Services Act (§2.2-5200 et seq. of the Code of Virginia). ]

"Mental health services transition planning" means the enhanced planning process described by 6VAC35-180-70 through 6VAC35-180-160 to ensure the provision of mental health, substance abuse, or other therapeutic treatment services upon a [ juvenile's resident's ] release from incarceration. This planning process is considered "enhanced" because it is more comprehensive than the standard process for developing a plan for probation, parole, or aftercare. This process shall result in a mental health transition services plan.

[ "Resident" means an individual, both a juvenile and an adult, who is or was committed to the department pursuant to §16.1-285.1 or subdivision A 14 or A 17 of §16.1-278.8 of the Code of Virginia and resides in a juvenile residential facility or a secure facility defined in §16.1-228 of the Code of Virginia operated or contracted for by the department or placed in a detention home that is operating a postdispositional detention program pursuant to subdivision A 16 of §16.1-278.8 and subsection B of §16.1-284.1 of the Code of Virginia. Resident includes an individual, both juvenile and adult, who is or was committed to the department by a circuit court judge under §16.1-272 of the Code of Virginia. For purposes of this regulation, the term includes residents being released from incarceration who are 18 years old or older and excludes any individual sentenced under §16.1-272 of the Code of Virginia who will be released directly from a department facility to an adult correctional institution or jail to complete the remaining portion of a blended sentence.

"Serious offender" means an individual who was committed to the department pursuant to subdivision A 17 of §16.1-278.8 and §16.1-285.1 of the Code of Virginia. ]

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# Regulations

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## **6VAC35-180-20. Purpose and goal.**

A. This chapter is intended to ensure the planning and provision of postrelease services addressing the mental health, substance abuse, or other therapeutic treatment needs of incarcerated [ juveniles residents ] as they transition back into their communities. The goal is to ensure implementation and continuity of necessary treatment and services in order to improve short- and long-term outcomes for juvenile offenders with significant needs in these areas. Services should be provided in the least restrictive setting consistent with public safety and the [ juvenile's resident's ] treatment needs. The plan shall address the [ juvenile's resident's ] need for and ability to access medication, medical insurance, disability benefits, mental health services, and funding necessary to meet the [ juvenile's resident's ] treatment needs.

B. This chapter is intended to be applied in conjunction with other relevant regulations of agencies of the Commonwealth (e.g., 6VAC35-150, Standards for Nonresidential Services Available to Juvenile and Domestic Relations District Courts; 6VAC35-140, Standards for Juvenile Residential Facilities; 22VAC42-10, Standards for Interdepartmental Regulation of Children's Residential Facilities; and 8VAC20-660, Regulations Governing the Reenrollment of Students Committed to the Department of Juvenile Justice).

## **6VAC35-180-30. Criteria for mental health services transition planning.**

A [ juvenile resident ] will [ be identified as having a recognized mental health, substance abuse, or other therapeutic need and will ] qualify for mental health services transition planning when one of the following criteria is met:

1. A qualified mental health professional determines that the [ juvenile resident ] has a current diagnosis for a mental illness that is likely to result in significant impairment in the [ juvenile's resident's ] functioning in the community, including, but not limited to, the following: psychotic disorders, major affective disorders, substance use disorders, and posttraumatic stress disorder.

2. The [ juvenile resident ] is currently receiving medication treatment for a mental illness as described in subdivision 1 of this section [ ; ] and the provider has indicated a treatment necessity [ is ] to continue such medication upon [ discharge release from the facility ].

## **6VAC35-180-40. Confidentiality.**

For all activities conducted in accordance with this chapter, confidential information shall be handled in accordance with [ the Health Insurance Portability and Privacy Act (HIPAA), federal regulations governing Confidentiality of Alcohol and Drug Abuse Patient Records (42 CFR Part 2), and any other all ] relevant state or federal [ law laws ] or [ regulation regulations ] addressing [ the ] sharing of confidential information.

## Part II

### Agreements Among Agencies and Service Providers

## **6VAC35-180-50. Interagency Memorandum of Understanding.**

Each court service unit (CSU) and [ detention home that is operating a ] postdispositional detention program shall enter into a single, integrated Memorandum of Understanding (MOU) with the public agencies that are required to participate in the Community Policy and Management Team (CPMT), as established by §2.2-5205 of the Code of Virginia, for each jurisdiction covered by the CSU or [ detention home that is operating a ] postdispositional detention program. The MOU shall specify the parties' commitment to participate in the planning process established in this chapter and in §16.1-293.1 B of the Code of Virginia. Other public or private agencies may be party to these agreements as appropriate.

## **6VAC35-180-60. Content of agreements.**

The Memorandum of Understanding shall identify:

1. The substance abuse, mental health, or other therapeutic treatment and case management services that the agencies will make available for [ juveniles residents ] being released from incarceration;

2. If, and with what restrictions, the Family Assessment and Planning Teams (FAPT), as established by §2.2-5207 of the Code of Virginia, shall be responsible for the development and implementation of the mental health transition plan as described in 6VAC35-180-100 or how the mental health transition planning process will take place when the FAPT will not serve as the responsible entity;

3. The process and parties responsible for making the necessary referrals specified in the plan and for assisting the [ juvenile resident ] and the [ juvenile's resident's ] family with the process of applying for services identified in the plan;

4. A timeline for implementation of services upon the [ juvenile's resident's ] release from incarceration;

5. The sources of funding that may be utilized to provide the services;

6. Methods for maximizing available sources of funding, including Medicaid, and the process and parties responsible for initiation of application(s) for insurance or other benefits that may be used to fully or partially fund such services; and

7. Methods for handling confidential information in accordance with [ the Health Insurance Portability and Privacy Act (HIPAA), federal regulations governing Confidentiality of Alcohol and Drug Abuse Patient Records (42 CFR Part 2), and any other all ] relevant state

or federal [ ~~law~~ laws ] or [ ~~regulation~~ regulations ] addressing [ the ] sharing of confidential information.

Part III

Facility Review of [ Juvenile's Resident's ] Case

**6VAC35-180-70. Timing and purpose of [ the ] facility case review.**

A. [ ~~At~~ In the event that the resident is indeterminately committed to the department, is committed to the department as a serious offender for less than 24 months, or is placed in a detention home that is operating a postdispositional detention program, then at ] least 90 days before a [ ~~juvenile's resident's~~ ] scheduled release from a [ ~~juvenile correctional center or postdispositional detention program facility~~ ], designated staff at the facility where the [ juvenile resident ] resides shall review the [ ~~juvenile's resident's~~ ] case, including the [ ~~juvenile's resident's~~ ] individualized service plan, to determine if the [ juvenile resident ] qualifies for the enhanced mental health services transition planning based on the criteria set forth in 6VAC35-180-30.

[ B. In the event that the resident is committed to the department as a serious offender for 24 months or greater, then at least 90 days before the second anniversary of that resident's commitment, designated staff at the facility where the resident resides shall review the resident's case, including the resident's individualized service plan, to determine if the resident qualifies for enhanced mental health services transition planning based on the criteria set forth in 6VAC35-180-30. The resident's case shall be reviewed annually thereafter for determination of whether the resident continues to be identified as having a recognized mental health, substance abuse, or other therapeutic treatment need and continues to qualify for mental health services transition planning. ]

[ ~~B. C.~~ ] In addition to an assessment of the criteria set forth in 6VAC35-180-30, the facility case review shall address the continuing needs of the [ juvenile resident ], family involvement, the [ ~~juvenile's resident's~~ ] progress towards discharge, and the anticipated release date.

[ ~~C.—D.~~ ] The time frames designated in [ subsection subsections ] A [ and B ] of this section [ ~~shall be~~ may be ] waived in the event that a judicial order for release of a [ juvenile resident ] sentenced under [ subdivision A 16 or A 17 of §16.1-278.8, ] §16.1-285.1 (serious offender incarcerated in a juvenile correctional center) or §16.1-284.1 (placement in a [ detention home that is operating a ] postdispositional detention program) of the Code of Virginia makes such time frames impracticable. In such cases, review shall be completed as soon as possible, but no later than 30 days after the [ ~~juvenile's resident's~~ ] release.

**6VAC35-180-80. Participants in facility case review.**

[ A. ] The following parties shall participate (either in person or via telephone or video-conference in the facility [ case ] review unless clearly [ impractical or ] inappropriate (as determined by the professional members of the facility review team) and documented in the case file:

1. The [ juvenile resident ];

[ ~~2. The juvenile's family, legal guardian, or legally authorized representative;~~

~~3.~~ 2. ] The [ ~~juvenile's resident's~~ ] probation or parole officer, or a representative of the Department of Corrections (adult probation [ or parole ] ), if applicable;

[ 3. A qualified mental health professional familiar with the resident's case; ]

4. Facility staff knowledgeable about the [ ~~juvenile and his mental health needs~~ resident ]; and

5. Other community agency staff, if appropriate (e.g., Department of Social Services (DSS) personnel for a [ youth resident ] to be released to DSS custody).

[ B. The resident's family members, caregivers, legal guardian, or legally authorized representative shall be invited and given the opportunity to participate in the development of the resident's plan. ]

**6VAC35-180-90. Distribution and documentation of facility case review.**

The results of the facility case review, including any recommendations for treatment or other services, shall be distributed to the parties who participated in the meeting. The distribution shall be documented in the [ juvenile's resident's ] record.

Part IV

Enhanced Transition Planning

Article 1

Developing the Transition Plan

**6VAC35-180-100. Enhanced mental health transition planning.**

A. If the [ juvenile resident ] meets the criteria set out in 6VAC35-180-30, the probation or parole officer present at the facility case review meeting shall (i) notify the responsible agency or agencies identified in the Memorandum of Understanding established pursuant to 6VAC35-180-50 [ ; ] and (ii) schedule a meeting, to be conducted no later than 30 days prior to the [ ~~juvenile's resident's~~ ] anticipated release, to develop the [ ~~juvenile's resident's~~ ] mental health services transition plan.

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# Regulations

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B. However, when a [ juvenile resident ] (i) will receive a direct discharge from the department upon attaining the age of 21 and will not be subject to adult parole supervision [ ; ] or (ii) will be released from a [ detention home that is operating a ] postdispositional program at age 18 or older without having been placed on probation, the meeting shall be scheduled and proceed only with the [ juvenile's resident's ] documented consent and, as required by law, the consent of his parent or legal guardian.

C. The time frames designated in subsection A of this section shall be waived in the event that a judicial order for release of a [ juvenile resident ] sentenced under [ subdivision A 16 or A 17 of §16.1-278.8, ] §16.1-285.1 (serious offender incarcerated in a juvenile correctional center) or §16.1-284.1 (placement in a [ detention home that is operating a ] postdispositional detention program) of the Code of Virginia makes such time frames impracticable. In such cases, review shall be completed as soon as possible, but no later than 30 days after the [ juvenile's resident's ] release.

## **6VAC35-180-110. Referral to family assessment and planning team.**

If the [ juvenile's resident's ] case is referred to the local family assessment and planning team established under the Comprehensive Services Act (§2.2-5200 et seq. of the Code of Virginia), the meeting will be conducted in accordance with the policies of the family planning and assessment team.

## **6VAC35-180-120. Development of the plan if other than family assessment and planning team.**

A. If the [ juvenile's resident's ] case is not referred to the local family assessment and planning team, the following persons shall participate [ (either in person or via telephone or video-conference) ] in the development of the mental health services transition plan [ unless clearly impractical or inappropriate (as determined by the professional members of the enhanced mental health transition planning team) and documented in the case file ]:

1. The [ juvenile resident ];
2. The [ juvenile's resident's ] parent, legal guardian, or legal custodian unless clearly inappropriate (as determined by the professional members of the review team) and documented in the case file;
3. Unless the [ juvenile resident ] will not be receiving any postrelease supervision, the [ juvenile's resident's ] probation or parole officer or a representative of the Department of Corrections for those offenders [ ~~determinately committed under §16.1-285.1 of the Code of Virginia~~ ] who will be released to adult [ probation or ] supervision; and
4. A representative of one or more of the agencies participating in the Memorandum of Understanding

established by 6VAC35-180-50, as applicable and appropriate.

B. The following persons may be invited to participate in the meeting to develop the [ juvenile's resident's ] mental health services transition plan:

1. Other family members or caregivers who are judged to be critical to the [ person's resident's ] successful completion of treatment services; and
2. Any other person, agency, or institution having a legitimate interest in the development of the plan for the purpose of providing treatment or services for the [ juvenile resident ] who is the subject of the plan.

C. If the persons invited pursuant to [ ~~subsection~~ subsections A and ] B of this section are unable to participate in the planning meeting as described in subsection D of this section, they may provide information prior to the meeting.

D. All participants in the development of the plan shall be concurrently available to each other during the transition services planning meeting, either in person, or by telephone conference call, or by video-conference.

## Article 2

### Content of the Plan

## **6VAC35-180-130. Content of the plan.**

A. The plan shall specify:

1. The person(s) assigned case management responsibilities for the development and implementation of the mental health transition services plan. Case management includes making all referrals and coordination of all aspects of the plan;
2. The kinds of substance abuse, mental health, or other therapeutic treatment that will be made available to the [ juvenile resident ];
3. The provider or providers who will be responsible for delivering each service;
4. The projected time frame over which each service will be provided;
5. The proposed sources through which the services will be funded (funding sources may include, but are not limited to, Medicaid, Comprehensive Services Act (§2.2-5200 et seq. of the Code of Virginia), Family Access to Medical Insurance Security, private insurance, and other federal, state, or local funds such as Promoting Safe & Stable Families funds, federal mental health and substance abuse block grant funds, Virginia Juvenile Community Crime Control Act funds, DJJ Transitional Services funds, and other state general funds available to the Community Service Boards, the [ ~~Department of Juvenile~~

Justice department ], or other agencies participating in the planning process); and

6. Any applications for services, insurance, and other financial assistance that must be completed in order for the [ juvenile resident ] to obtain the identified services. Such applications include (i) those [ applications ] that may be completed and submitted before the [ juvenile's resident's ] release from incarceration; (ii) those applications that may be completed before, but may not be submitted until after, the [ juvenile resident ] is released from incarceration; and (iii) those applications that may not be initiated until after the [ juvenile's resident's ] release from incarceration. The plan shall assign responsibility for assisting the [ juvenile resident ] or the [ juvenile's resident's ] parents or guardians in completing such applications.

B. To the extent possible, all issues pertaining to the implementation of the plan shall be resolved prior to the [ juvenile's resident's ] release.

Article 3

Completion and Implementation of the Plan

**6VAC35-180-140. Time frames for completing the plan and related tasks.**

A. To facilitate the process of referrals for services and application and enrollment for financial and other assistance, the written plan shall be completed at least 10 days prior to the [ juvenile's resident's ] release from incarceration unless such time frame is rendered impracticable by a judicial order to release the [ juvenile resident ] from incarceration. In such instances, the plan shall be completed as soon as possible, but in no event later than 30 days following the date of the court order for release.

B. All referrals for services and all applications for financial and other assistance shall be completed within sufficient time frames to ensure continuity of necessary treatment and implementation of recommended services upon the [ juvenile's resident's ] release.

C. All participants in the development of the plan shall sign the plan, indicating their commitment to fulfill the responsibilities assigned to them.

Part V

Review of the Plan

**6VAC35-180-150. Reports to probation or parole officer.**

When it is a condition of probation or parole that the juvenile [ , upon release from a facility, ] must participate in one or more treatment services provided in accordance with this chapter, the person or agency responsible for providing such clinical services shall report to the probation or parole officer on the juvenile's progress toward meeting the plan's

objectives at least monthly as long as the juvenile remains under probation or parole supervision.

When the juvenile's treatment need has been met, the service may be discontinued, and the probation or parole officer shall be notified that the juvenile has completed the treatment.

When the juvenile discontinues participation in the treatment or is suspended or terminated from the program, the probation or parole officer shall be notified as soon as practicable of the juvenile's changed status.

**6VAC35-180-160. Periodic review of mental health transition plan.**

A. Every 90 days, the parties to the plan shall review and assess the juvenile's progress and continued applicability of the plan.

B. Any changes to the plan shall be made in writing. All participants shall sign and receive copies of the revised plan.

**6VAC35-180-170. Final review prior to termination of probation or parole.**

A. If the juvenile has been placed on probation or parole, the individuals and agencies participating in the implementation of the mental health transition plan shall convene no later than 30 days before the juvenile's anticipated release from probation or parole supervision to determine if any of the services provided for in the plan should continue beyond the juvenile's release from probation or parole supervision.

B. If the determination is made that one or more services should continue, an updated plan shall be developed for the juvenile, including identification of the case manager to be responsible for the plan from that point forward. All participants shall sign and receive a copy of the updated plan.

C. If treatment services are continued beyond the juvenile's release from probation or parole, the service provider and case manager shall have no further duty to report to the probation or parole officer on the juvenile's progress in treatment.

DOCUMENTS INCORPORATED BY REFERENCE

Guidelines for Determining the Length of Stay of Juveniles Indeterminately Committed to the Department of Juvenile Justice, Department of Juvenile Justice, Rev. 10/01.

VA.R. Doc. No. R06-104; Filed October 18, 2007, 11:55 a.m.



## TITLE 8. EDUCATION

### STATE BOARD OF EDUCATION

#### Fast-Track Regulation

**Title of Regulation: 8VAC20-190. Regulations Governing Textbooks - Free or Rental Systems State Aid (repealing 8VAC20-190-10).**

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

**Public Hearing Information:** No public hearings are scheduled.

**Public comments:** Public comments may be submitted until 5 p.m. on December 12, 2007.

**Effective Date:** January 1, 2008.

**Agency Contact:** Dr. Margaret N. Roberts, Office of Policy & Communications, Department of Education, Post Office Box 2120, 101 N. 14th St., 25th Floor, Richmond, VA 23219, telephone (804) 225-2540, FAX (804) 225-2524, or email [margaret.roberts@doe.virginia.gov](mailto:margaret.roberts@doe.virginia.gov).

**Basis:** Section 22.1-16 of the Code of Virginia provides that "The Board of Education may adopt bylaws for its own governance and promulgate such regulations as may be necessary to carry out its powers and duties and the provisions of this title." This regulation no longer reflects the current rate of reimbursement to school divisions and is unnecessary because the language providing for this reimbursement is in the appropriation act. Therefore, it must be repealed.

**Purpose:** This regulation is incorrect and no longer needed. Therefore, it is being repealed.

**Rationale for Using Fast-Track Process:** The repeal of this regulation will not be controversial because the language providing for the reimbursement to local school divisions is contained in the appropriation act.

**Substance:** No changes are being made to this regulation. It is being repealed.

**Issues:** The advantage to the public, the Department of Education, and local school divisions is the elimination of a regulation that is inaccurate and out of date. There are no disadvantages.

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

**Summary of the Proposed Amendments to Regulation.** The Board of Education (Board) proposes to repeal these regulations.

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

**Estimated Economic Impact.** These regulations applied only to the 1980-82 biennium. Repealing these regulations will be moderately beneficial in that the possibility that someone might mistakenly believe that these rules still apply will no longer exist.

**Businesses and Entities Affected.** There are currently 132 school divisions in the Commonwealth. No school division, business, or other entity is truly affected by the proposed repeal since the regulations only applied to the 1980-82 biennium.

**Localities Particularly Affected.** No specific localities are particularly affected.

**Projected Impact on Employment.** Repealing these regulations will not affect employment.

**Effects on the Use and Value of Private Property.** Repealing these regulations will not affect the use and value of private property.

**Small Businesses: Costs and Other Effects.** Repealing these regulations will not affect small businesses.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** Repealing these regulations will not affect small businesses.

**Real Estate Development Costs.** Repealing these regulations will not affect real estate development costs.

**Legal Mandate.** The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with §2.2-4007.04 of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, §2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency agrees with the economic impact analysis done by DPB. The agency will continue to examine the economic and administrative impact of the regulations as they progress through the Administrative Process Act process.

Summary:

*The Regulations Governing Textbooks - Free or Rental Systems State Aid (8 VAC 20-190-10) was adopted on or before September 1, 1980. This regulation has not been amended since that time and applies to the 1980-1982 biennium. It provides for reimbursement from state funds at the rate of \$2.00 per pupil in average daily membership in school systems that maintain rental or free rental systems. The regulation is being repealed because the language providing for reimbursement is outdated and current reimbursement language exists in the appropriation act.*

VA.R. Doc. No. R08-742; Filed October 24, 2007, 10:27 a.m.

## Fast-Track Regulation

Title of Regulation: **8VAC20-500. Regulations Governing Student Insurance Programs (repealing 8VAC20-500-10).**

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

Public Hearing Information: No public hearings are scheduled.

Public comments: Public comments may be submitted until 5 p.m. on December 12, 2007.

Effective Date: January 1, 2008.

Agency Contact: Dr. Margaret N. Roberts, Office of Policy & Communications, Department of Education, Post Office Box 2120, 101 N. 14th St., 25th Floor, Richmond, VA 23219, telephone (804) 225-2540, FAX (804) 225-2524, or email [margaret.roberts@doe.virginia.gov](mailto:margaret.roberts@doe.virginia.gov).

Basis: Section 22.1-16 of the Code of Virginia provides that "The Board of Education may adopt bylaws for its own governance and promulgate such regulations as may be necessary to carry out its powers and duties and the provisions of this title." This regulation does not require local school divisions to purchase insurance; it only permits them to do so. Since school divisions can already purchase student accident insurance coverage for school-related injuries, and this regulation does not require them to do so, it is unnecessary and should be repealed.

Purpose: This regulation does not require local school divisions to do anything; it merely permits them to do so. Therefore, it is unnecessary and should be repealed.

Rationale for Using Fast-Track Process: The repeal of this regulation will not be controversial because it does not

require local school divisions to do anything. School divisions can already purchase the insurance covered by this regulation and will continue to do so. Therefore, the regulation is unnecessary.

Substance: No changes are being made to this regulation. It is being repealed.

Issues: The advantage to the public, the Department of Education, and local school divisions is the elimination of a regulation that is unnecessary. There are no disadvantages.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Education (Board) proposes to repeal these regulations.

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

Estimated Economic Impact. These brief regulations specify that local school divisions may purchase "student accident insurance coverage for school-related injuries" and that "no school division is to receive credit for sums expended in providing insurance in the distribution of state aid funds." As pointed out by the Department of Education, local school divisions are free to purchase student accident insurance whether or not this language exists in administrative code. School divisions do not receive credit for sums expended in providing insurance in the distribution of state aid funds, and are not expected to receive such credit with the elimination of these regulations. Thus the repeal of these regulations will have no impact beyond saving readers of regulations some time.

Businesses and Entities Affected. There are currently 132 school divisions in the Commonwealth. No school division or other entity is significantly affected by the repeal of these regulations.

Localities Particularly Affected. No localities are significantly affected.

Projected Impact on Employment. Repealing these regulations will not affect employment.

Effects on the Use and Value of Private Property. Repealing these regulations will not affect the use and value of private property.

Small Businesses: Costs and Other Effects. Repealing these regulations will not affect small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. Repealing these regulations will not affect small businesses.

Real Estate Development Costs. Repealing these regulations will not affect real estate development costs.



# Regulations

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with §2.2-4007.04 of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, §2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency agrees with the economic impact analysis done by the Department of Planning Budget. The agency will continue to examine the economic and administrative impact of the regulations as they progress through the Administrative Process Act process.

## Summary:

*The Regulations Governing Student Insurance Programs (8VAC20-500-10) was adopted on or before September 1, 1980. This regulation has not been amended since that time. It authorizes, but does not require, local school divisions to purchase, at their discretion, student accident insurance coverage for school-related injuries. The regulation is unnecessary and proposed to be repealed.*

VA.R. Doc. No. R08-743; Filed October 24, 2007, 10:26 a.m.

## TITLE 9. ENVIRONMENT

### STATE AIR POLLUTION CONTROL BOARD

#### Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from the Administrative Process Act in accordance with §2.2-4006 A 4 c of the Code of Virginia, which excludes

regulations that are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation. The State Air Pollution Control Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **9VAC5-20. General Provisions (amending 9VAC5-20-203, 9VAC5-20-204).**

Statutory Authority: §10.1-1308 of the Code of Virginia; §§110 and 182 of the Clean Air Act; 40 CFR Part 51.

Effective Date: December 12, 2007.

Agency Contact: Karen G. Sabasteanski, Policy Analyst, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, telephone 804-698-4426, FAX 804-698-4510, TTY 804-698-4021, or email kgsabastea@deq.virginia.gov.

## Summary:

*The amendments revise the geographic delineation of the nonattainment and maintenance areas by removing the Hampton Roads and Richmond areas from the list of eight-hour ozone nonattainment areas (9VAC5-20-204) and adding them to the list of maintenance areas (9VAC5-20-203).*

*The Hampton Roads eight-hour ozone nonattainment area (counties of Gloucester, Isle of Wight, James City, and York; cities of Chesapeake, Hampton, Newport News, Portsmouth, Poquoson, Norfolk, Suffolk, Virginia Beach, and Williamsburg) and the Richmond eight-hour ozone nonattainment area (counties of Charles City, Chesterfield, Hanover, Henrico, and Prince George; cities of Colonial Heights, Hopewell, Petersburg, and Richmond) have been deleted from the list of nonattainment areas.*

## **9VAC5-20-203. Maintenance areas.**

Maintenance areas are geographically defined below by locality for the criteria pollutants indicated.

### 1. Ozone.

#### Fredericksburg Ozone Maintenance Area.

Spotsylvania County  
Stafford County  
Fredericksburg City

#### Hampton Roads Ozone Maintenance Area.

Gloucester County  
Isle of Wight County  
James City County  
York County  
Chesapeake City  
Hampton City  
Newport News City

Norfolk City  
 Poquoson City  
 Portsmouth City  
 Suffolk City  
 Virginia Beach City  
 Williamsburg City

Richmond Ozone Maintenance Area.

Charles City County\*  
 Chesterfield County  
 Hanover County  
 Henrico County  
Prince George County  
 Colonial Heights City  
 Hopewell City  
Petersburg City  
 Richmond City

~~\*Beginning at the intersection of State Route 156 and the Henrico/Charles City County Line, proceeding south along State Route 5/156 to the intersection with State Route 106/156, proceeding south along Route 106/156 to the intersection with the Prince George/Charles City County line, proceeding west along the Prince George/Charles City County line to the intersection with the Chesterfield/Charles City County line, proceeding north along the Chesterfield/Charles City County line to the intersection with the Henrico/Charles City County line, proceeding north along the Henrico/Charles City County line to State Route 156.~~

Shenandoah National Park Ozone Maintenance Area.

Madison County (portions located in Shenandoah National Park)  
 Page County (portions located in Shenandoah National Park)

2. Carbon monoxide.

Northern Virginia Carbon Monoxide Maintenance Area.

Arlington County  
 Alexandria City

3. All other pollutants.

None.

**9VAC5-20-204. Nonattainment areas.**

A. Nonattainment areas are geographically defined below by locality for the criteria pollutants indicated. Following the name of each ozone nonattainment area, in parentheses, is the classification assigned pursuant to §181(a) of the federal Clean Air Act (42 USC §7511(a)) and 40 CFR 51.903(a).

1. Ozone (1-hour).

Northern Virginia Ozone Nonattainment Area (severe).

Arlington County

Fairfax County  
 Loudoun County  
 Prince William County  
 Stafford County  
 Alexandria City  
 Fairfax City  
 Falls Church City  
 Manassas City  
 Manassas Park City

2. Ozone (8-hour).

Northern Virginia Ozone Nonattainment Area (moderate).

Arlington County  
 Fairfax County  
 Loudoun County  
 Prince William County  
 Alexandria City  
 Fairfax City  
 Falls Church City  
 Manassas City  
 Manassas Park City

Hampton Roads Ozone Nonattainment Area (marginal).

~~Gloucester County  
 Isle of Wight County  
 James City County  
 York County  
 Chesapeake City  
 Hampton City  
 Newport News City  
 Poquoson City  
 Portsmouth City  
 Norfolk City  
 Suffolk City  
 Virginia Beach City  
 Williamsburg City~~

Richmond Ozone Nonattainment Area (marginal).

~~Charles City County  
 Chesterfield County  
 Hanover County  
 Henrico County  
 Prince George County  
 Colonial Heights City  
 Hopewell City  
 Petersburg City  
 Richmond City~~

3. PM<sub>2.5</sub> (particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers).

Northern Virginia PM<sub>2.5</sub> Nonattainment Area.

Arlington County  
 Fairfax County  
 Loudoun County

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Prince William County  
Alexandria City  
Fairfax City  
Falls Church City  
Manassas City  
Manassas Park City

4. All other pollutants.

None.

B. Subdivision A 1 of this section shall not be effective after June 15, 2005.

VA.R. Doc. No. R08-817; Filed October 15, 2007, 2:57 p.m.

## Final Regulation

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

Titles of Regulations: **9VAC5-40. Existing Stationary Sources (amending 9VAC5-40-20)**

**9VAC5-50. New and Modified Stationary Sources (amending 9VAC5-50-20).**

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

Effective Date: December 12, 2007.

Agency Contact: Mary E. Major, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, FAX (804) 698-4510, or email memajor@deq.virginia.gov.

Summary:

*The special provisions of the regulations concerning existing/new and modified stationary sources are amended to incorporate the requirements of Chapter 148 of the 2007 Acts of Assembly. Specifically, 9VAC5-40-20 A 3 and 9VAC5-50-20 A 3 are amended to indicate that compliance with opacity may be determined in one of the following ways: (i) compliance with Reference Method 9 or any alternative method approved by EPA, (ii) evaluation of data resulting from use of continuous monitoring providing that certain criteria are met, or (iii) use of any other method approved by EPA.*

## 9VAC5-40-20. Compliance.

A. Ninety days after the effective date of any emission standard prescribed under this chapter, no owner or other person shall operate any existing source in violation of such standard.

1. Compliance with standards in this chapter, other than opacity standards, shall be determined by emission tests established by 9VAC5-40-30, unless specified otherwise in the applicable standard.

2. Compliance with federal requirements in this chapter may be determined by alternative or equivalent methods only if approved by the administrator. For purposes of this subsection, federal requirements consist of the following:

a. New source performance standards established pursuant to §111 of the federal Clean Air Act.

b. All terms and conditions in a federal operating permit, including any provisions that limit a source's potential to emit, unless expressly designated as not federally enforceable.

c. Limitations and conditions that are part of an implementation plan.

d. Limitations and conditions that are part of a section 111(d) or section 111(d)/129 plan.

e. Limitations and conditions that are part of a federal construction permit issued under 40 CFR 52.21 or any construction permit issued under regulations approved by EPA in accordance with 40 CFR Part 51.

f. Limitations and conditions that are part of an operating permit issued pursuant to a program approved by EPA into an implementation plan as meeting EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for EPA and public comment prior to issuance of the final permit and practicable enforceability.

3. Compliance with opacity standards in this chapter ~~shall~~ may be determined by ~~conducting~~ one or more of the following means:

a. Conducting observations in accordance with Reference Method 9 or any alternative method approved by EPA. For purposes of determining initial compliance, the minimum total time of observations shall be three hours (30 six-minute averages) for the emission test or other set of observations (meaning those fugitive-type emission sources subject only to an opacity standard). Opacity readings of portions of plumes which contain condensed, uncombined water vapor shall not be used for purposes of determining compliance with opacity standards.

b. Evaluation of data resulting from use of continuous monitoring by transmissometer, provided the instrument

used meets Performance Specification 1 in Appendix B of 40 CFR Part 60 and has been properly maintained and that the resulting data have not been altered in any way.

c. Use of any other method approved by EPA.

4. The opacity standards prescribed under this chapter shall apply at all times except during periods of startup, shutdown, malfunction, and as otherwise provided in the applicable standard. This exception shall not apply to the following federal requirements:

- a. Limitations and conditions that are part of an implementation plan.
- b. Limitations and conditions that are part of a federal construction permit issued under 40 CFR 52.21 or any construction permit issued under regulations approved by EPA in accordance with 40 CFR Part 51.
- c. Limitations and conditions that are part of an operating permit issued pursuant to a program approved by EPA into an implementation plan as meeting EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for EPA and public comment prior to issuance of the final permit and practicable enforceability.

B. No owner of an existing source subject to the provisions of this chapter shall fail to conduct emission tests as required under this chapter.

C. No owner of an existing source subject to the provisions of this chapter shall fail to install, calibrate, maintain and operate equipment for continuously monitoring and recording emissions or process parameters or both as required under this chapter.

D. No owner of an existing source subject to the provisions of this chapter shall fail to provide notifications and reports, revise reports, maintain records or report emission test or monitoring results as required under this chapter.

E. At all times, including periods of startup, shutdown, soot blowing and malfunction, owners shall, to the extent practicable, maintain and operate any affected facility including associated air pollution control equipment in a manner consistent with air pollution control practices for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the board, which may include, but is not limited to, monitoring results, opacity observations, review of operating and maintenance procedures, and inspection of the source.

F. At all times the disposal of volatile organic compounds shall be accomplished by taking measures, to the extent practicable, consistent with air pollution control practices for minimizing emissions. Volatile organic compounds shall not be intentionally spilled, discarded in sewers which are not

connected to a treatment plant, or stored in open containers or handled in any other manner that would result in evaporation beyond that consistent with air pollution control practices for minimizing emissions.

G. The following provisions apply with respect to demonstrating compliance with opacity standards.

1. For the purpose of demonstrating initial compliance, opacity observations shall be conducted concurrently with the initial emission test unless one of the following conditions apply:

a. If no emission test is required, then opacity observations shall be conducted within 60 days after achieving the maximum production rate at which the affected facility will be operated but no later than 180 days after the compliance date.

b. If visibility or other conditions prevent the opacity observations from being conducted concurrently with the initial emission test, the owner shall reschedule the opacity observations as soon after the initial emission test as possible, but not later than 30 days thereafter, and shall advise the board of the rescheduled date. In these cases, the 30-day prior notification to the board required by 9VAC5-40-50 A 3 shall be waived. The rescheduled opacity observations shall be conducted (to the extent possible) under the same operating conditions that existed during the initial emission test. The visible emissions observer shall determine whether visibility or other conditions prevent the opacity observations from being made concurrently with the initial emission test in accordance with procedures contained in Reference Method 9.

Opacity readings of portions of plumes which contain condensed, uncombined water vapor shall not be used for purposes of determining compliance with opacity standards. The owner of an affected facility shall make available, upon request by the board, such records as may be necessary to determine the conditions under which the visual observations were made and shall provide evidence indicating proof of current visible observer emission certification. The results of continuous monitoring by transmissometer which indicate that the opacity at the time visual observations were made was not in excess of the standard are probative but not conclusive evidence of the actual opacity of an emission, provided the source meets the burden of proving that the instrument used meets (at the time of the alleged violation) Performance Specification 1 in Appendix B of 40 CFR Part 60 and has been properly maintained and (at the time of the alleged violation) that the resulting data have not been altered in any way.

2. Except as provided in subdivision 3 of this subsection, the owner of an affected facility to which an opacity

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standard in this chapter applies shall conduct opacity observations in accordance with subdivision A 3 of this section, shall record the opacity of emissions, and shall report to the board the opacity results along with the results of the initial emission test. The inability of an owner to secure a visible emissions observer shall not be considered a reason for not conducting the opacity observations concurrent with the initial emission test.

3. The owner of an affected facility to which an opacity standard in this chapter applies may request the board to determine and to record the opacity of emissions from the affected facility during the initial emission test and at such times as may be required. The owner of the affected facility shall report the opacity results. Any request to the board to determine and to record the opacity of emissions from an affected facility shall be included in the notification required in 9VAC5-40-50 A 3. If, for some reason, the board cannot determine and record the opacity of emissions from the affected facility during the emission test, then the provisions of subdivision 1 of this subsection shall apply.

4. An owner of an affected facility using a continuous opacity monitor (transmissometer) shall record the monitoring data produced during the initial emission test and shall furnish the board a written report of the monitoring results along with the Reference Method 9 and initial emission test results.

H. The following provisions apply with respect to new or more stringent emission standards:

1. The following provisions apply with respect to emission standards for volatile organic compounds:

a. In the case of any emission standard for volatile organic compounds adopted by the board which is more stringent than the emission standard for the source in effect prior to such adoption, if any, or where there was no emission standard, the source shall not be considered in violation of the newly adopted emission standard provided that the owner accomplishes the following:

(1) Complies with the emission standard as expeditiously as possible but in no case later than one year after the effective date of the emission standard.

(2) Within one month of achieving compliance, notifies the board of same.

(3) Within six months of achieving compliance, demonstrates to the satisfaction of the board compliance with the emission standard.

b. The reprieve provided by subdivision 1 a of this subsection shall only apply in cases where it is necessary for the owner to:

(1) Install emission control equipment or other equipment that alters the facility in order to comply with the emission standard; or

(2) Switch fuel or raw materials or both in order to comply with the emission standard.

c. Owners of sources not in compliance with the newly adopted emission standard, but in compliance with the provisions of subdivision 1 a of this subsection shall not be subject to any penalties for violation of the newly adopted emission standard that may be required by the Virginia Air Pollution Control Law.

d. Any reprieve from the sanctions of any provision of the Virginia Air Pollution Control Law pursuant to subdivision 1 a of this subsection shall not extend beyond the date by which compliance is to be achieved.

e. Nothing in subdivision 1 a of this subsection shall prevent the board from promulgating a separate compliance schedule for any source if the board finds that it is technologically infeasible or it is infeasible due to the nonavailability of necessary equipment or materials or other circumstances beyond the owner's control for the source to achieve compliance within one year of the effective date of an emission standard.

f. All compliance schedules proposed or prescribed under this section shall provide for compliance with the applicable emission standards as expeditiously as practicable.

g. Any compliance schedule approved under this subsection may be revoked at any time if the source owner does not meet the stipulated increments of progress, and if the failure to meet an increment is likely to result in failure to meet the date for final compliance, and the failure to meet the increment is due to causes within the owner's control.

2. The following provisions apply with respect to emission standards for pollutants other than volatile organic compounds:

a. In the case of any emission standard adopted by the board which is more stringent than the emission standard for the source in effect prior to such adoption, if any, or where there was no emission standard, the source shall not be considered in violation of the newly adopted emission standard provided that the owner accomplishes the following:

(1) Submits in a form and manner satisfactory to the board, a control program showing how compliance shall be achieved within the time frame in the applicable compliance schedule prescribed under 9VAC5-40-21; or, where no applicable compliance schedule is prescribed under 9VAC5-40-21, how compliance shall be achieved as expeditiously as possible; but in no case later than

three years after the effective date of such emission standard.

(2) Receives approval of the board of such control program.

(3) Complies with all provisions, terms and conditions of the control program including the increments of progress.

b. The reprieve provided by subdivision 2 a of this subsection shall only apply in cases where it is necessary for the owner to:

(1) Install emission control equipment or other equipment that alters the facility in order to comply with the emission standard; or

(2) Switch fuel or raw materials or both in order to comply with the emission standard.

c. Owners of sources not in compliance with the newly adopted emission standard, but in compliance with the provisions of subdivision 2 a of this subsection shall not be subject to any penalties for violation of the newly adapted emission standard that may be required by the Virginia Air Pollution Control Law.

d. Any reprieve from the sanctions of any provision of the Virginia Air Pollution Control Law pursuant to subdivision 2 a of this subsection shall not extend beyond the date, specified in the emission standard or approved control program, by which compliance is to be achieved.

e. Control programs submitted under the provisions of subdivision 2 a of this subsection shall be processed in accordance with the provisions of 9VAC5-20-170. However, if the control program contains a compliance schedule which conforms to the applicable schedule prescribed in 9VAC5-40-21, the public hearing provision of 9VAC5-20-170 shall not apply.

f. Nothing in this section shall prevent the board from promulgating a separate compliance schedule for any source if the board finds that the application of a compliance schedule in 9VAC5-40-21 is technologically infeasible, or if the board finds that the application of a compliance schedule in 9VAC5-40-21 is infeasible due to the nonavailability of necessary equipment or materials or other circumstances beyond the owner's control.

g. Nothing in this section shall prevent the owner of a source subject to a compliance schedule in 9VAC5-40-21 from submitting to the board a proposed alternative compliance schedule provided the following conditions are met:

(1) The proposed alternative compliance schedule is submitted within six months of the effective date of the emission standard;

(2) The final control plans for achieving compliance with the applicable emission standard are submitted simultaneously;

(3) The alternative compliance schedule contains the same increments of progress as the schedule for which it is proposed as an alternative; and

(4) Sufficient documentation is submitted by the owner of the source to justify the alternative dates proposed for the increments of progress.

h. All compliance schedules proposed or prescribed under this section shall provide for compliance with the applicable emission standards as expeditiously as practicable.

i. Any compliance schedule approved under this subsection may be revoked at any time if the source owner does not meet the stipulated increments of progress, and if the failure to meet an increment is likely to result in failure to meet the date for final compliance, and the failure to meet the increment is due to causes within the owner's control.

j. The provisions of 9VAC5-40-21 shall not apply to owners of sources which are in compliance with the applicable emission standard and for which the owners have determined and certified compliance to the satisfaction of the board within 12 months of the effective date of the applicable emission standard.

I. The following provisions apply with respect to stack heights:

1. The degree of emission limitation required of any source owner for control of any air pollutant shall not be affected in any manner by:

- a. So much of the stack height of any source as exceeds good engineering practice; or
- b. Any other dispersion technique.

2. The provisions of subdivision 1 of this subsection shall not apply to:

- a. Stack heights in existence, or dispersion techniques implemented on or before December 31, 1970, except where pollutants are being emitted from such stacks or using such dispersion techniques by sources, as defined in §111(a)(3) of the federal Clean Air Act, which were constructed, or reconstructed, or for which major modifications, as defined in Article 8 (9VAC5-80-1700 et seq.) and Article 9 (9VAC5-80-2000 et seq.) of Part II of 9VAC5 Chapter 80, were carried out after December 31, 1970; or
- b. Coal-fired steam electric generating units subject to the provisions of §118 of the federal Clean Air Act, which commenced operation before July 1, 1957, and

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whose stacks were constructed under a construction contract awarded before February 8, 1974.

3. Prior to the adoption of a new or revised emission limitation that is based on a good engineering practice stack height that exceeds the height allowed by subdivision 1 or 2 of the GEP definition, the board shall notify the public of the availability of the demonstration study and shall provide the opportunity for public hearing on it.

4. For purposes of this subsection, such height shall not exceed the height allowed by subdivision 1 or 2 of the GEP definition unless the owner demonstrates to the satisfaction of the board, after 30 days notice to the public and opportunity for public hearing, that a greater height is necessary as provided under subdivision 3 of the GEP definition.

5. In no event may the board prohibit any increase in any stack height or restrict in any manner the maximum stack height of any source.

6. Compliance with emission standards in this chapter shall not be affected in any manner by the stack height of any source or any other dispersion technique.

J. For the purpose of submitting compliance certifications or establishing whether or not a person has violated or is in violation of any standard in this chapter, nothing in this chapter shall preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether a source would have been in compliance with applicable requirements if the appropriate emission or compliance test or procedure had been performed.

## **9VAC5-50-20. Compliance.**

A. Sixty days after achieving the maximum production rate, but not later than 180 days after initial startup, no owner or other person shall operate any new or modified source in violation of any standard of performance prescribed under this chapter.

1. Compliance with standards in this chapter, other than opacity standards, shall be determined by performance tests established by 9VAC5-50-30, unless specified otherwise in the applicable standard.

2. Compliance with federal requirements in this chapter may be determined by alternative or equivalent methods only if approved by the administrator. For purposes of this subsection, federal requirements consist of the following:

a. New source performance standards established pursuant to §111 of the federal Clean Air Act.

b. All terms and conditions in a federal operating permit, including any provisions that limit a source's potential to emit, unless expressly designated as not federally enforceable.

c. Limitations and conditions that are part of an implementation plan.

d. Limitations and conditions that are part of a section 111(d) or section 111(d)/129 plan.

e. Limitations and conditions that are part of a federal construction permit issued under 40 CFR 52.21 or any construction permit issued under regulations approved by EPA in accordance with 40 CFR Part 51.

f. Limitations and conditions that are part of an operating permit issued pursuant to a program approved by EPA into an implementation plan as meeting EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for EPA and public comment prior to issuance of the final permit and practicable enforceability.

3. Compliance with opacity standards in this chapter ~~shall~~ may be determined by ~~conducting~~ one or more of the following means:

a. Conducting observations in accordance with Reference Method 9 or any alternative method approved by EPA, if specified in the permit granted pursuant to 9VAC5 Chapter 80 (9VAC5-80). For purposes of determining initial compliance, the minimum total time of observations shall be three hours (30 six-minute averages) for the performance test or other set of observations (meaning those fugitive-type emission sources subject only to an opacity standard). Opacity readings of portions of plumes which contain condensed, uncombined water vapor shall not be used for purposes of determining compliance with opacity standards.

b. Evaluation of data resulting from use of continuous monitoring by transmissometer, provided the instrument used meets Performance Specification 1 in Appendix B of 40 CFR Part 60 and has been properly maintained and that the resulting data have not been altered in any way.

c. Use of any other method approved by EPA.

4. The opacity standards prescribed under this chapter shall apply at all times except during periods of startup, shutdown, malfunction and as otherwise provided in the applicable standard.

5. Variation from a specified standard may be granted by the board for a definite period for testing and adjustment.

B. No owner of a new or modified source subject to the provisions of this chapter shall fail to conduct performance tests as required under this chapter.

C. No owner of a new or modified source subject to the provisions of this chapter shall fail to install, calibrate, maintain and operate equipment for continuously monitoring and recording emissions or process parameters or both as required under this chapter.

D. No owner of a new or modified source subject to the provisions of this chapter shall fail to provide notifications and reports, revise reports, maintain records or report performance test or monitoring results as required under this chapter.

E. At all times, including periods of startup, shutdown, soot blowing and malfunction, owners shall, to the extent practicable, maintain and operate any affected facility including associated air pollution control equipment in a manner consistent with air pollution control practices for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the board, which may include, but is not limited to, monitoring results, opacity observations, review of operating and maintenance procedures, and inspection of the source.

F. At all times the disposal of volatile organic compounds shall be accomplished by taking measures, to the extent practicable, consistent with air pollution control practices for minimizing emissions. Volatile organic compounds shall not be intentionally spilled, discarded in sewers which are not connected to a treatment plant, or stored in open containers or handled in any other manner that would result in evaporation beyond that consistent with air pollution control practices for minimizing emissions.

G. The following provisions apply with respect to compliance with opacity standards.

1. For the purpose of demonstrating initial compliance, opacity observations shall be conducted concurrently with the initial performance test unless one of the following conditions apply.

a. If no performance test is required, then opacity observations shall be conducted within 60 days after achieving the maximum production rate at which the affected facility will be operated but no later than 180 days after initial startup of the facility.

b. If visibility or other conditions prevent the opacity observations from being conducted concurrently with the initial performance test, the owner shall reschedule the opacity observations as soon after the initial performance test as possible, but not later than 30 days thereafter, and shall advise the board of the rescheduled date. In these cases, the 30-day prior notification to the board required by 9VAC5-50-50 A 6 shall be waived. The rescheduled opacity observations shall be conducted (to the extent possible) under the same operating conditions that existed during the initial performance test. The visible emissions observer shall determine whether visibility or other conditions prevent the opacity observations from being made concurrently with the initial performance test in accordance with procedures contained in Reference Method 9.

Opacity readings of portions of plumes which contain condensed, uncombined water vapor shall not be used for purposes of determining compliance with opacity standards. The owner of an affected facility shall make available, upon request by the board, such records as may be necessary to determine the conditions under which the visual observations were made and shall provide evidence indicating proof of current visible observer emission certification. The results of continuous monitoring by transmissometer which indicate that the opacity at the time visual observations were made was not in excess of the standard are probative but not conclusive evidence of the actual opacity of an emission, provided the source meets the burden of proving that the instrument used meets (at the time of the alleged violation) Performance Specification 1 in Appendix B of 40 CFR Part 60 and has been properly maintained and (at the time of the alleged violation) that the resulting data have not been altered in any way.

2. Except as provided in subdivision 3 of this subsection, the owner of an affected facility to which an opacity standard in this chapter applies shall conduct opacity observations in accordance with subdivision A 3 of this section, shall record the opacity of emissions, and shall report to the board the opacity results along with the results of the initial performance test. The inability of an owner to secure a visible emissions observer shall not be considered a reason for not conducting the opacity observations concurrent with the initial performance test.

3. The owner of an affected facility to which an opacity standard in this chapter applies may request the board to determine and to record the opacity of emissions from the affected facility during the initial performance test and at such times as may be required. The owner of the affected facility shall report the opacity results. Any request to the board to determine and to record the opacity of emissions from an affected facility shall be included in the notification required in 9VAC5-50-50 A 6. If, for some reason, the board cannot determine and record the opacity of emissions from the affected facility during the performance test, then the provisions of subdivision 1 of this subsection shall apply.

4. An owner of an affected facility using a continuous opacity monitor (transmissometer) shall record the monitoring data produced during the initial performance test and shall furnish the board a written report of the monitoring results along with the Reference Method 9 and initial performance test results.

H. The following provisions apply with respect to stack heights.



## Final Regulation

1. The degree of emission limitation required of any source owner for control of any air pollutant shall not be affected in any manner by:

- a. So much of the stack height of any source as exceeds good engineering practice; or
- b. Any other dispersion technique.

2. The provisions of subdivision 1 of this subsection shall not apply to:

- a. Stack heights in existence, or dispersion techniques implemented on or before December 31, 1970, except where pollutants are being emitted from such stacks or using such dispersion techniques by sources, as defined in §111(a)(3) of the federal Clean Air Act, which were constructed, or reconstructed, or for which major modifications, as defined in Article 8 (9VAC5-80-1700 et seq.) and Article 9 (9VAC5-80-2000 et seq.) of Part II of 9VAC5 Chapter 80, were carried out after December 31, 1970; or
- b. Coal-fired steam electric generating units subject to the provisions of §118 of the federal Clean Air Act, which commenced operation before July 1, 1957, and whose stacks were constructed under a construction contract awarded before February 8, 1974.

3. Prior to the adoption of a new or revised emission limitation that is based on a good engineering practice stack height that exceeds the height allowed by subdivision 1 or 2 of the GEP definition, the board shall notify the public of the availability of the demonstration study and shall provide opportunity for public hearing on it.

4. For purposes of this subsection, such height shall not exceed the height allowed by subdivision 1 or 2 of the GEP definition unless the owner demonstrates to the satisfaction of the board, after 30 days notice to the public and opportunity for public hearing, that a greater height is necessary as provided under subdivision 3 of the GEP definition.

5. In no event may the board prohibit any increase in any stack height or restrict in any manner the maximum stack height of any source.

6. Compliance with standards of performance in this chapter shall not be affected in any manner by the stack height of any source or any other dispersion technique.

I. For the purpose of submitting compliance certifications or establishing whether or not a person has violated or is in violation of any standard in this chapter, nothing in this chapter shall preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test or procedure had been performed.

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

**Titles of Regulations:** **9VAC5-50. New and Modified Stationary Sources (amending 9VAC5-50-400, 9VAC5-50-410).**

**9VAC5-60. Hazardous Air Pollutant Sources (amending 9VAC5-60-60, 9VAC5-60-90, 9VAC5-60-95, 9VAC5-60-100; adding 9VAC5-60-92).**

**Statutory Authority:** §10.1-1308 of the Code of Virginia; §112 of the Clean Air Act, 40 CFR Parts 61 and 63.

**Effective Date:** December 12, 2007.

**Agency Contact:** Karen G. Sabasteanski, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4426, FAX (804) 698-4510, TTY (804) 698-4021, or email kgsabastea@deq.virginia.gov.

### Summary:

*The amendments update state regulations that incorporate by reference certain federal regulations to reflect the Code of Federal Regulations as published on July 1, 2007. The following is a list of the new standards the department is incorporating into the state regulations by reference:*

*1. Incorporation of one Standard of Performance for New Stationary Sources: Subpart KKKK, Standards of Performance for Stationary Combustion Turbines (40 CFR 60.4300 through 40 CFR 60.4420). The date of the Code of Federal Regulations book being incorporated by reference is also being updated to the latest version.*

*2. No new National Emission Standards for Hazardous Air Pollutants are being incorporated; however, the date of the Code of Federal Regulations book being incorporated by reference is being updated to the latest version.*

*3. Incorporation of four Maximum Achievable Control Technologies: Subpart DDDDDD, Polyvinyl Chloride and Copolymers Production Area Sources (40 CFR 63.11140 through 40 CFR 63.11145); Subpart EEEEE, Primary Copper Smelting Area Sources (40 CFR 63.11146 through 40 CFR 63.11152); Subpart FFFFF, Secondary Copper Smelting Area Sources (40 CFR 63.11153 through 40 CFR 63.11159); and Subpart GGGGG, Primary Nonferrous*

*Metals Area Sources--Zinc, Cadmium, and Beryllium (40 CFR 63.11160 through 40 CFR 63.11168). The date of the Code of Federal Regulations book being incorporated by reference is also being updated to the latest version. Due to court-ordered vacatur, the following standards were removed: Subpart J, Polyvinyl Chloride and Copolymers Production (40 CFR 63.210 through 40 CFR 63.217); Subpart DDDDD, Industrial, Commercial, and Institutional Boilers and Process Heaters (40 CFR 63.7480 through 40 CFR 63.7575); Subpart JJJJJ, Brick and Structural Clay Products Manufacturing (40 CFR 63.8380 through 40 CFR 63.8515); and Subpart KKKKK, Clay Ceramics Manufacturing (40 CFR 63.8530 through 40 CFR 63.8665).*

*In addition, 9VAC5-60-92 (Federal Hazardous Air Pollutant Program) is being added in order to formally incorporate by reference the U.S. EPA Hazardous Air Pollutant Program as promulgated in §112 of the federal Clean Air Act to the extent that the provisions of 40 CFR Part 63 are incorporated by reference. The purpose of this section is to identify the specific hazardous air pollutants and to track the source category schedule. This is necessary in order to implement other provisions of the regulations, such as new source review. The new provisions reference EPA provisions and will ensure proper implementation of EPA requirements.*

**9VAC5-50-400. General.**

The U.S. Environmental Protection Agency Regulations on Standards of Performance for New Stationary Sources (NSPSs), as promulgated in 40 CFR Part 60 and designated in 9VAC5-50-410 are, unless indicated otherwise, incorporated by reference into the regulations of the board as amended by the word or phrase substitutions given in 9VAC5-50-420. The complete text of the subparts in 9VAC5-50-410 incorporated herein by reference is contained in 40 CFR Part 60. The 40 CFR section numbers appearing under each subpart in 9VAC5-50-410 identify the specific provisions of the subpart incorporated by reference. The specific version of the provision adopted by reference shall be that contained in the CFR (~~2006~~) (2007) in effect July 1, ~~2006~~ 2007. In making reference to the Code of Federal Regulations, 40 CFR Part 60 means Part 60 of Title 40 of the Code of Federal Regulations; 40 CFR 60.1 means 60.1 in Part 60 of Title 40 of the Code of Federal Regulations.

**9VAC5-50-410. Designated standards of performance.**

Subpart A - General Provisions.

40 CFR 60.1 through 40 CFR 60.3, 40 CFR 60.7, 40 CFR 60.8, 40 CFR 60.11 through 40 CFR 60.15, 40 CFR 60.18 through 40 CFR 60.19

(applicability, definitions, units and abbreviations, notification and recordkeeping, performance tests,

compliance, circumvention, monitoring requirements, modification, reconstruction, general control device requirements, and general notification and reporting requirements)

Subpart B - Not applicable.

Subpart C - Not applicable.

Subpart Ca - Reserved.

Subpart Cb - Not applicable.

Subpart Cc - Not applicable.

Subpart Cd - Not applicable.

Subpart Ce - Not applicable.

Subpart D - Fossil-Fuel Fired Steam Generators for which Construction is Commenced after August 17, 1971.

40 CFR 60.40 through 40 CFR 60.46

(fossil-fuel fired steam generating units of more than 250 million Btu per hour heat input rate, and fossil-fuel fired and wood-residue fired steam generating units capable of firing fossil fuel at a heat input rate of more than 250 million Btu per hour)

Subpart Da - Electric Utility Steam Generating Units for which Construction is Commenced after September 18, 1978.

40 CFR 60.40a through 40 CFR 60.49a

(electric utility steam generating units capable of combusting more than 250 million Btu per hour heat input of fossil fuel (either alone or in combination with any other fuel); electric utility combined cycle gas turbines capable of combusting more than 250 million Btu per hour heat input in the steam generator)

Subpart Db - Industrial-Commercial-Institutional Steam Generating Units.

40 CFR 60.40b through 40 CFR 60.49b

(industrial-commercial-institutional steam generating units which have a heat input capacity from combusted fuels of more than 100 million Btu per hour)

Subpart Dc - Small Industrial-Commercial-Institutional Steam Generating Units.

40 CFR 60.40c through 40 CFR 60.48c

(industrial-commercial-institutional steam generating units which have a heat input capacity of 100 million Btu per hour or less, but greater than or equal to 10 million Btu per hour)

Subpart E - Incinerators.

40 CFR 60.50 through 40 CFR 60.54

(incinerator units of more than 50 tons per day charging rate)

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Subpart Ea - Municipal Waste Combustors for which Construction is Commenced after December 20, 1989, and on or before September 20, 1994

40 CFR 60.50a through 40 CFR 60.59a

(municipal waste combustor units with a capacity greater than 250 tons per day of municipal-type solid waste or refuse-derived fuel)

Subpart Eb - Large Municipal Combustors for which Construction is Commenced after September 20, 1994, or for which Modification or Reconstruction is Commenced after June 19, 1996

40 CFR 60.50b through 40 CFR 60.59b

(municipal waste combustor units with a capacity greater than 250 tons per day of municipal-type solid waste or refuse-derived fuel)

Subpart Ec - Hospital/Medical/Infectious Waste Incinerators for which Construction is Commenced after June 20, 1996

40 CFR 60.50c through 40 CFR 60.58c

(hospital/medical/infectious waste incinerators that combust any amount of hospital waste and medical/infectious waste or both)

Subpart F - Portland Cement Plants.

40 CFR 60.60 through 40 CFR 60.64

(kilns, clinker coolers, raw mill systems, finish mill systems, raw mill dryers, raw material storage, clinker storage, finished product storage, conveyor transfer points, bagging and bulk loading and unloading systems)

Subpart G - Nitric Acid Plants.

40 CFR 60.70 through 40 CFR 60.74

(nitric acid production units)

Subpart H - Sulfuric Acid Plants.

40 CFR 60.80 through 40 CFR 60.85

(sulfuric acid production units)

Subpart I - Hot Mix Asphalt Facilities.

40 CFR 60.90 through 40 CFR 60.93

(dryers; systems for screening, handling, storing and weighing hot aggregate; systems for loading, transferring and storing mineral filler; systems for mixing asphalt; and the loading, transfer and storage systems associated with emission control systems)

Subpart J - Petroleum Refineries.

40 CFR 60.100 through 40 CFR 60.106

(fluid catalytic cracking unit catalyst regenerators, fluid catalytic cracking unit incinerator-waste heat boilers and fuel gas combustion devices)

Subpart K - Storage Vessels for Petroleum Liquids for which Construction, Reconstruction, or Modification Commenced after June 11, 1973, and prior to May 19, 1978.

40 CFR 60.110 through 40 CFR 60.113

(storage vessels with a capacity greater than 40,000 gallons)

Subpart Ka - Storage Vessels for Petroleum Liquids for which Construction, Reconstruction, or Modification Commenced after May 18, 1978, and prior to July 23, 1984.

40 CFR 60.110a through 40 CFR 60.115a

(storage vessels with a capacity greater than 40,000 gallons)

Subpart Kb - Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for which Construction, Reconstruction, or Modification Commenced after July 23, 1984.

40 CFR 60.110b through 40 CFR 60.117b

(storage vessels with capacity greater than or equal to 10,566 gallons)

Subpart L - Secondary Lead Smelters.

40 CFR 60.120 through 40 CFR 60.123

(pot furnaces of more than 550 pound charging capacity, blast (cupola) furnaces and reverberatory furnaces)

Subpart M - Secondary Brass and Bronze Production Plants.

40 CFR 60.130 through 40 CFR 60.133

(reverberatory and electric furnaces of 2205 pound or greater production capacity and blast (cupola) furnaces of 550 pounds per hour or greater production capacity)

Subpart N - Primary Emissions from Basic Oxygen Process Furnaces for which Construction is Commenced after June 11, 1973.

40 CFR 60.140 through 40 CFR 60.144

(basic oxygen process furnaces)

Subpart Na - Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for which Construction is Commenced after January 20, 1983.

40 CFR 60.140a through 40 CFR 60.145a

(facilities in an iron and steel plant: top-blown BOPFs and hot metal transfer stations and skimming stations used with bottom-blown or top-blown BOPFs)

Subpart O - Sewage Treatment Plants.

40 CFR 60.150 through 40 CFR 60.154

(incinerators that combust wastes containing more than 10% sewage sludge (dry basis) produced by municipal sewage treatment plants or incinerators that charge more than 2205 pounds per day municipal sewage sludge (dry basis))

Subpart P - Primary Copper Smelters.

40 CFR 60.160 through 40 CFR 60.166

(dryers, roasters, smelting furnaces, and copper converters)

Subpart Q - Primary Zinc Smelters.

40 CFR 60.170 through 40 CFR 60.176

(roasters and sintering machines)

Subpart R - Primary Lead Smelters

40 CFR 60.180 through 40 CFR 60.186

(sintering machines, sintering machine discharge ends, blast furnaces, dross reverberatory furnaces, electric smelting furnaces and converters)

Subpart S - Primary Aluminum Reduction Plants.

40 CFR 60.190 through 40 CFR 60.195

(potroom groups and anode bake plants)

Subpart T - Phosphate Fertilizer Industry: Wet-Process Phosphoric Acid Plants.

40 CFR 60.200 through 40 CFR 60.204

(reactors, filters, evaporators, and hot wells)

Subpart U - Phosphate Fertilizer Industry: Superphosphoric Acid Plants.

40 CFR 60.210 through 40 CFR 60.214

(evaporators, hot wells, acid sumps, and cooling tanks)

Subpart V - Phosphate Fertilizer Industry: Diammonium Phosphate Plants.

40 CFR 60.220 through 40 CFR 60.224

(reactors, granulators, dryers, coolers, screens, and mills)

Subpart W - Phosphate Fertilizer Industry: Triple Superphosphate Plants.

40 CFR 60.230 through 40 CFR 60.234

(mixers, curing belts (dens), reactors, granulators, dryers, cookers, screens, mills, and facilities which store run-of-pile triple superphosphate)

Subpart X - Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities.

40 CFR 60.240 through 40 CFR 60.244

(storage or curing piles, conveyors, elevators, screens and mills)

Subpart Y - Coal Preparation Plants.

40 CFR 60.250 through 40 CFR 60.254

(plants which process more than 200 tons per day: thermal dryers, pneumatic coal-cleaning equipment (air tables), coal processing and conveying equipment (including breakers and crushers), coal storage systems, and coal transfer and loading systems)

Subpart Z - Ferroalloy Production Facilities.

40 CFR 60.260 through 40 CFR 60.266

(electric submerged arc furnaces which produce silicon metal, ferrosilicon, calcium silicon, silicomanganese zirconium, ferrochrome silicon, silvery iron, high-carbon ferrochrome, charge chrome, standard ferromanganese, silicomanganese, ferromanganese silicon or calcium carbide; and dust-handling equipment)

Subpart AA - Steel Plants: Electric Arc Furnaces Constructed after October 21, 1974, and on or before August 17, 1983.

40 CFR 60.270 through 40 CFR 60.276

(electric arc furnaces and dust-handling systems that produce carbon, alloy or specialty steels)

Subpart AAa - Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed after August 17, 1983.

40 CFR 60.270a through 40 CFR 60.276a

(electric arc furnaces, argon-oxygen decarburization vessels, and dust-handling systems that produce carbon, alloy, or specialty steels)

Subpart BB - Kraft Pulp Mills.

40 CFR 60.280 through 40 CFR 60.285

(digester systems, brown stock washer systems, multiple effect evaporator systems, black liquor oxidation systems, recovery furnaces, smelt dissolving tanks, lime kilns, condensate strippers and kraft pulping operations)

Subpart CC - Glass Manufacturing Plants.

40 CFR 60.290 through 40 CFR 60.296

(glass melting furnaces)

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Subpart DD - Grain Elevators.

40 CFR 60.300 through 40 CFR 60.304

(grain terminal elevators/grain storage elevators: truck unloading stations, truck loading stations, barge and ship unloading stations, barge and ship loading stations, railcar unloading stations, railcar loading stations, grain dryers, and all grain handling operations)

Subpart EE - Surface Coating of Metal Furniture.

40 CFR 60.310 through 40 CFR 60.316

(metal furniture surface coating operations in which organic coatings are applied)

Subpart FF - (Reserved)

Subpart GG - Stationary Gas Turbines.

40 CFR 60.330 through 40 CFR 60.335

(stationary gas turbines with a heat input at peak load equal to or greater than 10 million Btu per hour, based on the lower heating value of the fuel fired)

Subpart HH - Lime Manufacturing Plants.

40 CFR 60.340 through 40 CFR 60.344

(each rotary lime kiln)

Subparts II through JJ - (Reserved)

Subpart KK - Lead-Acid Battery Manufacturing Plants.

40 CFR 60.370 through 40 CFR 60.374

(lead-acid battery manufacturing plants that produce or have the design capacity to produce in one day (24 hours) batteries containing an amount of lead equal to or greater than 6.5 tons: grid casting facilities, paste mixing facilities, three-process operation facilities, lead oxide manufacturing facilities, lead reclamation facilities, and other lead-emitting operations)

Subpart LL - Metallic Mineral Processing Plants.

40 CFR 60.380 through 40 CFR 60.386

(each crusher and screen in open-pit mines; each crusher, screen, bucket elevator, conveyor belt transfer point, thermal dryer, product packaging station, storage bin, enclosed storage area, truck loading station, truck unloading station, railcar loading station, and railcar unloading station at the mill or concentrator with the following exceptions. All facilities located in underground mines are exempted from the provisions of this subpart. At uranium ore processing plants, all facilities subsequent to and including the beneficiation of uranium ore are exempted from the provisions of this subpart)

Subpart MM - Automobile and Light Duty Truck Surface Coating Operations.

40 CFR 60.390 through 40 CFR 60.397

(prime coat operations, guide coat operations, and top-coat operations)

Subpart NN - Phosphate Rock Plants.

40 CFR 60.400 through 40 CFR 60.404

(phosphate rock plants which have a maximum plant production capacity greater than 4 tons per hour: dryers, calciners, grinders, and ground rock handling and storage facilities, except those facilities producing or preparing phosphate rock solely for consumption in elemental phosphorous production)

Subpart OO - (Reserved)

Subpart PP - Ammonium Sulfate Manufacture.

40 CFR 60.420 through 40 CFR 60.424

(ammonium sulfate dryer within an ammonium sulfate manufacturing plant in the caprolactum by-product, synthetic, and coke oven by-product sectors of the ammonium sulfate industry)

Subpart QQ - Graphic Arts Industry: Publication Rotogravure Printing.

40 CFR 60.430 through 40 CFR 60.435

(publication rotogravure printing presses, except proof presses)

Subpart RR - Pressure Sensitive Tape and Label Surface Coating Operations.

40 CFR 60.440 through 40 CFR 60.447

(pressure sensitive tape and label material coating lines)

Subpart SS - Industrial Surface Coating: Large Appliances.

40 CFR 60.450 through 40 CFR 60.456

(surface coating operations in large appliance coating lines)

Subpart TT - Metal Coil Surface Coating.

40 CFR 60.460 through 40 CFR 60.466

(metal coil surface coating operations: each prime coat operation, each finish coat operation, and each prime and finish coat operation combined when the finish coat is applied wet on wet over the prime coat and both coatings are cured simultaneously)

Subpart UU - Asphalt Processing and Asphalt Roofing Manufacture.

40 CFR 60.470 through 40 CFR 60.474

(each saturator and each mineral handling and storage facility at asphalt roofing plants; and each asphalt storage tank and each blowing still at asphalt processing plants, petroleum refineries, and asphalt roofing plants)

Subpart VV - Equipment Leaks of Volatile Organic Compounds in the Synthetic Organic Chemicals Manufacturing Industry.

40 CFR 60.480 through 40 CFR 60.489

(all equipment within a process unit in a synthetic organic chemicals manufacturing plant)

Subpart WW - Beverage Can Surface Coating Industry.

40 CFR 60.490 through 40 CFR 60.496

(beverage can surface coating lines: each exterior base coat operation, each overvarnish coating operation, and each inside spray coating operation)

Subpart XX - Bulk Gasoline Terminals.

40 CFR 60.500 through 40 CFR 60.506

(total of all loading racks at a bulk gasoline terminal which deliver liquid product into gasoline tank trucks)

Subparts YY through ZZ - (Reserved)

Subpart AAA - New Residential Wood Heaters.

40 CFR 60.530 through 40 CFR 60.539b

(wood heaters)

Subpart BBB - Rubber Tire Manufacturing Industry.

40 CFR 60.540 through 40 CFR 60.548

(each undertread cementing operation, each sidewall cementing operation, each tread end cementing operation, each bead cementing operation, each green tire spraying operation, each Michelin-A operation, each Michelin-B operation, and each Michelin-C automatic operation)

Subpart CCC - (Reserved)

Subpart DDD - Volatile Organic Compound (VOC) Emissions from the Polymer Manufacturing Industry.

40 CFR 60.560 through 40 CFR 60.566

(for polypropylene and polyethylene manufacturing using a continuous process that emits continuously or intermittently: all equipment used in the manufacture of these polymers. For polystyrene manufacturing using a continuous process that emits continuously: each material recovery section. For poly(ethylene terephthalate) manufacturing using a

continuous process that emits continuously: each polymerization reaction section; if dimethyl terephthalate is used in the process, each material recovery section is also an affected facility; if terephthalic acid is used in the process, each raw materials preparation section is also an affected facility. For VOC emissions from equipment leaks: each group of fugitive emissions equipment within any process unit, excluding poly(ethylene terephthalate) manufacture.)

Subpart EEE - (Reserved)

Subpart FFF - Flexible Vinyl and Urethane Coating and Printing.

40 CFR 60.580 through 40 CFR 60.585

(each rotogravure printing line used to print or coat flexible vinyl or urethane products)

Subpart GGG - Equipment Leaks of VOC in Petroleum Refineries.

40 CFR 60.590 through 40 CFR 60.593

(each compressor, valve, pump pressure relief device, sampling connection system, open-ended valve or line, and flange or other connector in VOC service)

Subpart HHH - Synthetic Fiber Production Facilities.

40 CFR 60.600 through 40 CFR 60.604

(each solvent-spun synthetic fiber process that produces more than 500 megagrams of fiber per year)

Subpart III - Volatile Organic Compound (VOC) Emissions from the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes.

40 CFR 60.610 through 40 CFR 60.618

(each air oxidation reactor not discharging its vent stream into a recovery system and each combination of an air oxidation reactor or two or more air oxidation reactors and the recovery system into which the vent streams are discharged)

Subpart JJJ - Petroleum Dry Cleaners.

40 CFR 60.620 through 40 CFR 60.625

(facilities located at a petroleum dry cleaning plant with a total manufacturers' rated dryer capacity equal to or greater than 84 pounds: petroleum solvent dry cleaning dryers, washers, filters, stills, and settling tanks)

Subpart KKK - Equipment Leaks of VOC from Onshore Natural Gas Processing Plants.

40 CFR 60.630 through 40 CFR 60.636

(each compressor in VOC service or in wet gas service; each pump, pressure relief device, open-ended valve or line, valve, and flange or other connector that is in VOC service or in wet

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gas service, and any device or system required by this subpart)

Subpart LLL - Onshore Natural Gas Processing: Sulfur Dioxide Emissions.

40 CFR 60.640 through 40 CFR 60.648

(facilities that process natural gas: each sweetening unit, and each sweetening unit followed by a sulfur recovery unit)

Subpart MMM - (Reserved)

Subpart NNN - Volatile Organic Compound (VOC) Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations.

40 CFR 60.660 through 40 CFR 60.668

(each distillation unit not discharging its vent stream into a recovery system, each combination of a distillation unit or of two or more units and the recovery system into which their vent streams are discharged)

Subpart OOO - Nonmetallic Mineral Processing Plants.

40 CFR 60.670 through 40 CFR 60.676

(facilities in fixed or portable nonmetallic mineral processing plants: each crusher, grinding mill, screening operation, bucket elevator, belt conveyor, bagging operation, storage bin, enclosed truck or railcar loading station)

Subpart PPP - Wool Fiberglass Insulation Manufacturing Plants.

40 CFR 60.680 through 40 CFR 60.685

(each rotary spin wool fiberglass insulation manufacturing line)

Subpart QQQ - VOC Emissions from Petroleum Refinery Wastewater Systems.

40 CFR 60.690 through 40 CFR 60.699

(individual drain systems, oil-water separators, and aggregate facilities in petroleum refineries)

Subpart RRR - Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes.

40 CFR 60.700 through 40 CFR 60.708

(each reactor process not discharging its vent stream into a recovery system, each combination of a reactor process and the recovery system into which its vent stream is discharged, and each combination of two or more reactor processes and the common recovery system into which their vent streams are discharged)

Subpart SSS - Magnetic Tape Coating Facilities.

40 CFR 60.710 through 40 CFR 60.718

(each coating operation and each piece of coating mix preparation equipment)

Subpart TTT - Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines.

40 CFR 60.720 through 40 CFR 60.726

(each spray booth in which plastic parts for use in the manufacture of business machines receive prime coats, color coats, texture coats, or touch-up coats)

Subpart UUU - Calciners and Dryers in Mineral Industries.

40 CFR 60.730 through 40 CFR 60.737

(each calciner and dryer at a mineral processing plant)

Subpart VVV - Polymeric Coating of Supporting Substrates Facilities.

40 CFR 60.740 through 40 CFR 60.748

(each coating operation and any onsite coating mix preparation equipment used to prepare coatings for the polymeric coating of supporting substrates)

Subpart WWW - Municipal Solid Waste Landfills.

40 CFR 60.750 through 40 CFR 60.759

(municipal solid waste landfills for the containment of household and RCRA Subtitle D wastes)

Subpart AAAA - Small Municipal Waste Combustors for which Construction is Commenced after August 30, 1999, or for which Modification or Reconstruction is Commenced after June 6, 2001

40 CFR 60.1000 through 40 CFR 60.1465

(municipal waste combustor units with a capacity less than 250 tons per day and greater than 35 tons per day of municipal solid waste or refuse-derived fuel)

Subpart BBBB - Not applicable.

Subpart CCCC - Commercial/Industrial Solid Waste Incinerators for which Construction is Commenced after November 30, 1999, or for which Modification or Construction is Commenced on or after June 1, 2001

40 CFR 60.2000 through 40 CFR 60.2265

(an enclosed device using controlled flame combustion without energy recovery that is a distinct operating unit of any commercial or industrial facility, or an air curtain incinerator without energy recovery that is a distinct operating unit of any commercial or industrial facility)

Subpart DDDD - Not applicable.

Subpart EEEE - Other Solid Waste Incineration Units for Which Construction is Commenced After December 9, 2004, or for Which Modification or Reconstruction Is Commenced on or After June 16, 2006.

40 CFR 60.2880 through 40 CFR 60.2977

(very small municipal waste combustion units with the capacity to combust less than 35 tons per day of municipal solid waste or refuse-derived fuel, and institutional waste incineration units owned or operated by an organization having a governmental, educational, civic, or religious purpose)

Subpart FFFF - Reserved.

Subpart GGGG - Reserved.

Subpart HHHH - Reserved.

Subpart IIII - Reserved.

Subpart JJJJ - Reserved.

Subpart KKKK - Stationary Combustion Turbines.

40 CFR 60.4300 through 40 CFR 60.4420

(stationary combustion turbine with a heat input at peak load equal to or greater than 10.7 gigajoules (10 MMBtu) per hour)

Appendix A - Test methods.

Appendix B - Performance specifications.

Appendix C - Determination of Emission Rate Change.

Appendix D - Required Emission Inventory Information.

Appendix E - (Reserved)

Appendix F - Quality Assurance Procedures.

Appendix G - (Not applicable)

Appendix H - (Reserved)

Appendix I - Removable label and owner's manual.

**9VAC5-60-60. General.**

The Environmental Protection Agency (EPA) Regulations on National Emission Standards for Hazardous Air Pollutants (NESHAP), as promulgated in 40 CFR Part 61 and designated in 9VAC5-60-70 are, unless indicated otherwise, incorporated by reference into the regulations of the board as amended by the word or phrase substitutions given in 9VAC5-60-80. The complete text of the subparts in 9VAC5-60-70 incorporated herein by reference is contained in 40 CFR Part 61. The 40 CFR section numbers appearing under each subpart in 9VAC5-60-70 identify the specific provisions of the subpart incorporated by reference. The specific version of the provision adopted by reference shall be that contained in the CFR ~~(2006)~~ (2007) in effect July 1, ~~2006~~ 2007. In making reference to the Code of Federal Regulations, 40 CFR Part 61 means Part 61 of Title 40 of the Code of Federal Regulations; 40 CFR 61.01 means 61.01 in Part 61 of Title 40 of the Code of Federal Regulations.

**9VAC5-60-90. General.**

The Environmental Protection Agency (EPA) National Emission Standards for Hazardous Air Pollutants for Source Categories (Maximum Achievable Control Technologies, or MACTs) as promulgated in 40 CFR Part 63 and designated in 9VAC5-60-100 are, unless indicated otherwise, incorporated by reference into the regulations of the board as amended by the word or phrase substitutions given in 9VAC5-60-110. The complete text of the subparts in 9VAC5-60-100 incorporated herein by reference is contained in 40 CFR Part 63. The 40 CFR section numbers appearing under each subpart in 9VAC5-60-100 identify the specific provisions of the subpart incorporated by reference. The specific version of the provision adopted by reference shall be that contained in the CFR ~~(2006)~~ (2007) in effect July 1, ~~2006~~ 2007. In making reference to the Code of Federal Regulations, 40 CFR Part 63 means Part 63 of Title 40 of the Code of Federal Regulations; 40 CFR 63.1 means 63.1 in Part 63 of Title 40 of the Code of Federal Regulations.

**9VAC5-60-92. Federal Hazardous Air Pollutant Program.**

The Environmental Protection Agency (EPA) Hazardous Air Pollutant Program as promulgated in §112 of the federal Clean Air Act is incorporated by reference into the regulations of the board to the extent that the provisions of 40 CFR Part 63 are incorporated by reference into this article. The following provisions govern implementation of the federal Hazardous Air Pollutant Program.

1. For the purposes of the federal Hazardous Air Pollutant Program, a hazardous air pollutant is any air pollutant listed in §112(b) of the federal Clean Air Act, as amended by Subpart C of 40 CFR Part 63. The specific version of Subpart C adopted by reference shall be that contained in the CFR specified in 9VAC5-60-90.

2. For the purposes of the federal Hazardous Air Pollutant Program, the source category schedule for standards is the schedule issued pursuant to §112(e) of the federal Clean Air Act for promulgating the standards issued pursuant to §112(d) of the federal Clean Air Act and promulgated in 40 CFR Part 63. The specific schedule adopted by reference shall be that promulgated on February 12, 2002 (67 FR 6521).

**9VAC5-60-95. Authority to implement and enforce standards as authorized by EPA.**

A. This article provides the legally enforceable mechanism to facilitate the Commonwealth's obligation to implement and enforce the federal MACTs as state requirements.

B. The Commonwealth's delegated authority to implement and enforce the standards designated in ~~9VAC5-50-410~~ 9VAC5-60-100 as authorized by EPA is identified in the documents specified in subdivisions 1 through 5 of this subsection. The Commonwealth's delegated authority extends



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only to the source categories and pollutants identified in the documents, and is subject to the provisions, conditions, and limitations set forth in the following documents:

1. Letter from W. Michael McCabe dated April 20, 1998.
2. Letter from W. Michael McCabe dated November 19, 1998.
3. Federal Register notice dated January 26, 1999 (64 FR 3938).
4. Letter from Judith M. Katz dated May 30, 2001.
5. Federal Register notice dated January 8, 2002 (67 FR 825).

C. In its delegation notices and letters, EPA automatically delegated to the Commonwealth the authority to implement and enforce future MACT requirements if the Commonwealth legally adopted the requirements, informed EPA that it intended to enforce the standards in accordance with the terms of the delegation, and met other conditions. The latest letter that the Commonwealth submitted to obtain authority to implement and enforce additional requirements is available for examination as provided in subsection D of this section.

D. Copies of the documents cited in subsections B and C of this section may be examined by the public at the central office of the Department of Environmental Quality, 629 East Main Street, Eighth Floor, Richmond, Virginia between 8:30 a.m. and 4:30 p.m. of each business day.

E. The documents cited in subsection B of this section establish the terms of the delegation to the Commonwealth to implement and enforce the federal MACT as authorized by EPA. As such, the documents place requirements upon the Commonwealth, not the affected facilities; thus, the documents are not being incorporated by reference into the regulations of the board but are being cited for information purposes only.

## **9VAC5-60-100. Designated emission standards.**

Subpart A - General Provisions.

40 CFR 63.1 through 40 CFR 63.11; 40 CFR 63.16

(applicability, definitions, units and abbreviations, prohibited activities and circumvention, construction and reconstruction, compliance with standards and maintenance requirements, performance testing requirements, monitoring requirements, notification requirements, recordkeeping and reporting requirements, control device requirements, performance track provisions)

Subpart B - Not applicable.

Subpart C - List of Hazardous Air Pollutants, Petitions Process, Lesser Quantity Designations, Source Category List.

40 CFR 63.60, 40 CFR 63.61, 40 CFR 63.62 and 40 CFR 63.63

(deletion of caprolactam from the list of hazardous air pollutants, deletion of methyl ethyl ketone from the list of hazardous air pollutants, redefinition of glycol ethers listed as hazardous air pollutants, deletion of ethylene glycol monobutyl ether)

Subpart D - Not applicable.

Subpart E - Not applicable.

Subpart F - Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry.

40 CFR 63.100 through 40 CFR 63.106

(chemical manufacturing process units that manufacture as a primary product one or more of a listed chemical; use as a reactant or manufacture as a product, by-product, or co-product, one or more of a listed organic hazardous air pollutant; and are located at a plant site that is a major source as defined in §112 of the federal Clean Air Act)

Subpart G - Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater.

40 CFR 63.110 through 40 CFR 63.152

(all process vents, storage vessels, transfer operations, and wastewater streams within a source subject to Subpart F, 40 CFR 63.100 through 40 CFR 63.106)

Subpart H - Organic Hazardous Air Pollutants for Equipment Leaks.

40 CFR 63.160 through 40 CFR 63.182

(pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, surge control vessels, bottoms receivers, instrumentation systems, and control devices or systems that are intended to operate in organic hazardous air pollutant service 300 hours or more during the calendar year within a source subject to the provisions of a specific subpart in 40 CFR Part 63)

Subpart I - Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.

40 CFR 63.190 through 40 CFR 63.192

(emissions of designated organic hazardous air pollutants from processes specified in this subpart that are located at a plant site that is a major source as defined in §112 of the federal Clean Air Act)

~~Subpart J - Polyvinyl Chloride and Copolymers Production J - Reserved.~~

~~40 CFR 63.210 through 40 CFR 63.217~~

~~(production of PVC and copolymers)~~

Subpart K - Reserved.

Subpart L - Coke Oven Batteries.

40 CFR 63.300 through 40 CFR 63.313

(existing by-product coke oven batteries at a coke plant, and existing nonrecovery coke oven batteries located at a coke plant)

Subpart M - Perchloroethylene Dry Cleaning Facilities.

40 CFR 63.320 through 40 CFR 63.325

(each dry cleaning facility that uses perchloroethylene)

Subpart N - Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks.

40 CFR 63.340 through 40 CFR 63.347

(each chromium electroplating or chromium anodizing tank at facilities performing hard chromium electroplating, decorative chromium electroplating, or chromium anodizing)

Subpart O - Ethylene Oxide Commercial Sterilization and Fumigation Operations.

40 CFR 63.360 through 40 CFR 63.367

(sterilization sources using ethylene oxide in sterilization or fumigation operations)

Subpart P - Reserved.

Subpart Q - Industrial Process Cooling Towers.

40 CFR 63.400 through 40 CFR 63.406

(industrial process cooling towers that are operated with chromium-based water treatment chemicals)

Subpart R - Gasoline Distribution Facilities.

40 CFR 63.420 through 40 CFR 63.429

(bulk gasoline terminals and pipeline breakout stations)

Subpart S - Pulp and Paper Industry.

40 CFR 63.440 through 40 CFR 63.458

(processes that produce pulp, paper, or paperboard, and use the following processes and materials: kraft, soda, sulfite, or semi-chemical pulping processes using wood; or mechanical pulping processes using wood; or any process using secondary or nonwood fibers)

Subpart T - Halogenated Solvent Cleaning.

40 CFR 63.460 through 40 CFR 63.469

(each individual batch vapor, in-line vapor, in-line cold, and batch cold solvent cleaning machine that uses any solvent containing methylene chloride, perchloroethylene, trichloroethylene, 1,1,1-trichloroethane, carbon tetrachloride, or chloroform)

Subpart U - Group I Polymers and Resins.

40 CFR 63.480 through 40 CFR 63.506

(elastomer product process units that produce butyl rubber, halobutyl rubber, epichlorohydrin elastomers, ethylene propylene rubber, Hypalon™, neoprene, nitrile butadiene rubber, nitrile butadiene latex, polysulfide rubber, polybutadiene rubber/styrene butadiene rubber by solution, styrene butadiene latex, and styrene butadiene rubber by emulsion)

Subpart V - Reserved.

Subpart W - Epoxy Resins Production and Non-Nylon Polyamides Production.

40 CFR 63.520 through 40 CFR 63.527

(manufacturers of basic liquid epoxy resins and wet strength resins)

Subpart X - Secondary Lead Smelting.

40 CFR 63.541 through 40 CFR 63.550

(at all secondary lead smelters: blast, reveratory, rotary, and electric smelting furnaces; refining kettles; agglomerating furnaces; dryers; process fugitive sources; and fugitive dust sources)

Subpart Y - Marine Tank Vessel Tank Loading Operations.

40 CFR 63.560 through 40 CFR 63.567

(marine tank vessel unloading operations at petroleum refineries)

Subpart Z - Reserved.

Subpart AA - Phosphoric Acid Manufacturing Plants.

40 CFR 63.600 through 40 CFR 63.610

(wet-process phosphoric acid process lines, evaporative cooling towers, rock dryers, rock calciners, superphosphoric acid process lines, purified acid process lines)

Subpart BB - Phosphate Fertilizers Production Plants.

40 CFR 63.620 through 40 CFR 63.631

(diammonium and monoammonium phosphate process lines, granular triple superphosphate process lines, and granular triple superphosphate storage buildings)

Subpart CC - Petroleum Refineries.

40 CFR 63.640 through 40 CFR 63.654

(storage tanks, equipment leaks, process vents, and wastewater collection and treatment systems at petroleum refineries)

Subpart DD - Off-Site Waste and Recovery Operations.

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40 CFR 63.680 through 40 CFR 63.697

(operations that treat, store, recycle, and dispose of waste received from other operations that produce waste or recoverable materials as part of their manufacturing processes)

Subpart EE - Magnetic Tape Manufacturing Operations.

40 CFR 63.701 through 40 CFR 63.708

(manufacturers of magnetic tape)

Subpart FF - Reserved.

Subpart GG - Aerospace Manufacturing and Rework Facilities.

40 CFR 63.741 through 40 CFR 63.752

(facilities engaged in the manufacture or rework of commercial, civil, or military aerospace vehicles or components)

Subpart HH - Oil and Natural Gas Production Facilities.

40 CFR 63.760 through 40 CFR 63.779

(facilities that process, upgrade, or store hydrocarbon liquids or natural gas; ancillary equipment and compressors intended to operate in volatile hazardous air pollutant service)

Subpart II - Shipbuilding and Ship Repair (Surface Coating).

40 CFR 63.780 through 40 CFR 63.788

(shipbuilding and ship repair operations)

Subpart JJ - Wood Furniture Manufacturing Operations.

40 CFR 63.800 through 40 CFR 63.819

(finishing materials, adhesives, and strippable spray booth coatings; storage, transfer, and application of coatings and solvents)

Subpart KK - Printing and Publishing Industry.

40 CFR 63.820 through 40 CFR 63.831

(publication rotogravure, product and packaging rotogravure, and wide-web printing processes)

Subpart LL - Primary Aluminum Reduction Plants.

40 CFR 63.840 through 40 CFR 63.859

(each pitch storage tank, potline, paste production plant, or anode bulk furnace associated with primary aluminum production)

Subpart MM - Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite and Stand-Alone Semicheical Pulp Mills.

40 CFR 63.860 through 40 CFR 63.868

(chemical recovery systems, direct and nondirect contact evaporator recovery furnace systems, lime kilns, sulfite combustion units, semicheical combustion units)

Subpart NN - Reserved.

Subpart OO - Tanks--Level 1.

40 CFR 63.900 through 40 CFR 63.907

(for off-site waste and recovery operations, fixed-roof tanks)

Subpart PP - Containers.

40 CFR 63.920 through 40 CFR 63.928

(for off-site waste and recovery operations, containers)

Subpart QQ - Surface Impoundments.

40 CFR 63.940 through 40 CFR 63.948

(for off-site waste and recovery operations, surface impoundment covers and vents)

Subpart RR - Individual Drain Systems.

40 CFR 63.960 through 40 CFR 63.966

(for off-site waste and recovery operations, inspection and maintenance of individual drain systems)

Subpart SS - Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process.

40 CFR 63.980 through 40 CFR 63.999

(closed vent systems, control devices, recovery devices, and routing to a fuel gas system or a process, when associated with facilities subject to a referencing subpart)

Subpart TT - Equipment Leaks - Control Level 1.

40 CFR 63.1000 through 40 CFR 63.1018

(control of air emissions from equipment leaks when associated with facilities subject to a referencing subpart)

Subpart UU - Equipment Leaks - Control Level 2.

40 CFR 63.1019 through 40 CFR 63.1039

(control of air emissions from equipment leaks when associated with facilities subject to a referencing subpart: pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, instrumentation systems, closed vent systems and control devices)

Subpart VV - Oil-Water Separators and Organic-Water Separators.

40 CFR 63.1040 through 40 CFR 63.1049

(for off-site waste and recovery operations, oil-water separators and organic-water separator roofs and vents)

Subpart WW - Storage Vessels (Tanks) - Control Level 2.  
40 CFR 63.1060 through 40 CFR 63.1066

(storage vessels associated with facilities subject to a referencing subpart)

Subpart XX - Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste.

40 CFR 63.1080 through 40 CFR 63.1098

(any cooling tower system or once-through cooling water system)

Subpart YY - Generic Maximum Achievable Control Technology Standards.

40 CFR 63.1100 through 40 CFR 63.1113

(acetal resins production, acrylic and modacrylic fibers production, hydrogen fluoride production, polycarbonate production)

Subpart ZZ - Reserved.

Subpart AAA - Reserved.

Subpart BBB - Reserved.

Subpart CCC - Steel Pickling - Hydrogen Chloride Process Facilities and Hydrochloric Acid Regeneration Plants.

40 CFR 63.1155 through 40 CFR 63.1174

(steel pickling facilities that pickle carbon steel using hydrochloric acid solution, hydrochloric acid regeneration plants)

Subpart DDD - Mineral Wool Production.

40 CFR 63.1175 through 40 CFR 63.1199

(cupolas and curing ovens at mineral wool manufacturing facilities)

Subpart EEE - Hazardous Waste Combustors.

40 CFR 63.1200 through 40 CFR 63.1221

(hazardous waste combustors)

Subpart FFF - Reserved.

Subpart GGG - Pharmaceutical Production.

40 CFR 63.1250 through 40 CFR 63.1261

(pharmaceutical manufacturing operations)

Subpart HHH - Natural Gas Transmission and Storage Facilities.

40 CFR 63.1270 through 40 CFR 63.1289

(natural gas transmission and storage facilities that transport or store natural gas prior to entering the pipeline to a local distribution company or to a final end user)

Subpart III - Flexible Polyurethane Foam Production.

40 CFR 63.1290 through 40 CFR 63.1309

(flexible polyurethane foam or rebond processes)

Subpart JJJ - Group IV Polymers and Resins.

40 CFR 63.1310 through 40 CFR 63.1335

(facilities which manufacture acrylonitrile butadiene styrene resin, styrene acrylonitrile resin, methyl methacrylate butadiene styrene resin, polystyrene resin, poly(ethylene terephthalate) resin, or nitrile resin)

Subpart KKK - Reserved.

Subpart LLL - Portland Cement Manufacturing.

40 CFR 63.1340 through 40 CFR 63.1359

(kilns; in-line kilns/raw mills; clinker coolers; raw mills; finish mills; raw material dryers; raw material, clinker, or finished product storage bins; conveying system transfer points; bagging systems; bulk loading or unloading systems)

Subpart MMM - Pesticide Active Ingredient Production.

40 CFR 63.1360 through 40 CFR 63.1369

(pesticide active ingredient manufacturing process units, waste management units, heat exchange systems, and cooling towers)

Subpart NNN - Wool Fiberglass Manufacturing.

40 CFR 63.1380 through 40 CFR 63.1399

(glass melting furnaces, rotary spin wool fiberglass manufacturing lines producing bonded wool fiberglass building insulation or bonded heavy-density product)

Subpart OOO - Amino/Phenolic Resins Production.

40 CFR 63.1400 through 40 CFR 63.1419

(unit operations, process vents, storage vessels, equipment subject to leak provisions)

Subpart PPP - Polyether Polyols Production.

40 CFR 63.1420 through 40 CFR 63.1439

(polyether polyol manufacturing process units)

Subpart QQQ - Primary Copper Smelting.

40 CFR 63.1440 through 40 CFR 63.1-1459

(batch copper converters, including copper concentrate dryers, smelting furnaces, slag cleaning vessels, copper converter departments, and the entire group of fugitive emission sources)

Subpart RRR - Secondary Aluminum Production.

40 CFR 63.1500 through 40 CFR 63.1520

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(scrap shredders; thermal chip dryers; scrap dryers/delacquering kilns/decoating kilns; group 2, sweat, dross-only furnaces; rotary dross coolers; processing units)

Subpart SSS - Reserved.

Subpart TTT - Primary Lead Smelting.

40 CFR 63.1541 through 40 CFR 63.1550

(sinter machines, blast furnaces, dross furnaces, process fugitive sources, fugitive dust sources)

Subpart UUU - Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units.

40 CFR 63.1560 through 40 CFR 63.1579

(petroleum refineries that produce transportation and heating fuels or lubricants, separate petroleum, or separate, crack, react, or reform an intermediate petroleum stream, or recover byproducts from an intermediate petroleum stream)

Subpart VVV - Publicly Owned Treatment Works.

40 CFR 63.1580 through 40 CFR 63.1595

(intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment)

Subpart WWW - Reserved.

Subpart XXX - Ferroalloys Production: Ferromanganese and Silicomanganese.

40 CFR 63.1620 through 40 CFR 63.1679

(submerged arc furnaces, metal oxygen refining processes, crushing and screening operations, fugitive dust sources)

Subpart YYY - Reserved.

Subpart ZZZ - Reserved.

Subpart AAAA - Municipal Solid Waste Landfills.

40 CFR 63.1930 through 40 CFR 63.1990

(municipal solid waste landfills that have accepted waste since November 8, 1987, or have additional capacity for waste deposition)

Subpart BBBB - Reserved.

Subpart CCCC - Manufacturing of Nutritional Yeast.

40 CFR 63.2130 through 40 CFR 63.2192

(fermentation vessels)

Subpart DDDD - Plywood and Composite Wood Products.

40 CFR 63.2230 through 40 CFR 63.2292

(manufacture of plywood and composite wood products by bonding wood material or agricultural fiber with resin under heat and pressure to form a structural panel or engineered wood product)

Subpart EEEE - Organic Liquids Distribution (Nongasoline).

40 CFR 63.2330 through 40 CFR 63.2406

(transfer of noncrude oil liquids or liquid mixtures that contain organic hazardous air pollutants, or crude oils downstream of the first point of custody, via storage tanks, transfer racks, equipment leak components associated with pipelines, and transport vehicles)

Subpart FFFF - Miscellaneous Organic Chemical Manufacturing.

40 CFR 63.2430 through 40 CFR 63.2550

(reaction, recovery, separation, purification, or other activity, operation, manufacture, or treatment that are used to produce a product or isolated intermediate)

Subpart GGGG - Solvent Extraction for Vegetable Oil Production.

40 CFR 63.2830 through 40 CFR 63.2872

(vegetable oil production processes)

Subpart HHHH--Wet-formed Fiberglass Mat Production.

40 CFR 63.2980 through 63.3079

(wet-formed fiberglass mat drying and curing ovens)

Subpart IIII - Surface Coating of Automobiles and Light-Duty Trucks.

40 CFR 63.3080 through 40 CFR 63.3176.

(application of topcoat to new automobile or new light-duty truck bodies or body parts)

Subpart JJJJ - Paper and Other Web Coating.

40 CFR 63.3280 through 40 CFR 63.3420

(web coating lines engaged in the coating of metal webs used in flexible packaging and in the coating of fabric substrates for use in pressure-sensitive tape and abrasive materials)

Subpart KKKK - Surface Coating of Metal Cans.

40 CFR 63.3480 through 40 CFR 63.3561

(application of coatings to a substrate using spray guns or dip tanks, including one- and two-piece draw and iron can body coating; sheetcoating; three-piece can body assembly coating; and end coating)

Subpart LLLL - Reserved.

Subpart MMMM - Surface Coating of Miscellaneous Metal Parts and Products.

40 CFR 63.3880 through 40 CFR 63.3981

(application of coatings to industrial, household, and consumer products)

Subpart NNNN - Surface Coating of Large Appliances.

40 CFR 63.4080 through 40 CFR 63.4181

(surface coating of a large appliance part or product, including cooking equipment; refrigerators, freezers, and refrigerated cabinets and cases; laundry equipment; dishwashers, trash compactors, and water heaters; and HVAC units, air-conditioning, air-conditioning and heating combination units, comfort furnaces, and electric heat pumps)

Subpart OOOO - Printing, Coating, and Dyeing of Fabrics and Other Textiles.

40 CFR 63.4280 through 40 CFR 63.4371

(printing, coating, slashing, dyeing, or finishing of fabric and other textiles)

Subpart PPPP - Surface Coating of Plastic Parts and Products.

40 CFR 63.4480 through 40 CFR 63.4581

(application of coating to a substrate using spray guns or dip tanks, including motor vehicle parts and accessories for automobiles, trucks, recreational vehicles; sporting and recreational goods; toys; business machines; laboratory and medical equipment; and household and other consumer products)

Subpart QQQQ - Surface Coating of Wood Building Products.

40 CFR 63.4680 through 40 CFR 63.4781

(finishing or laminating of wood building products used in the construction of a residential, commercial, or institutional building)

Subpart RRRR - Surface Coating of Metal Furniture.

40 CFR 63.4880 through 40 CFR 63.4981

(application of coatings to substrate using spray guns and dip tanks)

Subpart SSSS - Surface Coating of Metal Coil.

40 CFR 63.5080 through 40 CFR 63.5209

(organic coating to surface of metal coil, including web unwind or feed sections, work stations, curing ovens, wet sections, and quench stations)

Subpart TTTT - Leather Finishing Operations.

40 CFR 63.5280 through 40 CFR 63.5460

(multistage application of finishing materials to adjust and improve the physical and aesthetic characteristics of leather surfaces)

Subpart UUUU - Cellulose Products Manufacturing.

40 CFR 63.5480 through 40 CFR 63.5610

(cellulose food casing, rayon, cellulosic sponge, cellophane manufacturing, methyl cellulose, hydroxypropyl methyl cellulose, hydroxypropyl cellulose, hydroxyethyl cellulose, and carboxymethyl cellulose manufacturing industries)

Subpart VVVV - Boat Manufacturing.

40 CFR 63.5680 through 40 CFR 63.5779

(resin and gel coat operations, carpet and fabric adhesive operations, aluminum recreational boat surface coating operations)

Subpart WWWW - Reinforced Plastic Composites Production.

40 CFR 63.5780 through 40 CFR 63.5935

(reinforced or nonreinforced plastic composites or plastic molding compounds using thermostat resins and gel coats that contain styrene)

Subpart XXXX - Rubber Tire Manufacturing.

40 CFR 63.5980 through 40 CFR 63.6015

(production of rubber tires and components including rubber compounds, sidewalls, tread, tire beads, tire cord and liners)

Subpart YYYYY - Stationary Combustion Turbines.

40 CFR 63.6080 through 40 CFR 63.6175

(simple cycle, regenerative/recuperative cycle, cogeneration cycle, and combined cycle stationary combustion turbines)

Subpart ZZZZ - Stationary Reciprocating Internal Combustion Engines.

40 CFR 63.6580 through 40 CFR 63.6675.

(any stationary internal combustion engine that uses reciprocating motion to convert heat energy into mechanical work)

Subpart AAAAA - Lime Manufacturing Plants.

40 CFR 63.7080 through 40 CFR 63.7143.

(manufacture of lime product, including calcium oxide, calcium oxide with magnesium oxide, or dead burned dolomite, by calcination of limestone, dolomite, shells or other calcareous substances)

Subpart BBBBB - Semiconductor Manufacturing.

40 CFR 63.7180 through 40 CFR 63.7195

(semiconductor manufacturing process units used to manufacture p-type and n-type semiconductors and active solid-state devices from a wafer substrate)

Subpart CCCCC - Coke Ovens: Pushing, Quenching, and Battery Stacks.

40 CFR 63.7280 through 40 CFR 63.7352

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(pushing, soaking, quenching, and battery stacks at coke oven batteries)

Subpart ~~DDDDD - Industrial, Commercial, and Institutional Boilers and Process Heaters Reserved.~~

~~40 CFR 63.7480 through 40 CFR 63.7575~~

~~(boilers that consist of an enclosed device using controlled flame combustion and having the primary purpose of recovering thermal energy in the form of steam or hot water; process heaters that consist of an enclosed device using controlled flame, that is not a boiler, whose primary purpose is to transfer heat indirectly to a process material or to a heat transfer material for use in a process unit, instead of generating steam)~~

Subpart EEEEE - Iron and Steel Foundries.

40 CFR 63.7680 through 40 CFR 63.7765

(metal melting furnaces, scrap preheaters, pouring areas, pouring stations, automated conveyor and pallet cooling lines, automated shakeout lines, and mold and core making lines)

Subpart FFFFF - Integrated Iron and Steel Manufacturing.

40 CFR 63.7780 through 40 CFR 63.7852

(each sinter plant, blast furnace, and basic oxygen process furnace at an integrated iron and steel manufacturing facility)

Subpart GGGGG - Site Remediation.

40 CFR 63.7880 through 40 CFR 63.7957

(activities or processes used to remove, destroy, degrade, transform, immobilize, or otherwise manage remediation material)

Subpart HHHHH - Miscellaneous Coating Manufacturing.

40 CFR 63.7980 through 40 CFR 63.8105

(process vessels; storage tanks for feedstocks and products; pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, and instrumentation systems; wastewater tanks and transfer racks)

Subpart IIIII - Mercury Cell Chlor-Alkali Plants.

40 CFR 63.8180 through 40 CFR 63.8266

(byproduct hydrogen streams, end box ventilation system vents, and fugitive emission sources associated with cell rooms, hydrogen systems, caustic systems, and storage areas for mercury-containing wastes)

Subpart ~~JJJJJ - Brick and Structural Clay Products Manufacturing Reserved.~~

~~40 CFR 63.8380 through 40 CFR 63.8515~~

~~(manufacture of brick, clay pipe, roof tile, extruded floor and wall tile, and other extruded, dimensional clay products)~~

Subpart KKKKK - ~~Clay Ceramics Manufacturing Reserved.~~

~~40 CFR 63.8530 through 40 CFR 63.8665~~

~~(manufacture of pressed floor tile, pressed wall tile, other pressed tile, or sanitaryware)~~

Subpart LLLLL - Asphalt Processing and Asphalt Roof Manufacturing.

40 CFR 63.8680 through 40 CFR 63.8698

(preparation of asphalt flux at stand-alone asphalt processing facilities, petroleum refineries, and asphalt roofing facilities)

Subpart MMMMM - Flexible Polyurethane Foam Fabrication Operations.

40 CFR 63.8780 through 40 CFR 63.8830

(flexible polyurethane foam fabrication plants using flame lamination or loop slitter adhesives)

Subpart NNNNN - Hydrochloric Acid Production.

40 CFR 63.8980 through 40 CFR 63.9075

(HCl production facilities that produce a liquid HCl product)

Subpart OOOOO - Reserved.

Subpart PTTTT - Engine Test Cells and Stands.

40 CFR Subpart 63.9280 through 40 CFR 63.9375

(any apparatus used for testing uninstalled stationary or uninstalled mobile (motive) engines)

Subpart QQQQQ - Friction Materials Manufacturing Facilities.

40 CFR 63.9480 through 40 CFR 63.9579

(friction materials manufacturing facilities that use a solvent-based process)

Subpart RRRRR - Taconite Iron Ore Processing.

40 CFR 63.9580 through 40 CFR 63.9652

(ore crushing and handling, ore dryer stacks, indurating furnace stacks, finished pellet handling, and fugitive dust)

Subpart SSSSS - Refractory Products Manufacturing.

40 CFR 63.9780 through 40 CFR 63.9824

(manufacture of refractory products, including refractory bricks and shapes, monolithics, kiln furniture, crucibles, and other materials for liming furnaces and other high temperature process units)

Subpart TTTTT - Primary Magnesium Refining.

40 CFR 63.9880 through 40 CFR 63.9942

(spray dryer, magnesium chloride storage bin scrubber, melt/reactor system, and launder off-gas system stacks)

Subpart UUUUU - Reserved.

Subpart VVVVV - Reserved.

Subpart WWWW - Reserved.

Subpart XXXX - Reserved.

Subpart YYYYY - Reserved.

Subpart ZZZZ - Reserved.

Subpart AAAAAA - Reserved.

Subpart BBBBBB - Reserved.

Subpart CCCCC - Reserved.

Subpart DDDDD - Polyvinyl Chloride and Copolymers Production Area Sources.

40 CFR 63.11140 through 40 CFR 63.11145

(plants that produce polyvinyl chloride or copolymers)

Subpart EEEEE - Primary Copper Smelting Area Sources.

40 CFR 63.11146 through 40 CFR 63.11152

(any installation or any intermediate process engaged in the production of copper from copper sulfide ore concentrates through the use of pyrometallurgical techniques)

Subpart FFFFF - Secondary Copper Smelting Area Sources.

40 CFR 63.11153 through 40 CFR 63.11159

(a facility that processes copper scrap in a blast furnace and converter or that uses another pyrometallurgical purification process to produce anode copper from copper scrap, including low-grade copper scrap)

Subpart GGGGG - Primary Nonferrous Metals Area Sources--Zinc, Cadmium, and Beryllium.

40 CFR 63.11160 through 40 CFR 63.11168

(cadmium melting furnaces used to melt cadmium or produce cadmium oxide from the cadmium recovered in the zinc production; primary beryllium production facilities engaged in the chemical processing of beryllium ore to produce beryllium metal, alloy, or oxide, or performing any of the intermediate steps in these processes; and primary zinc production facilities engaged in the production, or any intermediate process in the production, of zinc or zinc oxide from zinc sulfide ore concentrates through the use of pyrometallurgical techniques)

Appendix A - Test Methods.

Appendix B - Sources Defined for Early Reduction Provisions.

Appendix C - Determination of the Fraction Biodegraded ( $F_{bio}$ ) in a Biological Treatment Unit.

Appendix D - Alternative Validation Procedure for EPA Waste and Wastewater Methods.

VA.R. Doc. No. R08-837; Filed October 15, 2007, 2:58 p.m.

## Final Regulation

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

**Title of Regulation:** **9VAC5-91. Regulations for the Control of Motor Vehicle Emissions in the Northern Virginia Area (amending 9VAC5-91-20).**

**Statutory Authority:** §46.2-1180 of the Code of Virginia; §182 of the Clean Air Act; 40 CFR Part 51, Subpart S.

**Effective Date:** December 12, 2007.

**Agency Contact:** Mary E. Major, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, FAX (804) 698-4510, or email memajor@deq.virginia.gov.

### Summary:

*The amendments incorporate the requirements of Chapter 325 of the 2007 Acts of Assembly. Any vehicle registered by the Department of Motor Vehicles as a replica vehicle is included in the definition of "affected motor vehicles" to ensure that those vehicles are subject to emissions testing. Definitions for "specially constructed vehicle," "reconstructed vehicle," and "replica vehicle" are also added for clarity.*

### 9VAC5-91-20. Terms defined.

"Aborted test" means an emissions inspection procedure that has been initiated by the inspector but stopped and not completed due to inspector error or a vehicular problem that prevents completion of the test. Aborted tests are not tests that cannot be completed due to a "failed/invalid" result caused by an exhaust dilution problem or an engine condition that prevents the inspection from being completed.

"Access code" means the security phrase or number which allows authorized station personnel, the department, and analyzer service technicians to perform specific assigned functions using the certified analyzer system, as determined by the department. Depending on the assigned function, the access code is a personal password, a state password or a service password. Access code is not an identification number, but is used as an authenticator along with the



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identification number where such number is needed to perform specific tasks.

"Actual gross weight" means the gross vehicle weight rating (GVWR).

"Administrator" means the administrator of the U.S. Environmental Protection Agency (EPA) or an authorized representative.

"Affected motor vehicle" means any motor vehicle or replica vehicle which:

1. Was manufactured or designated by the manufacturer as a model year less than 25 calendar years prior to January 1 of the present calendar year according to the formula, the current calendar year minus 24, except those identified by remote sensing as specified in subdivision 5 of this definition;
2. Is designed for the transportation of persons or property;
3. Is powered by an internal combustion engine;
4. For the Northern Virginia Emissions Inspection Program, has an actual gross weight of 10,000 pounds or less; and
5. For vehicles subject to the remote sensing requirements of 9VAC5-91-180, was designated by the manufacturer as model year 1968 or newer.

The term "affected motor vehicle" does not mean any:

1. Vehicle powered by a clean special fuel as defined in §58.1-2101 of the Code of Virginia, provided the federal Clean Air Act permits such exemptions for vehicles powered by clean special fuels;
2. Motorcycle;
3. Vehicle that at the time of its manufacture was not designed to meet emissions standards set or approved by the federal government;
4. Any antique motor vehicle as defined in §46.2-100 of the Code of Virginia and licensed pursuant to §46.2-730 of the Code of Virginia;
5. Firefighting equipment, rescue vehicle, or ambulance;
6. Vehicle for which no testing standards have been adopted by the board; or
7. Tactical military vehicle.

"Air intake systems" means those systems that allow for the induction of ambient air (to include preheated air) into the engine combustion chamber for the purpose of mixing with a fuel for combustion.

"Air pollution" means the presence in the outdoor atmosphere of one or more substances which are or may be harmful or injurious to human health, welfare or safety; to

animal or plant life; or to property; or which unreasonably interfere with the enjoyment by the people of life or property.

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

"Air system" means a system for providing supplementary air to promote further oxidation of hydrocarbons and carbon monoxide gases and to assist catalytic reaction.

"Alternative fuel" means an internal combustion engine fuel other than (i) gasoline, (ii) diesel, or (iii) fuel mixtures containing more than 15% volume of gasoline.

"Alternative method" means any method of sampling and analyzing for an air pollutant that is not a reference method, but that has been demonstrated to the satisfaction of the board, in specific cases, to produce results adequate for its determination of compliance.

"Acceleration Simulation Mode (ASM) test" means a dynamometer-based emissions test performed in one or more, discreet, simulated road speed and engine load modes, and equipment which can be used to perform any such test.

"Authorized personnel" means department personnel, an individual designated by analyzer manufacturer, station owner, licensed emissions inspector, station manager or other person as designated by the station manager.

"Basic engine systems" means those parts or assemblies which provide for the efficient conversion of a compressed air and fuel charge into useful power to include but not limited to valve train mechanisms, cylinder head to block integrity, piston-ring-cylinder sealing integrity and post-combustion emissions control device integrity.

"Bi-fuel" means any motor vehicle capable of operating on one of two different fuels, usually gasoline and an alternative fuel, but not a mixture of the fuels. That is, only one fuel at a time.

"Board" means the State Air Pollution Control Board or its designated representative.

"Calibration" means establishing or verifying the response curve of a measurement device using several different measurements having precisely known quantities.

"Calibration gases" means gases of precisely known concentrations that are used as references for establishing or verifying the response curve of a measurement device.

"Canister" means a mechanical device capable of adsorbing and retaining hydrocarbon vapors.

"Catalytic converter" means a post combustion device that oxidizes hydrocarbons, carbon monoxide gases, and may also reduce oxides of nitrogen.

"Certificate of emissions inspection" means a document, device, or symbol, whether recorded in written or electronic

form, as prescribed by the director and issued pursuant to this chapter, which indicates that (i) an affected motor vehicle has satisfactorily complied with the emissions standards and passed the emissions inspection provided for in this chapter; (ii) the requirement of compliance with the emissions standards has been temporarily waived; or (iii) the affected motor vehicle has failed the emissions inspection.

"Certified emissions repair facility" means a facility, or portion of a facility, that has obtained a certification in accordance with Part VII (9VAC5-91-500 et seq.) to perform emissions related repairs on motor vehicles.

"Certified emissions repair technician" means a person who has obtained a certification in accordance with Part VIII (9VAC5-91-550 et seq.) to perform emissions related repairs on motor vehicles.

"Certified enhanced analyzer system" or "analyzer system" means the complete system that samples and reads concentrations of hydrocarbon, carbon dioxide, nitric oxides and carbon monoxide gases and that is approved by the department for use in the Enhanced Emissions Inspection Program in accordance with Part X (9VAC5-91-640 et seq.). The system includes the exhaust gas handling system, the exhaust gas analyzer, evaporative system pressure test equipment, associated automation hardware and software, data media, the analyzer system cabinet, the dynamometer and appurtenant devices, vehicle identification equipment, and associated cooling and exhaust fans and gas cylinders.

"Certified thermometer" means a laboratory grade ambient temperature-measuring device with a range of at least 20°F through 120°F, and an attested accuracy of at least 1°F with increments of 1°, with protective shielding.

"Chargeable inspection" means a completed inspection on an affected motor vehicle, for which the station owner is entitled to collect an inspection fee. No fee shall be paid for (i) inspections for which a certificate of emissions inspection has not been issued, (ii) inspections that are conducted by the department for referee purposes, (iii) inspections which were ordered due to on-road test failures but which result in an emissions inspection "pass" at an inspection station, or (iv) the first reinspection done at the same station that performed the initial inspection within 14 days. An inspection ordered by the department due to an on-road test failure that results in a confirmation test failure at an emissions inspection station is a chargeable inspection.

"Confirmation test" means an emissions inspection required due to a determination that the vehicle exceeds the exhaust emissions standards prescribed in Table III-B in 9VAC5-91-180 for on-road testing through remote sensing. The confirmation emissions inspection procedure may include an exhaust test (ASM or TSI), OBD system test or both.

"Consent order" means a mutual agreement between the department and any owner, operator, emissions inspector, or emissions repair technician that such owner or other person will perform specific actions for the purpose of diminishing or abating the causes of air pollution or for the purpose of coming into compliance with this chapter. A consent order may include agreed upon civil charges. Such orders may be issued without a formal hearing.

"Curb idle" means vehicle operation whereby the transmission is disengaged and the engine is operated with the throttle in the closed or idle stop position with the resultant engine speed between 400 and 1,250 revolutions per minute (rpm), or at another idle speed if so specified by the manufacturer.

"Data handling system" means all the computer hardware, software and peripheral equipment used to conduct emissions inspections and manage the enhanced emissions inspection program.

"Data medium" or "data media" means the medium contained in the certified analyzer system and used to electronically record test data.

"Day" means a 24-hour period beginning at midnight.

"Dedicated alternative fuel vehicle" means a vehicle that was configured by the vehicle manufacturer to operate only on one specific fuel other than (i) gasoline, (ii) diesel, or (iii) fuel mixtures containing more than 15% by volume of gasoline.

"Dedicated-fuel vehicle" means a vehicle that was designed and manufactured to operate and operates on one specific fuel.

"Department" means any employee or other representative of the Virginia Department of Environmental Quality, as designated by the director.

"Director" means the director of the Virginia Department of Environmental Quality or a designated representative.

"Dual fuel" means a vehicle that operates on a combination of fuels, usually gasoline or diesel and an alternative fuel, at the same time. That is, the mixed fuels are introduced into the combustion chamber of the engine.

"Emissions control equipment" means any part, assembly or equipment originally installed by the manufacturer in or on a motor vehicle for the sole or primary purpose of reducing emissions.

"Emissions control systems" means any system consisting of parts, assemblies or equipment originally installed by the manufacturer in or on a motor vehicle for the primary purpose of reducing emissions.

"Emissions inspection" means an emissions inspection of a motor vehicle performed by an emissions inspector employed

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by or working at an emissions inspection station or fleet emissions inspection station, using the tests, procedures, and provisions set forth in this chapter.

"Emissions inspection station" means a facility or portion of a facility that has obtained an emissions inspection station permit from the director authorizing the facility to perform emissions inspections in accordance with the provisions of this chapter.

"Emissions inspector" means a person licensed by the department to perform inspections of vehicles required under the Virginia Motor Vehicle Emissions Control Law and is qualified in accordance with this chapter.

"Emissions standard" means any provision of Part III (9VAC5-91-160 et seq.) or Part XIV (9VAC5-91-790 et seq.) that prescribes an emission limitation, or other emission control requirements for motor vehicle air pollution.

"Empty weight (EW)" means that weight stated as the EW on a Virginia motor vehicle registration or derived from the motor vehicle title or manufacturer's certificate of origin. The EW may be used to determine emissions inspection standards.

"Enhanced emissions inspection program" means a motor vehicle emissions inspection including procedures, emissions standards, and equipment required by 40 CFR Part 51, Subpart S or equivalent and consistent with applicable requirements of the federal Clean Air Act. The director will administer the enhanced emissions inspection program. Under the Virginia Motor Vehicle Emissions Control Law, the program requires that affected motor vehicles, unless otherwise exempted, receive biennial inspections at official emissions inspection stations, which may be test and repair facilities, in accordance with this chapter. Nothing in this program shall bar enhanced emissions inspection stations or facilities from also performing vehicle repairs.

"EPA" means the United States Environmental Protection Agency.

"Equivalent test weight (ETW)" or "emission test weight" means the weight of a motor vehicle as automatically determined by the emissions analyzer system based on vehicle make, model, body, style, model year, engine size, permanently installed equipment, and other manufacturer and aftermarket supplied information, and used for the purpose of assigning dynamometer resistance and exhaust emissions standards for the conduct of an exhaust emissions inspection.

"Evaporative system pressure test" or "pressure test" means a physical test of the evaporative emission control system on a motor vehicle to determine whether the evaporative system vents emissions of volatile organic compounds from the fuel tank and fuel system to an on-board emission control device, and prevents their release to the ambient air under normal vehicle operating conditions. Such testing shall only be

conducted at emissions inspection stations upon installation of approved equipment and software necessary for performing the test, as determined by the director.

"Exhaust gas analyzer" means an instrument that is capable of measuring the concentrations of certain air pollutants in the exhaust gas from a motor vehicle.

"Facility" means something that is built, installed or established to serve a particular purpose; includes, but is not limited to, buildings, installations, public works, businesses, commercial and industrial plants, shops and stores, apparatus, processes, operations, structures, and equipment of all types.

"Federal Clean Air Act" means 42 USC §7401 et seq.

"Fleet" means 20 or more motor vehicles that are owned, operated, leased or rented for use by a common owner.

"Fleet emissions inspection station" means any inspection facility operated under a permit issued to a qualified fleet owner or lessee as determined by the director.

"Flexible-fuel vehicle" means any motor vehicle capable of operating on two or more fuels, either one at a time or any mixture of two or more different fuels.

"Formal hearing" means a board or department process that provides for the right of private parties to submit factual proofs as provided in §2.2-4020 of the Administrative Process Act in connection with case decisions. Formal hearings do not include the factual inquiries of an informal nature provided in §2.2-4019 of the Administrative Process Act.

"Fuel control systems" means those mechanical, electro-mechanical, galvanic or electronic parts or assemblies which regulate the air-to-fuel ratio in an engine for the purpose of providing a combustible charge.

"Fuel filler cap pressure test" or "gas cap pressure test" means a test of the ability of the fuel filler cap to prevent the release of fuel vapors from the fuel tank under normal operating conditions.

"Gas span" means the adjustment of an exhaust gas analyzer to correspond with known concentrations of gases.

"Gas span check" means a procedure using known concentrations of gases to verify the gas span adjustment of an analyzer.

"Gross vehicle weight rating (GVWR)" means the maximum recommended combined weight of the motor vehicle and its load as prescribed by the manufacturer and is (i) expressed on a permanent identification label affixed to the motor vehicle; (ii) stated on the manufacturer's certificate of origin; or (iii) coded in the vehicle identification number. If the GVWR can be determined it shall be one element used to determine emissions inspection standards and test type. If the GVWR is unavailable, the department may make a determination based

on the best available evidence including manufacturer reference, information coded in the vehicle identification number, or other available sources of information from which to make the determination.

"Heavy duty gasoline vehicle (HDGV)" means a heavy duty vehicle using gasoline as its fuel.

"Heavy duty vehicle (HDV)" means any affected motor vehicle (i) which is rated at more than 8,500 pounds GVWR or (ii) which has a loaded vehicle weight or GVWR of more than 6,000 pounds and has a basic frontal area in excess of 45 square feet.

"High emitter index" means the method of categorizing the probable emissions inspection failure-rates of engine families. Values within the index are determined by computing the percentile of the historical emissions inspection failure rate of a specific engine family, i.e., a specific group of vehicles with the same vehicle type, year, make and engine size, to the historical emissions inspection failure rate of all engine families in a specific model year group. Failure rates are based on the most recent full year of emissions inspection test data from the Virginia Motor Vehicle Emissions Control Program. Vehicles with an index value above 75 are considered "high-emitters."

"Identification number" means the number assigned by the department to uniquely identify department personnel, an emissions inspection station, a certified emissions repair facility, a licensed emissions inspector, a certified emissions repair technician or other authorized personnel as necessary for specific tasks.

"Idle mode" means a condition where the vehicle engine is warm and running at the rate specified by the manufacturer as curb idle, where the engine is not propelling the vehicle, and where the throttle is in the closed or idle stop position.

"Ignition systems" means those parts or assemblies that are designed to cause and time the ignition of a compressed air and fuel charge.

"Implementation plan" means the plan, including any revision thereof, that has been submitted by the Commonwealth and approved in Subpart VV of 40 CFR Part 52 by the administrator under §110 of the federal Clean Air Act, or promulgated in Subpart VV of 40 CFR Part 52 by the administrator under §110(c) of the federal Clean Air Act, or promulgated or approved by the administrator pursuant to regulations promulgated under §301(d) of the federal Clean Air Act and that implements the relevant requirements of the federal Clean Air Act.

"Informal fact finding" means an informal conference or consultation proceeding used to ascertain the fact basis for case decisions as provided in §2.2-4019 of the Administrative Process Act.

"Initial inspection" means the first complete emissions inspection of a motor vehicle conducted in accordance with the biennial inspection requirement and for which a valid vehicle emissions inspection report was issued. Any test following the initial inspection is a retest or reinspection.

"Inspection area" means the area that is occupied by the certified analyzer system and the vehicle being inspected.

"Inspection fee" means the amount of money that the emissions inspection station may collect from the motor vehicle owner for each chargeable inspection.

"Light duty gasoline vehicle (LDGV)" means a light duty vehicle using gasoline as its fuel.

"Light duty gasoline truck (LDGT1)" means a light duty truck 1 using gasoline as its fuel.

"Light duty gasoline truck (LDGT2)" means a light duty truck 2 using gasoline as its fuel."

"Light duty truck (LDT)" means any affected motor vehicle which (i) has a loaded vehicle weight or GVWR of 6,000 pounds or less and meets any one of the criteria below; or (ii) is rated at more than 6,000 pounds GVWR but less than 8,500 pounds GVWR and has a basic vehicle frontal area of 45 square feet or less; and meets one of the following criteria:

1. Designed primarily for purposes of transportation of property or is a derivation of such a vehicle.
2. Designed primarily for transportation of persons and has a capacity of more than 12 persons.
3. Equipped with special features enabling off-street or off-highway operation and use.

"Light duty truck 1 (LDT1)" means any light duty truck rated at 6,000 pounds GVWR or less. LDT1 is a subset of light duty trucks.

"Light duty truck 2 (LDT2)" means any light duty truck rated at greater than 6,000 pounds GVWR. LDT2 is a subset of light duty trucks.

"Light duty vehicle (LDV)" means an affected motor vehicle that is a passenger car or passenger car derivative capable of seating 12 passengers or less.

"Loaded vehicle weight (LVW)" or "curb weight" means the weight of a vehicle and its standard equipment; i.e., the empty weight as recorded on the vehicle's registration or the base shipping weight as recorded in the vehicle identification number, whichever is greater; plus the weight of any permanent attachments, the weight of a nominally filled fuel tank, plus 300 pounds.

"Locality" means a city, town, or county created by or pursuant to state law.

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"Mobile fleet emissions inspection station" means a facility or entity that provides emissions inspection equipment or services to a fleet emissions inspection station on a temporary basis. Such equipment is not permanently installed at the fleet facility but is temporarily located at the fleet facility for the sole purpose of testing vehicles owned, operated, leased or rented for use by a common owner.

"Model year" means, except as may be otherwise defined in this chapter, the motor vehicle manufacturer's annual production period which includes the time period from January 1 of the calendar year prior to the stated model year to December 31 of the calendar year of the stated model year; provided that, if the manufacturer has no annual production period, the term "model year" shall mean the calendar year of manufacture. For the purpose of this definition, model year is applied to the vehicle chassis, irrespective of the year of manufacture of the vehicle engine.

"Motor vehicle" means any motor vehicle as defined in §46.2-100 of the Code of Virginia as a motor vehicle and that:

1. Is designed for the transportation of persons or property; and
2. Is powered by an internal combustion engine.

"Motor vehicle dealer" means a person who is licensed by the Department of Motor Vehicles in accordance with §§46.2-1500 and 46.2-1508 of the Code of Virginia.

"Motor vehicle inspection report" means a printed certificate of emissions inspection that is a report of the results of an emissions inspection. It indicates whether the motor vehicle has (i) passed, (ii) failed, or (iii) obtained a temporary emissions inspection waiver. It may also indicate whether the emissions inspection could not be completed due to an exhaust dilution or an engine condition that prevents the inspection from being completed. The report shall accurately identify the motor vehicle and shall include inspection results, recall information provided by the department, warranty and repair information, and a unique identification number.

"Motor vehicle owner" means any person who owns, leases, operates, or controls a motor vehicle or fleet of motor vehicles.

"Nonconforming vehicle" means a vehicle not manufactured for sale in the United States to conform to emissions standards established by the federal government.

"Normal business hours" for emissions inspection stations, means a daily eight-hour period Monday through Friday, between the hours of 8 a.m. and 6 p.m., with the exception of national holidays, state holidays, temporary closures noticed to the department and closures due to the inability to meet the requirements of this chapter. Nothing in this chapter shall prevent stations from performing inspections at other times in addition to the "normal business hours." Emissions inspection

stations may, with the approval of the department, substitute a combined total of eight hours, between 8 a.m. and 6 p.m., over a weekend period for one weekday as their "normal business hours" for conducting emission inspections. Emissions inspection stations shall post inspection hours.

"Northern Virginia emissions inspection program" means the emissions inspection program required by this chapter in the Northern Virginia program area.

"Northern Virginia program area" or "program area" means the territorial area encompassed by the boundaries of the following localities: the counties of Arlington, Fairfax, Loudoun, Prince William, and Stafford; and the cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park.

"On-board diagnostic system (OBD system)" means the computerized emissions control diagnostic system installed on model year 1996 and newer affected motor vehicles.

"On-board diagnostic system test (OBD) system test" means an evaluation of the OBD system pursuant to 40 CFR 86.094-17 according to procedures specified in 40 CFR 85.2222 and this chapter.

"On-board diagnostic vehicle (OBD vehicle)" means a model year 1996 and newer model affected motor vehicle equipped with an on-board diagnostic system and meeting the requirements of 40 CFR 85.2231.

"On-road testing" means tests of motor vehicle emissions or emissions control devices by means of roadside pullovers or remote sensing devices.

"Operated primarily" means motor vehicle operation that constitutes routine operation into or within the program area as evidenced by observation using remote sensing equipment at least three times in a 60-day period with no less than 30 days between the first and last observation. The director may increase the number of observations required for compliance determination if, in his discretion, based on program experience, such an increase would not significantly adversely impact the objectives of this chapter. The term "operated primarily" shall be used to identify motor vehicle operation that is subject to the exhaust emission standards for on-road testing through remote sensing set forth in 9VAC5-91-180. The term "operated primarily" shall not be used to identify motor vehicle operation that will subject the vehicle to the compliance provisions set forth in 9VAC5-91-160 and 9VAC5-91-170 for biennial emissions inspections.

"Order" means any decision or directive of the board or the director, including orders, consent orders, and orders of all types rendered for the purpose of diminishing or abating the causes of air pollution or enforcement of this chapter. Unless specified otherwise in this chapter, orders shall only be issued after the appropriate administrative proceeding.

"Original condition" means the condition of the vehicle, parts, and components as installed by the manufacturer but not necessarily to the original level of effectiveness.

"Owner" means any person who owns, leases, operates, controls or supervises a facility or motor vehicle.

"Party" means any person who actively participates in the administrative proceeding or offers comments through the public participation process and is named in the administrative record. The term "party" also means the department.

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

"Pollutant" means any substance the presence of which in the outdoor atmosphere is or may be harmful or injurious to human health, welfare or safety, to animal or plant life, or to property, or which unreasonably interferes with the enjoyment by the people of life or property.

"Reconstructed vehicle" means every vehicle of a type required to be registered under Title 46.2 (§46.2-100 et seq.) of the Code of Virginia, materially altered from its original construction by the removal, addition or substitution of new or used essential parts. Such vehicles, at the discretion of the Department of Motor Vehicles, shall retain their original vehicle identification number, line-make, and model year.

"Referee station" means those facilities operated or used by the department to (i) determine program effectiveness, (ii) resolve emissions inspection conflicts between motor vehicle owners and emissions inspection stations, and (iii) provide such other technical support and information, as appropriate, to emissions inspection stations and motor vehicle owners.

"Reference method" means any method of sampling and analyzing for an air pollutant as described in Appendix A of 40 CFR Part 60.

"Reinspection" or "retest" means a type of inspection selected by the department or the emissions inspector when a request for an inspection is due to a previous failure. Any inspection that occurs 120 days or less following the most recent chargeable inspection is a retest.

"Rejected" or "rejected from testing" means that the vehicle cannot be inspected due to conditions in accordance with 9VAC5-91-420 C or 9VAC5-91-420 G 3.

"Remote sensing" means the observation, measurement, and recordation of motor vehicle exhaust emissions from motor vehicles while traveling on roadways or in specified areas by specialized equipment. Such equipment may use light sensing and electronic stimuli in conjunction with devices, including videographic and digitized images, to detect and record vehicle identification information, such as registration or other identification numbers.

"Replica vehicle" means every vehicle of a type required to be registered under Title 46.2 (§46.2-100 et seq.) of the Code of Virginia not fully constructed by a licensed manufacturer but either constructed or assembled from components. Such components may be from a single vehicle, multiple vehicles, a kit, parts, or fabricated components. The kit may be made up of "major components" as defined in §46.2-1600 of the Code of Virginia, a full body, or a full chassis, or a combination of these parts. The vehicle shall resemble a vehicle of distinctive name, line-make, model, or type as produced by a licensed manufacturer or manufacturer no longer in business and is not a reconstructed or specially constructed vehicle. Any vehicle registered as a replica vehicle shall meet emission requirements as established for the model year of which the vehicle is a replica.

"Sensitive mission vehicle" means any vehicle which, for law enforcement or national security reasons, cannot be tested in the public inspection system and must not be identified through the fleet testing system. For such vehicles, an autonomous fleet testing system may be established by agreement between the controlling agency and the director.

"Span gas" means gases of known concentration used as references to adjust or verify the accuracy of an exhaust gas analyzer that are approved by the department and are so labeled.

"Specially constructed vehicle" means any vehicle that was not originally constructed under a distinctive name, make, model, or type by a generally recognized manufacturer of vehicles and not a reconstructed vehicle as defined in this section.

"Standard conditions" means a temperature of 20°C (68°F) and a pressure of 760 mm of H<sub>g</sub> (29.92 inches of H<sub>g</sub>).

"Standardized instruments" means laboratory instruments calibrated with precision gases traceable to the National Institute of Standards and Technology and accepted by the department as the standards to be used for comparison purposes. All candidate instruments are compared in performance to the standardized instruments.

"Tactical military vehicle" means any motor vehicle designed to military specifications or a commercially designed motor vehicle modified to military specifications to meet direct transportation support of combat, tactical, or military relief operations, or training of personnel for such operations.

"Tampering" means to alter, remove or otherwise disable or reduce the effectiveness of emissions control equipment on a motor vehicle.

"Test" means an emissions inspection of a vehicle, or any portion thereof, performed by an emissions inspector at an emissions inspection station, using the procedures and provisions set forth in this chapter.

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"Test and repair" means motor vehicle emissions inspection stations that perform emissions inspections and may also perform vehicle repairs. No provision of this chapter shall bar emissions inspection stations from also performing vehicle repairs.

"Thermostatic air cleaner" means a system that supplies temperature-regulated air to the air intake system during engine operation.

"True concentration" means the concentration of the gases of interest as measured by a standardized instrument that has been calibrated with 1.0% precision gases traceable to the National Bureau of Standards.

"Two-speed idle test (TSI)" means a vehicle exhaust emissions test, performed in accordance with section (II) of 40 CFR Part 51, Appendix B to Subpart S, which measures the concentrations of pollutants in the exhaust gases of an engine (i) while the motor vehicle transmission is not propelling the vehicle and (ii) while the engine is operated at both curb idle and at a nominal engine speed of 2,500 rpm.

"Vehicle specific power (VSP)" means an indicator expressed as a function of vehicle speed, acceleration, drag coefficient, tire rolling resistance and roadway grade that is used to characterize the load a vehicle is operating under at the time and place a vehicle is measured by remote sensing equipment. It is calculated using the following formula:

$$\text{VSP} = 4.39 \times \text{Sine} (\text{Site Grade in Degrees}/57.3) \times \text{Speed} + \text{K1} \\ \times \text{Speed} \times \text{Acceleration} + \text{K2} \times \text{Speed} + \text{K3} \times \text{Speed}^3.$$

Where:

VSP = vehicle specific power indicator;

Sine = the trigonometric function that for an acute angle is the ratio between the side opposite the angle when it is considered part of a right triangle and the hypotenuse;

Site Grade in Degrees = slope of road where remote sensing measurement is taken;

K1, K2 and K3 = empirically determined coefficients specific to the weight class of the vehicle;

Speed = rate of motion in miles per hour of vehicle at the time remote sensing measurement is taken; and

Acceleration = change in speed in miles per hour per second.

For light duty vehicles the values for K1, K2 and K3 are respectively 0.22, 0.0954 and 0.0000272. Based on EPA guidance, the department may develop different values for K1, K2 and K3 that are applicable to heavy duty vehicles or to specific classes of light duty vehicles.

"Virginia Motor Vehicle Emissions Control Program" means the program for the inspection and control of motor

vehicle emissions established by Virginia Motor Vehicle Emissions Control Law.

"Virginia Motor Vehicle Emissions Control Law" means Article 22 (§46.2-1176 et seq.) of Chapter 10 of Title 46.2 of the Code of Virginia.

"Visible smoke" means any air pollutant, other than visible water droplets, consisting of black, gray, blue or blue-black airborne particulate matter emanating from the exhaust system or crankcase. Visible smoke does not mean steam.

"Zero gas" means a gas, usually air or nitrogen, which is used as a reference for establishing or verifying the zero point of an exhaust gas analyzer.

VA.R. Doc. No. R08-900; Filed October 23, 2007, 12:37 p.m.

## Final Regulation

**REGISTRAR'S NOTICE:** The State Air Pollution Control Board is claiming an exemption from the Administrative Process Act in accordance with §2.2-4006 A 3, which excludes regulations that consist only of changes in style or form or corrections of technical errors. The State Air Pollution Control Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** **9VAC5-140. Regulation for Emissions Trading Programs (amending 9VAC5-140-3400).**

**Statutory Authority:** §§10.1-1308 and 10.1-1322.3 of the Code of Virginia; 40 CFR Part 51; 42 USC §§7408, 7409, 7410 and 7602.

**Effective Date:** December 12, 2007.

**Agency Contact:** Mary E. Major, Environmental Program Manager, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23240, telephone (804) 698-4423, FAX (804) 698-4510, TTY (804) 698-4021, or email [mlmajor@deq.virginia.gov](mailto:mlmajor@deq.virginia.gov).

### Summary:

*The amendment corrects a technical error, changing the first phase start date for the CAIR SO<sub>2</sub> budget from 2009 to 2010.*

**9VAC5-140-3400. State CAIR SO<sub>2</sub> Annual trading budgets.**

The state trading budgets for annual allocations of CAIR SO<sub>2</sub> allowances for the control periods are as follows:

1. For use in each control period in ~~2009~~ 2010 through 2014, the total number of SO<sub>2</sub> tons apportioned to all CAIR SO<sub>2</sub> units is 63,478.
2. For use in each control period in 2015 and thereafter, the total number of SO<sub>2</sub> tons apportioned to all CAIR SO<sub>2</sub> units is 44,435.

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## TITLE 11. GAMING

### VIRGINIA RACING COMMISSION

#### Final Regulation

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

**Title of Regulation:** **11VAC10-45. Advance Deposit Account Wagering (amending 11VAC10-45-10; adding 11VAC10-45-25).**

**Statutory Authority:** §59.1-369 of the Code of Virginia.

**Effective Date:** December 12, 2007.

**Agency Contact:** David S. Lermond, Jr., Regulatory Coordinator, Virginia Racing Commission, 10700 Horsemen's Rd., New Kent, VA 23024, telephone 804-966-7404, FAX 804-966-7418, or email david.lermond@vrc.virginia.gov.

**Summary:**

*The amendments conform the regulations to Chapter 757 of the 2007 Acts of Assembly by providing the Virginia Racing Commission the authority to intervene in contract negotiations regarding account wagering if an agreement cannot be reached among the parties involved.*

**11VAC10-45-10. Definitions.**

The following definitions and interpretations shall apply to these rules unless otherwise indicated or the text otherwise requires:

"Account" means an account for account wagering with a specific identifiable record of deposits, wagers, and withdrawals established by an account holder and managed by the account-wagering licensee.

"Account holder" means an individual who successfully completed an application and for whom the account-wagering licensee has opened an account.

"Account wagering center" means an actual location, equipment, and staff of an account wagering licensee or agents of the account wagering licensee involved in the management, servicing and operation of account wagering.

"Account wagering licensee" means an entity licensed by the commission to accept deposits and wagers, issue a receipt or other confirmation to the account holder evidencing such deposits and wagers, and transfer credits and debits to and from accounts.

"Advance deposit account wagering" (hereafter account wagering) means a ~~form of pari-mutuel wagering in which an individual may deposit money in an account with an account wagering licensee and then use the current balance to place pari-mutuel wagers in person or electronically~~ method of pari-mutuel wagering conducted in the Commonwealth that is permissible under the Interstate Horseracing Act (15 USC §3001 et seq.) and in which an individual may establish an account with an entity, licensed by the commission, to place pari-mutuel wagers in person or electronically.

"Applicant" means an individual who has submitted an application to establish an account with either (i) an account wagering licensee or (ii) a company applying for an account wagering license from the commission.

"Commission" means the Virginia Racing Commission.

"Confidential information" means:

1. The amount of money credited to, debited from, withdrawn from, or present in any particular account holder's account;
2. The amount of money wagered by a particular account holder on any race or series of races;
3. The account number and secure personal identification code of a particular account holder;
4. The identities of particular entries on which the account holder is wagering or has wagered; and
5. Unless otherwise authorized by the account holder, the name, address, and other information in the possession of the account wagering center and race meet licensee that would identify the account holder to anyone other than the commission or the account wagering licensee.

"Credits" means all inflow of money to an account.

"Debits" means all outflow of money from an account.

"Deposit" means a payment of money by cash, check, money order, credit card, debit card, or electronic funds transfer made by an account holder to the account holder's account.

"Handle" means the total amount of all pari-mutuel wagering sales excluding refunds and cancellations.

"Individual" means any natural person at least 18 years of age, but does not include any corporation, partnership, limited liability company, trust, estate or other legal entity.



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"Other electronic media" means any electronic communication device or combination of devices including but not limited to personal computers, the Internet, private networks, interactive televisions and wireless communication technologies or other technologies approved by the commission.

"Principal residence address" means the street address identified by an applicant or a current account holder as that individual's residential address, as such address may be verified by the account wagering licensee.

"Proper identification" means a form of identification accepted in the normal course of business to establish that the person making a transaction is an account holder.

"Racetrack licensee" means any person holding a current unlimited license to own or operate a horse racetrack or satellite facility where pari-mutuel wagering is permitted.

"Retainage" means the total amount deducted from the pari-mutuel wagering pool for (i) a license fee to the commission and localities, (ii) the unlimited license, (iii) purse money for the participants, (iv) the Virginia Breeders Fund, and (v) certain enumerated organizations as required or permitted by law, regulation or contract approved by the commission.

"Secure personal identification code" means either a numeric or an alpha-numeric character code chosen by an account holder as a means by which the account wagering licensee may verify a wager or account transaction as authorized by the account holder.

"Source market fee" means the fee payable by the account wagering licensee pursuant to the terms and provisions of the contractual agreement among the prospective account wagering licensee, the racetrack licensee and the recognized majority horsemen's organizations.

"Source market fee area" means the Commonwealth of Virginia.

"Terms of agreement" means the agreement, approved by the commission, between an account wagering licensee and an account holder that includes but is not limited to the deposits, credits, debits, withdrawals and the opening and closing of accounts.

"Withdrawal" means a payment of money from an account by the account wagering licensee to the account holder when properly requested by the account holder.

"Withdrawal slip" means a form provided by the account wagering licensee for use by an account holder in withdrawing funds from an account.

## **11VAC10-45-25. Temporary licenses to conduct account wagering.**

A. If an applicant for a license to operate account wagering has not been able to reach an agreement with an unlimited

licensee and representatives of the recognized majority horsemen's organizations concerning the distribution of the retainage after good faith negotiations, the license applicant may submit its application together with an affidavit specifying and certifying its offer to an unlimited licensee and the recognized horsemen's groups, attesting that it has entered into good faith negotiations with both, that it has offered the terms specified and certified in its affidavit, and that its offer has been rejected, stating with particularity the basis given to it for rejection of its offer and by whom it was rejected. In such event, the commission shall (i) consider the applicant's request for a temporary license as provided in subsection B of this section and (ii) be authorized to appoint an impartial third party to mediate the negotiations regarding the contractual agreement between the applicant and an unlimited licensee and representatives of the recognized majority horsemen's groups concerning the distribution of the remaining portion of the retainage. If during the term of the temporary license, the parties are unable to reach agreement through mediation, the commission shall specify the percentage of the total gross handle of wagers placed with the account wagering applicant from within the Commonwealth to be paid by the applicant to an unlimited licensee and representatives of the recognized majority horsemen's groups. In doing so, the commission shall consider among other factors, the contractual agreements that other account wagering licensees have with an unlimited licensee and representatives of the recognized majority horsemen's groups. The percentage specified by the commission shall be the best offer made by either (a) the account wagering applicant or (b) the unlimited licensee and the representatives of the recognized majority horsemen's groups. The percentage specified by the commission shall be effective for one year from the one-year term of the applicant's temporary license.

B. Upon receipt of the application and affidavit described in subsection A of this section, the commission may grant a temporary license to operate account wagering to any applicant for a license to conduct account wagering whose application is complete except for a contractual agreement, approved by the commission, between such entity and an unlimited licensee and representatives of the recognized majority horsemen's groups concerning the distribution of the portion of the retainage remaining after the license fee has been paid to the commission and that is otherwise deemed by the commission to be fully qualified to conduct deposit wagering in the Commonwealth. Such license shall expire at the end of six months and shall be subject to one renewal. If a temporary license is not granted, the applicant is entitled to a hearing on the issue of qualifications.

C. If a temporary license is granted, the temporary licensee shall pay to the commission one-half percent of the gross total handle of wagers placed with the temporary licensee from within the Commonwealth on the tenth day of the month following the month in which the temporary licensee receives

wagers from within the Commonwealth. Each month the temporary licensee shall also pay an amount equal to the average of all account wagering licensees in the Commonwealth, as calculated by the commission, into an escrow account in the name of the commission no later than the tenth of the month following the month in which such wagers are placed. Such escrow account shall be in a financial institution approved by the commission and shall be distributed within three business days by the commission in equal amounts to any unlimited licensee and representatives of the recognized majority horsemen's groups, until such time as the unlimited licensee, representatives of the recognized horsemen's groups, and the temporary account wagering licensee reach an agreement regarding the retainage that is acceptable to the commission and the commission has granted a license to operate account wagering replacing the temporary license.

D. A temporary license may be revoked summarily by the commission for any cause set forth in this chapter without complying with subsection A of this section. Revocation of a temporary license shall be effective upon service of the order of revocation upon the licensee or upon the expiration of three business days after the order of the revocation has been mailed to the licensee either at his residence or the address given for the business in the license application. No further notice shall be required.

VA.R. Doc. No. R08-1017; Filed October 23, 2007, 12:12 p.m.

**TITLE 12. HEALTH**

**STATE BOARD OF HEALTH**

**Emergency Regulation**

**Title of Regulation:** 12VAC5-90. Regulations for Disease Reporting and Control (amending 12VAC5-90-80).

**Statutory Authority:** §32.1-35 of the Code of Virginia.

**Effective Dates:** October 24, 2007, through October 23, 2008.

**Agency Contact:** Diane Woolard, PhD, Department of Health, 109 Governor Street, Richmond, VA 23219, telephone 804-864-8124, or email diane.woolard@vdh.virginia.gov.

**Preamble:**

*Methicillin-resistant Staphylococcus aureus (MRSA) has the potential to cause severe illness. The public has grown increasingly concerned about this threat to the health of their communities. The Virginia Department of Health is promulgating regulations to require the reporting of the most severe MRSA infections confirmed by laboratories in order to have more data on the occurrence of these infections in Virginia communities.*

*The emergency regulatory action requires laboratories to report MRSA infections confirmed from specimens collected from normally sterile sites of the body, such as blood or joint fluid. The department will use the data to compile statistics on the occurrences of these infections in different localities and populations across Virginia.*

*The action is being taken as a result of concern following the recent death of a Virginia teenager due to invasive MRSA and a peer-reviewed medical publication finding that invasive MRSA is a major public health problem in the United States. MRSA infections are occurring across the state and a more systematic means of capturing and compiling reports is needed. The reporting of confirmed invasive infections will allow the department to respond to requests and expectations for data from the concerned public, health care professionals, and policymakers. Potential issues include the burden on laboratories to report results and the identification of sufficient resources within the health department to compile and track data on these conditions.*

**12VAC5-90-80. Reportable disease list.**

A. The board declares suspected or confirmed cases of the following named diseases, toxic effects, and conditions to be reportable by the persons enumerated in 12VAC5-90-90. Conditions identified by an asterisk (\*) require rapid communication to the local health department within 24 hours of suspicion or confirmation, as defined in subsection C of this section. Other conditions should be reported within three days of suspected or confirmed diagnosis.

Acquired immunodeficiency syndrome (AIDS)

Amebiasis

\*Anthrax

Arboviral infections (e.g., EEE, LAC, SLE, WNV)

\*Botulism

\*Brucellosis

Campylobacteriosis

Chancroid

Chickenpox (Varicella)

Chlamydia trachomatis infection

\*Cholera

Creutzfeldt-Jakob disease if <55 years of age

Cryptosporidiosis

Cyclosporiasis

\*Diphtheria

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\*Disease caused by an agent that may have been used as a weapon

Ehrlichiosis

Escherichia coli infection, Shiga toxin-producing

Giardiasis

Gonorrhea

Granuloma inguinale

\*Haemophilus influenzae infection, invasive

Hantavirus pulmonary syndrome

Hemolytic uremic syndrome (HUS)

\*Hepatitis A

Hepatitis B: (acute and chronic)

Hepatitis C (acute and chronic)

Hepatitis, other acute viral

Human immunodeficiency virus (HIV) infection

Influenza

\*Influenza-associated deaths in children <18 years of age

Kawasaki syndrome

Lead-elevated blood levels

Legionellosis

Leprosy (Hansen's disease)

Listeriosis

Lyme disease

Lymphogranuloma venereum

Malaria

\*Measles (Rubeola)

\*Meningococcal disease

\*Monkeypox

Mumps

Ophthalmia neonatorum

\*Outbreaks, all (including but not limited to foodborne, nosocomial, occupational, toxic substance-related, and waterborne)

\*Pertussis

\*Plague

\*Poliomyelitis

\*Psittacosis

\*Q fever

\*Rabies, human and animal

Rabies treatment, post-exposure

Rocky Mountain spotted fever

\*Rubella, including congenital rubella syndrome

Salmonellosis

\*Severe acute respiratory syndrome (SARS)

Shigellosis

\*Smallpox (Variola)

Streptococcal disease, Group A, invasive

Streptococcus pneumoniae infection, invasive, in children <5 years of age

Syphilis (report \*primary and \*secondary syphilis by rapid means)

Tetanus

Toxic shock syndrome

Toxic substance-related illness

Trichinosis (Trichinellosis)

\*Tuberculosis, active disease

Tuberculosis infection in children <4 years of age

\*Tularemia

\*Typhoid fever

\*Unusual occurrence of disease of public health concern

\*Vaccinia, disease or adverse event

Vancomycin-intermediate or vancomycin-resistant Staphylococcus aureus infection

\*Vibrio infection

\*Viral hemorrhagic fever

\*Yellow fever

Yersiniosis

B. Conditions reportable by directors of laboratories.

Conditions identified by an asterisk (\*) require rapid communication to the local health department within 24 hours of suspicion or confirmation, as defined in subsection C of this section. Other conditions should be reported within three days of suspected or confirmed diagnosis.

Amebiasis—by microscopic examination, culture, antigen detection, nucleic acid detection, or serologic results consistent with recent infection

\*Anthrax—by culture, antigen detection or nucleic acid detection

Arboviral infection—by culture, antigen detection, nucleic acid detection, or serologic results consistent with recent infection

\*Botulism—by culture or identification of toxin in a clinical specimen

\*Brucellosis—by culture, antigen detection, nucleic acid detection, or serologic results consistent with recent infection

Campylobacteriosis—by culture

Chancroid—by culture, antigen detection, or nucleic acid detection

Chickenpox (varicella)—by culture, antigen detection, nucleic acid detection, or serologic results consistent with recent infection

Chlamydia trachomatis infection—by culture, antigen detection, nucleic acid detection or, for lymphogranuloma venereum, serologic results consistent with recent infection

\*Cholera—by culture or serologic results consistent with recent infection

Creutzfeldt-Jakob disease if <55 years of age—presumptive diagnosis—by histopathology in patients under the age of 55 years

Cryptosporidiosis—by microscopic examination, antigen detection, or nucleic acid detection

Cyclosporiasis—by microscopic examination or nucleic acid detection

\*Diphtheria—by culture

Ehrlichiosis—by culture, nucleic acid detection, or serologic results consistent with recent infection

Escherichia coli infection, Shiga toxin-producing—by culture of E. coli O157 or other Shiga toxin-producing E. coli, Shiga toxin detection (e.g., by EIA), or nucleic acid detection

Giardiasis—by microscopic examination or antigen detection

Gonorrhea—by microscopic examination of a urethral smear specimen (males only), culture, antigen detection, or nucleic acid detection

\*Haemophilus influenzae infection, invasive—by culture, antigen detection, or nucleic acid detection from a normally sterile site

Hantavirus pulmonary syndrome—by antigen detection (immunohistochemistry), nucleic acid detection, or serologic results consistent with recent infection

\*Hepatitis A—by detection of IgM antibodies

Hepatitis B (acute and chronic)—by detection of HBsAg or IgM antibodies

Hepatitis C (acute and chronic)—by hepatitis C virus antibody (anti-HCV) screening test positive with a signal-to-cutoff ratio predictive of a true positive as determined for the particular assay as defined by CDC, HCV antibody positive by immunoblot (RIBA), or HCV RNA positive by nucleic acid test. For all hepatitis C patients, also report available results of serum alanine aminotransferase (ALT), anti-HAV IgM, anti-HBc IgM, and HBsAg

Human immunodeficiency virus infection—by culture, antigen detection, nucleic acid detection, or detection of antibody confirmed with a supplemental test. For HIV-infected patients, report all results of CD4 and HIV viral load tests

Influenza—by culture, antigen detection by direct fluorescent antibody (DFA) or nucleic acid detection

Lead-elevated blood levels—by blood lead level greater than or equal to 10 µg/dL in children ages 0-15 years, or greater than or equal to 25 µg/dL in persons older than 15 years of age

Legionellosis—by culture, antigen detection including urinary antigen), nucleic acid detection, or serologic results consistent with recent infection

Listeriosis—by culture

Malaria—by microscopic examination, antigen detection, or nucleic acid detection

\*Measles (rubeola)—by culture, antigen detection, nucleic acid detection, or serologic results consistent with recent infection

\*Meningococcal disease—by culture or antigen detection from a normally sterile site

\*Monkeypox—by culture nucleic acid detection

Mumps—by culture, nucleic acid detection, or serologic results consistent with recent infection

\*Mycobacterial diseases—(See 12VAC5-90-225 B) Report any of the following:

1. Acid fast bacilli by microscopic examination;
2. Mycobacterial identification—preliminary and final identification by culture or nucleic acid detection;
3. Drug susceptibility test results for M. tuberculosis.

\*Pertussis—by culture, antigen detection, or nucleic acid detection

\*Plague—by culture, antigen detection, nucleic acid detection, or serologic results consistent with recent infection

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\*Poliomyelitis—by culture

\*Psittacosis—by culture, antigen detection, nucleic acid detection, or serologic results consistent with recent infection

\*Q fever—by culture, antigen detection, nucleic acid detection, or serologic results consistent with recent infection

\*Rabies, human and animal—by culture, antigen detection by direct fluorescent antibody test, nucleic acid detection, or, for humans only, serologic results consistent with recent infection

Rocky Mountain spotted fever—by culture, antigen detection (including immunohistochemical staining), nucleic acid detection, or serologic results consistent with recent infection

\*Rubella—by culture, nucleic acid detection, or serologic results consistent with recent infection

Salmonellosis—by culture

\*Severe acute respiratory syndrome—by culture, nucleic acid detection, or serologic results consistent with recent infection

Shigellosis—by culture

\*Smallpox (variola)—by culture or nucleic acid detection

Staphylococcus aureus infection, resistant, as defined below:

1. Methicillin-resistant - by antimicrobial susceptibility testing of a Staphylococcus aureus isolate, with a susceptibility result indicating methicillin resistance, cultured from a normally sterile site;

2. Vancomycin-intermediate or vancomycin-resistant Staphylococcus aureus infection - by antimicrobial susceptibility testing of a Staphylococcus aureus isolate, with a vancomycin susceptibility result of intermediate or resistant, cultured from a clinical specimen.

Streptococcal disease, Group A, invasive—by culture from a normally sterile site

Streptococcus pneumoniae infection, invasive, in children <5 years of age—by culture from a normally sterile site in a child under the age of five years

\*Syphilis—by microscopic examination (including dark field), antigen detection (including direct fluorescent antibody), or serology by either treponemal or nontreponemal methods

Toxic substance-related illness—by blood or urine laboratory findings above the normal range, including but not limited to heavy metals, pesticides, and industrial-type solvents and gases

Trichinosis (trichinellosis)—by microscopic examination of a muscle biopsy or serologic results consistent with recent infection

\*Tularemia—by culture, antigen detection, nucleic acid detection, or serologic results consistent with recent infection

\*Typhoid fever—by culture

\*Vaccinia, disease or adverse event—by culture or nucleic acid detection

~~Vancomycin intermediate or vancomycin-resistant Staphylococcus aureus infection by antimicrobial susceptibility testing of a Staphylococcus aureus isolate, with a vancomycin susceptibility result of intermediate or resistant, cultured from a clinical specimen~~

\*Vibrio infection—by culture

\*Viral hemorrhagic fever—by culture, antigen detection (including immunohistochemical staining), nucleic acid detection, or serologic results consistent with recent infection

\*Yellow fever—by culture, antigen detection, nucleic acid detection, or serologic results consistent with recent infection

Yersiniosis—by culture, nucleic acid detection, or serologic results consistent with recent infection

C. Reportable diseases requiring rapid communication. Certain of the diseases in the list of reportable diseases, because of their extremely contagious nature or their potential for greater harm, or both, require immediate identification and control. Reporting of persons confirmed or suspected of having these diseases, listed below, shall be made within 24 hours by the most rapid means available, preferably that of telecommunication (e.g., telephone, telephone transmitted facsimile, pagers, etc.) to the local health director or other professional employee of the department. (These same diseases are also identified by an asterisk (\*) in subsection A and subsection B, where applicable, of this section.)

Anthrax

Botulism

Brucellosis

Cholera

Diphtheria

Disease caused by an agent that may have been used as a weapon

Haemophilus influenzae infection, invasive

Hepatitis A

Influenza deaths in children <18 years of age

Measles (Rubeola)  
 Meningococcal disease  
 Monkeypox  
 Outbreaks, all  
 Pertussis  
 Plague  
 Poliomyelitis  
 Psittacosis  
 Q fever  
 Rabies, human and animal  
 Rubella  
 Severe acute respiratory syndrome (SARS)  
 Smallpox (Variola)  
 Syphilis, primary and secondary  
 Tuberculosis, active disease  
 Tularemia  
 Typhoid fever  
 Unusual occurrence of disease of public health concern  
 Vaccinia, disease or adverse event  
 Vibrio infection  
 Viral hemorrhagic fever  
 Yellow Fever

D. Toxic substance-related illnesses. All toxic substance-related illnesses, including pesticide and heavy metal poisoning or illness resulting from exposure to an occupational dust or fiber or radioactive substance, shall be reported.

If such illness is verified or suspected and presents an emergency or a serious threat to public health or safety, the report of such illness shall be by rapid communication as in subsection C of this section.

E. Outbreaks. The occurrence of outbreaks or clusters of any illness which may represent a group expression of an illness which may be of public health concern shall be reported to the local health department by the most rapid means available.

F. Unusual or ill-defined diseases or emerging or reemerging pathogens. Unusual or emerging conditions of public health concern shall be reported to the local health department by the most rapid means available. In addition, the commissioner or his designee may establish surveillance systems for diseases or conditions that are not on the list of

reportable diseases. Such surveillance may be established to identify cases (delineate the magnitude of the situation), to identify the mode of transmission and risk factors for the disease, and to identify and implement appropriate action to protect public health. Any person reporting information at the request of the department for special surveillance or other epidemiological studies shall be immune from liability as provided by §32.1-38 of the Code of Virginia.

VA.R. Doc. No. R08-1024; Filed October 24, 2007, 11:57 a.m.

### Final Regulation

**Title of Regulation: 12VAC5-585. Biosolids Use Regulations (amending 12VAC5-585-70, 12VAC5-585-510, 12VAC5-585-600, 12VAC5-585-610, 12VAC5-585-620, 12VAC5-585-630).**

**Statutory Authority:** §32.1-164 of the Code of Virginia.

**Effective Date:** December 17, 2007.

**Agency Contact:** Cal Sawyer, Department of Health, 109 Governor St., Richmond, VA 23219, telephone 804-864-7463 or email cal.sawyer@vdh.virginia.gov.

**Summary:**

*The amendments provide for resolution of disputes involving local governments and land appliers concerning permit compliance issues and for land application site management practices, including extended buffer setback distances, the application of biosolids, nutrient management plan requirements and extended buffer zones for surface application without incorporation, to protect odor sensitive receptors.*

*Changes since publication of the proposed regulation specify that all biosolids application rates, application times and other site management operations shall be restricted as specified in the approved management practices plan. The final amendments require that the management practices plan shall include a nutrient management plan prepared by a certified nutrient management planner as stipulated in regulations promulgated pursuant to §10.1-104.2 of the Code of Virginia. The amendments were revised to require that biosolids application rates, application timing and all other site management practices shall be restricted to the existing criteria in accordance with the approved management practices plan including the nutrient management plan, which may prescribe more restrictive site management practices than the existing criteria. The amendments also require that biosolids should not be applied any earlier than 30 days prior to spring planting on environmentally sensitive sites in accordance with the nutrient management plan. Certain Plant Available Nitrogen values and estimated plant yields in Table 11*

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*were revised. Also, the maximum application rates for biosolids were modified.*

**Summary of Public Comments and Agency's Response:** A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

## **12VAC5-585-70. Enforcement of regulations.**

A. All biosolids use facilities shall be constructed and operated in compliance with the requirements as set forth in this chapter.

B. Notice. Whenever the commissioner has reason to believe that a violation of Title 32.1 of the Code of Virginia or of any provisions of this chapter has occurred or is occurring, the division shall so notify the alleged violator. Such notice shall be: (i) in writing, with a request to the owner to respond by providing any pertinent information on this issue they may wish; (ii) cite the statute, regulation or regulations that are allegedly being violated; and (iii) state the facts which form the basis for believing that the violation has occurred or is occurring. Such notification is not an official finding or case decision nor an adjudication, but may be accompanied by a request that certain corrective action be taken.

C. Orders. Pursuant to §32.1-26 of the Code of Virginia, the commissioner may issue orders to require any owner to comply with the provisions of Title 32.1 of the Code of Virginia or the provisions of this chapter. The order may require:

1. The immediate cessation or correction of the violation;
2. The acquisition or use of additional equipment, supplies or personnel to ensure that the violation does not recur;
3. The submission of a plan to prevent future violations;
4. The submission of an application for a variance;
5. Any other corrective action deemed necessary for proper compliance with this chapter; or
6. Evaluation and approval, if appropriate, of the required submissions.

D. Compliance. The commissioner may act as the agent of the board to enforce all effective orders and this chapter. Should any owner fail to comply with any effective order or this chapter, the commissioner may:

1. Institute a proceeding to revoke the owner's permit in accordance with 12VAC5-585-220;
2. Request the attorney for the Commonwealth to bring a criminal action;
3. Request the Attorney General to bring an action for civil penalty, injunction, or other appropriate remedy; or
4. Do any combination of the above.

## E. Disputes involving local ordinances.

1. In the event of a dispute between a locality that has adopted a local ordinance for testing and monitoring the land application of sewage sludge and a permittee concerning the existence of a violation, the activity alleged to be in violation shall be halted pending a determination by the commissioner. The decision of the commissioner shall be final and binding unless reversed on judicial appeal pursuant to §2.2-4026 of the Code of Virginia. If the activity is not halted, the commissioner may seek an injunction compelling the halting of the activity from a court having jurisdiction.

2. Upon determination by the division that there has been a violation of §32.1-164.5, 32.1-164.6, or 62.1-44.19:3 of the Code of Virginia, or of any regulation promulgated under those sections, and that such violation poses an imminent threat to public health, safety or welfare, the commissioner shall commence appropriate action to abate the violation and immediately notify the chief administrative officer of any locality potentially affected by the violation.

~~E. F.~~ Nothing in this section shall prevent the commissioner or the division from taking actions to obtain compliance with permit requirements prior to issuing an order, or from making efforts to obtain voluntary compliance through conference, warning, or other appropriate means.

## **12VAC5-585-510. Biosolids utilization methods.**

[ A. All biosolids application rates, application times and other site management operations shall be restricted as specified in the approved management practices plan. The management practices plan shall include a nutrient management plan as required by 12VAC5-585-630 and prepared by a certified nutrient management planner as stipulated in regulations promulgated pursuant to §10.1-104.2 of the Code of Virginia. ]

[ A. B. ] Agricultural use. Agricultural use of sewage sludge is the land application of biosolids (Table 8) to cropland or pasture land to obtain agronomic benefits as a plant nutrient source and soil conditioner. This use shall require a system design which ensures that the land application procedures are performed in accordance with sound agronomic principles.

1. Sludge treatment. As a minimum, biosolids that are applied to the land or incorporated into the soil shall be treated by a Class II pathogen treatment process and shall be treated or managed to provide an acceptable level of vector attraction reduction.
2. Site soils. Soils best suited for agricultural use should possess good tilth and drainage capabilities, have moderate to high surface infiltration rates and moderate to slow subsoil permeability. Depth to bedrock or restrictive layers should be a minimum of 18 inches. Depth to the seasonal water table should exceed 18 inches as defined by the Soil

Conservation Service soil survey. If such information is not available the water table depth may be determined by soil characteristics or water table observations. If the soil survey or such evidence indicates that the seasonal water table can be less than 18 inches below the average ground surface, soil borings shall be utilized within seven days prior to land application operations during periods of high water table for the soil series present, to verify that the 18-inch depth restriction is complied with during field operations. The use of soil borings and water table depth verification may be required for such sites from November to May (during seasonal high water table elevations) of each year depending on soil type. Constructed channels (agricultural drainage ditch) may be utilized to remove surface water and lower the water table as necessary for crop productions and site management.

The pH of the biosolids and soil mixture shall be 6.0 or greater at the time of each biosolids application if the biosolids cadmium concentration is greater than or equal to 21 mg/kg. The soil pH must be properly tested and recorded prior to land application operations during which a pH change of 1/2 unit or more may occur within the zone of incorporation (i.e., use of biosolids containing lime or other alkaline additives at 10% or more of dry solid weight).

3. Management practices.

a. Application rates and requirements. Process design considerations shall include sludge composition, soil characteristics, climate, vegetation, cropping practices, and other pertinent factors in determining application rates. Site specific application rates should be proposed using pertinent biosolids plant available nitrogen (PAN) and crop nutrient needs (agronomic rate listed in Table 11) and the cumulative trace element loading rates (Table 9). Lime amended biosolids shall be applied at rates which are not expected to result in a target soil pH in the plow layer above a pH of 6.5 for soils located in the coastal plain and above a pH of 6.8 in other areas of the state (Table 14). Agricultural use of treated septage shall be in accordance with these requirements (Table 13). The biosolids application rate [ , application timing and all other site management practices ] shall be restricted to the following criteria in accordance with the approved operation management practices plan (12VAC5-585-630) [ , including the nutrient management plan, which may prescribe more restrictive site management practices than the following criteria ]:

(1) For infrequent applications, biosolids may be applied such that the total crop needs for nitrogen (Table 11 Agronomic Rate) is not exceeded (in order to minimize the amount of nitrogen that passes below the crop root zone to actually or potentially pollute groundwater), during a one year crop rotation period including the

production and harvesting of two crops in succession within a consecutive 12-month growing season. However, the total application of biosolids shall not exceed a computed maximum loading of 15 dry tons per acre, unless a higher loading can be justified in relation to both the biosolids and the site characteristics, including the biosolids nutrient and dry solids content and the site slopes. No further applications of biosolids shall be allowed for a period of three years from the date that the agronomic rate is achieved for the crop or crops grown in the following 12 months.

(2) The infrequent application rate may be restricted: (i) down to 10% of the maximum cumulative loading rate (Table 9) for cadmium and lead (i.e., 2.0 kilograms per hectare (kg/ha) for cadmium); (ii) to account for all sources of nutrients applied to the site, including existing residuals.

(3) The infrequent application rate may also be restricted by the ~~maximum established CCE loading rate (Table 14)~~ lime content of the biosolids.

(4) For systems designed for frequent application of biosolids (application of the PAN requirement for a normal crop rotation more frequently than once in every three years), the previous year's applied Biosolids nitrogen and mineralization rates (Table 12) and soil phosphorus levels, shall be considered in the design and proposed subsequent application rates. Acceptable nutrient management requirements shall be included in the ~~operation management practices~~ plan for all sites proposed for frequent at-agronomic application rates (12VAC5-585-630).

(5) Frequent below-agronomic application rate involves frequent applications of biosolids on permanent pasture or hay at less than the PAN requirement listed in Table 11. Frequent below-agronomic application rates shall be calculated using one of the following options:

(a) A maximum of 70% of the nitrogen requirement of the permanent pasture or hay crop can be applied on an annual basis. The 70% application rate shall be calculated after accounting for the previous two years' applied biosolids nitrogen mineralization rates.

(b) A maximum of 50% of the nitrogen requirement of the permanent pasture or hay crop can be applied on an annual basis. It is not necessary to account for the previous two years' applied biosolids nitrogen mineralization rates under this option.

For systems designed for frequent below-agronomic rates, surface and groundwater monitoring ~~and a certified nutrient management plan~~ shall not be required. Soil phosphorus levels shall be considered in the design of proposed subsequent application rates. On warm-season



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grasses and alfalfa, no application shall be made between September 15 and March 15.

b. Standard slopes and topography. Management practices specifying uniform application of biosolids at approved rates should be established in accordance with standard slopes. Agronomic practices and crop growth on sites with slope of not greater than [ ~~5.0%~~ 7.0% ] will provide acceptable protection of surface water quality during the active growing season. If biosolids are applied to site slopes greater than [ ~~5.0%~~ 7.0% ] during the period of November 16 of one year to March 15 of the following year certain Best Management Practices (BMP's) should be utilized (see subdivision 3 c (1) of this subsection). Biosolids should be directly-injected into soils on sites exhibiting erosion potential unless other best management practices are utilized to minimize soil erosion and the potential of nonpoint runoff. Biosolids shall not be applied to site slopes exceeding 15%. Biosolids shall be direct-injected or incorporated (mixed within the normal plow layer within 48 hours) if: (i) applied on sites with less than 60% uniform residue cover (stalks, vines, stubble, etc.) within any portion of the site; or (ii) applied to soils during periods of time soils may be subject to frequent flooding as defined by soil survey information.

c. Operations.

(1) Field management. The application rate of all application equipment shall be routinely measured as described in an approved sludge management plan and every effort shall be made to ensure uniform application of biosolids within sites in accordance with approved maximum design loading rates. Liquid sludges shall not be applied at rates exceeding 14,000 gallons per acre, per application. Sufficient drying times shall be allowed between subsequent applications. Application vehicles should be suitable for use on agricultural land. Pasture and hay fields should be grazed or clipped to a height of approximately four and six inches, respectively, prior to biosolids application unless the biosolids can be uniformly applied so as not to mat down the vegetative cover so that the site vegetation can be clipped to a height of approximately four inches within one week of the biosolids application. If application methods do not result in a uniform distribution of biosolids, additional operational methods shall be employed following application such as dragging with a pasture harrow, followed by clipping if required, to achieve a uniform distribution of the applied biosolids.

Surface incorporation may be required on cropland by the department, or the local monitor with approval of the department, to mitigate excessive odors, when incorporation is practicable and compatible with a soil conservation plan meeting the standards and

specifications of the U.S. Department of Agriculture Natural Resources Conservation Service.

When ~~In accordance with the management practices plan,~~ when biosolids are applied to site slopes greater than 7.0% between the period of November 16 of one year, and March 15 of the following year, one of the following practices shall be used to prevent runoff and soil loss:

(a) Biosolids are surface applied or subsurface injected beneath an established living crop such as hay, pasture, or timely planted small grain or cover crop;

(b) Biosolids are surface applied or subsurface injected so that immediately after application the crop residue still provides at least 60% soil surface coverage; or

(c) Biosolids are applied by surface application or subsurface injection and the site is operated in compliance with an existing soil conservation plan approved by the U.S.D.A. Natural Resource Conservation Service and will remain in compliance after any subsequent tillage operation to incorporate the biosolids.

~~If~~ In accordance with the management practices plan [  ~~]~~ if site slopes exceed 5.0% up to 7.0%, biosolids can be applied by surface application or subsurface injection followed by: (i) incorporation within 48 hours of application if crop residue still provides at least 30% soil surface coverage immediately following incorporation, or (ii) ridge tilling or chisel plowing within 48 hours of application; during the period of November 16 to March 15 of the following year. The site should be chisel plowed or ridge tilled predominately along the contour so that uniform parallel ridges of four inches or greater are created that will improve soil roughness and reduce runoff. Consideration should also be given to the use of similar practices on slopes of 5.0% or less when feasible for applications during the late fall and winter.

(2) Restrictions. Biosolids application shall not be made during times when the seasonal high water table of the soil is within 18 inches of the ground surface. Biosolids may only be applied to snow covered ground if the snow cover does not exceed one inch and the snow and biosolids are immediately incorporated within 24 hours of application. Liquid sludges may not be applied to frozen ground. Dry or dewatered sludges may be applied to frozen ground only if: (i) site slopes are [ ~~5.0%~~ 6.0% ] or less; (ii) a 200-foot vegetative (i.e., at least 60% uniformly covered by stalks or other vegetation) buffer is maintained from surface water courses; and (iii) the entire application site has uniform soil coverage of at least 60% with stalks, vines, stubble, or other vegetation and the site soils are characterized as well drained [ in accordance with the nutrient management plan ].

~~When~~ In accordance with the management practices plan, ~~when~~ biosolids are land applied between March 15 and September 1, crop planting following biosolids application should occur within a 30-day period. When biosolids are applied to sites between September 1 and November 16, an agronomically justified crop capable of trapping plant available nitrogen such as small grain shall be planted within 45 days of the application of biosolids or prior to November 16, whichever comes first, or an established cool season grass sod or timely planted small grain crop shall be present. The crop planted should be capable of germination and significant growth before the onset of winter so the plant is able to use available nitrogen released by the biosolids.

On sites with a high leaching index (greater than 10) as defined by the Department of Conservation and Recreation, an established cool season grass or timely planted small grain crop should be present when biosolids are applied to such sites between November 16 and December 21 [in accordance with the nutrient management plan. Biosolids should not be applied any earlier than 30 days prior to spring planting on environmentally sensitive sites in accordance with the nutrient management plan].

d. Buffer zones.

~~(2) Standard buffer zones.~~ (1) Setback distances. If slopes are greater than 7.0% and biosolids will be applied between November 16 and March 15, ~~standard buffer setback~~ distances to perennial streams and other surface water bodies shall be doubled. The location of land application of biosolids shall not occur within the following minimum buffer zone requirements:

Minimum Distances (Feet) to Land Application Area			
Adjacent Features	Surface Application <sup>(1)</sup>	Incorporation	Winter <sup>(2)</sup>
Occupied dwellings	200 ft.	200	200
Water supply wells or springs	100 ft.	100	100
Property lines	100 ft.	50	100
Perennial streams and other surface waters except intermittent streams	50 ft.	35	100
Intermittent streams/drainage ditches	25 ft.	25	50
All improved roadways	10 ft.	5	10

Rock outcrops and sinkholes	25 ft.	25	25
Agricultural drainage ditches with slopes equal to or less than 2.0%	10 ft.	5	10
<sup>(1)</sup> Note: Not plowed or disced to incorporate within 48 hours. <sup>(2)</sup> Application occurs on average site slope greater than 7.0% during the time between November 16 of one year and March 15 of the following year.			

The stated buffer zones to adjacent property boundaries and drainage ditches constructed for agricultural operations may be reduced by 50% for subsurface application (includes same day incorporation) unless state or federal regulations provide more stringent requirements. Written consent of affected landowners is required to reduce buffer distances from property lines and dwellings. In cases where more than one buffer distance is involved, the most restrictive distance governs. Buffer requirements may be increased or decreased based on either site specific features, such as agricultural drainage features and site slopes, or on biosolids application procedures demonstrating precise placement methods.

(2) Extended buffer setback distances. For applications where surface applied biosolids are not incorporated, the department [~~may include as a site specific permit condition authorization for the department, or the local monitor with approval of the department, to require~~ (or the local monitor with approval of the department) may require as a site-specific permit condition,] extended buffer zone setback distances when necessary to protect odor sensitive receptors. When necessary, buffer zone setback distances from odor sensitive receptors may be extended to 400 feet or more and no biosolids shall be applied within such extended buffer zones. In accordance with 12VAC5-585-260, the commissioner may impose standards and requirements that are more stringent when required to protect public health and the environment, or prevent nuisance conditions from developing, either prior to or during biosolids use operations.

e. Monitoring and testing. ~~(3) Monitoring.~~ Groundwater and surface water and soils monitoring and testing may be required by the department, or the local monitor with approval of the department for any frequent application sites (reach agronomic rate more than once in three years) for which a potential environmental or public health concern is identified by the commissioner in accordance with this chapter (12VAC5-585-320). Groundwater monitoring and testing should not be required for infrequent application of biosolids.

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[ ~~B. C.~~ ] Forestland (Silviculture). Silvicultural use includes application of biosolids to commercial timber and fiber production land, as well as federal and state forests. The forestland may be recently cleared and planted, young plantations (two-year-old to five-year-old trees) or established forest stands.

1. Sludge standards. Refer to Article 3 (12VAC5-585-540 et seq.) of this part.

2. Site suitability. Site suitability requirements should conform to subdivision A 2 of this section. The soil pH should be managed at the natural soil pH for the types of trees proposed for growth.

3. Management practices.

a. Application rates. Biosolids application rates shall be determined by the division in accordance with the provisions of [ ~~subdivision A 3 of this section~~ the management practices plan ] and [ ~~based on nitrogen uptake rates and yields as recommended in~~ ] information provided by the Virginia Department of Forestry.

b. Operations.

(1) Field management.

(a) High pressure spray shall not be utilized if public activity is occurring within 1,500 feet downwind of the application site. Public access to the site shall be adequately limited or controlled following application (Article 3 of this part).

(b) The operations should only proceed when the wind velocity is less than or equal to 15 miles per hour. When high pressure spray is used windless conditions are preferred for such operations.

(c) Biosolids application vehicles should have adequate clearance to be suitable for silvicultural field use.

(d) Application scheduling should take into account high rainfall periods and periods of freezing conditions.

(e) Monitoring requirements shall be site specific and may include groundwater, surface water or soils, for frequent application sites.

(2) Buffer zones. Buffer zones should conform to those for agricultural utilization. Refer to Table 2.

[ ~~C. D.~~ ] Reclamation of disturbed land. Biosolids applied at rates exceeding the agronomic rate may reclaim disturbed land in one or more of the following ways: (i) surface or underground mining operations, (ii) the deposition of ore processing wastes, (iii) deposition of dredge spoils or fly ash in construction areas such as roads and borrow pits. Reclamation of disturbed land is within the jurisdiction of the Virginia Department of Mines, Minerals and Energy. That department should be contacted concerning issuance of a permit for these operations. The land reclamation operation

plan should be prepared with the assistance of the Virginia Department of Conservation and Recreation, the Soil Conservation Service and the Virginia Cooperative Extension Service.

1. Sludge standards. Refer to Article 3 of this part.

2. Site suitability. Site suitability requirements should conform to subdivision A 2 of this section. Exceptions may be considered on a case-by-case basis.

3. Management practices.

a. Application rates. The application rates shall be established [ ~~by the division in accordance with subdivision A 3 of this section and the recommendation of~~ in the management practices plan through recommendations provided by ] appropriate agencies including the Virginia Department of Mines, Minerals and Energy and the appropriate faculty of the Department of Crop and Soil Environmental Sciences of the Virginia Polytechnic Institute and State University.

b. Vegetation selection. The land should be seeded with grass and legumes even when reforested in order to help prevent erosion and utilize available plant nitrogen. The [ ~~sludge~~ ] management [ practices ] plan should include information on the seeding mixture and a detailed seeding schedule.

c. Operations.

(1) The soil pH should be maintained at 6.0 or above if the cadmium level in the biosolids applied is at or above 21 mg/kg. during the first year after the initial application. Soil samples should be analyzed by a qualified laboratory. The application rate shall be limited by the most restrictive cumulative trace element loading (Table 9).

(2) Surface material should be turned or worked prior to the surface application of liquid biosolids, to minimize potential for runoff, since solids in liquid sludge can clog soil surface pores.

(3) Unless the applied biosolids are determined to be Class A or have been documented as subjected to Class I treatment, crops intended for direct human consumption shall not be grown for a period of three years following the date of the last sludge application, unless the crop is tested to verify that the crop is not contaminated. No animals whose products are intended for human consumption may graze the site or obtain feed from the site for a period of six months following the date of the last biosolids application, unless representative samples of the animal products are tested after grazing and prior to marketing to verify that they are not contaminated.

**12VAC5-585-600. Maximum application rates for high lime biosolids.**

Application rates for biosolids borne calcium carbonate equivalency (CCE) alkaline stabilized biosolids may be restricted in accordance with the soil pH, as listed in Table 14. Biosolids conditioned or stabilized with lime contain quantities of lime that may buffer capacity, as determined by commercial and state soil testing laboratories. The application of biosolids will affect soil pH (expressed as calcium carbonate equivalency). Unless properly controlled, high rates of CCE calcium carbonate equivalence (i.e., CCE, which is a factor that relates the liming potential of biosolids to calcium carbonate limestone) application can have an adverse effect on crop productivity by increasing the soil pH beyond the range optimum for maximum crop production. Therefore, agricultural use of biosolids with high CCE content should be controlled to correspond with current agricultural liming practices. Recommendations for application of agricultural limestone to soil types to obtain a desired pH value is given in Table 14. Corresponding application rates for lime stabilized biosolids may be computed by determining the actual CCE content of the biosolids and adjusting the recommended lime rate by the appropriate factor. For example, the rates in Table 14 should be multiplied by a factor of 3.33 to determine the biosolids application rate needed (dry tons/acre) for biosolids with a CCE of 30%. Calcium carbonate equivalent loadings should not exceed rates designed to target attain soil pH values of in the plow layer above 6.5 for low soils located in the coastal plain soils and above 6.8 for mid to upper coastal plains soils located in other areas of the state.

**12VAC5-585-610. Maximum application rates for phosphorus biosolids.**

[ Biosolids use operations involving high application rates of phosphorus may involve additional monitoring requirements (12VAC5 585 400) for permit issuance. Submission of additional information may be requested for any proposed biosolids use sites exhibiting very high soil test phosphorus of 55 or more parts per million parts phosphorus (Mehlich I analytical test procedure or equivalent). The Virginia Department of Conservation and Recreation may require the preparation of a complete nutrient management plan or a soil conservation plan, as appropriate, if such sites exhibit a significant erosion potential based on site soils and topography. The division will request such information from the Virginia Department of Conservation and Recreation and the required plans shall be completed prior to any biosolids use operations on that site. If soils exhibit very high soil test phosphorus of 55 or more parts per million phosphorus (Mehlich I analytical test procedure or equivalent procedure approved by the Department of Conservation and Recreation), the maximum application rates for phosphorus contained in biosolids together with phosphorus contained in

other applied nutrient sources to the site and all applicable phosphorus management practices shall be consistent with the nutrient management plan. ]

TABLE 8

A. RECOMMENDED CEILING LIMITS FOR THE TRACE ELEMENT CONTENT OF BIOSOLIDS ACCEPTABLE FOR LAND APPLICATION

TRACE ELEMENT	CONCENTRATION IN MILLIGRAMS PER KILOGRAMS (DRY WEIGHT)
Arsenic	75
Cadmium	85
Copper	4300
Lead	840
Mercury	57
Molybdenum	75
Nickel	420
Selenium	100
Zinc	7500

B. MAXIMUM MONTHLY AVERAGE TRACE ELEMENT CONCENTRATIONS FOR APPLICATION OF EXCEPTIONAL QUALITY BIOSOLIDS TO LAWNS OR HOME GARDENS IN RESIDENTIAL LOCATIONS

TRACE ELEMENT	CONCENTRATION IN MILLIGRAMS PER KILOGRAMS (DRY WEIGHT)
Arsenic <sup>(1)</sup>	41
Cadmium	39
Copper	1500
Lead	300
Mercury	17
Molybdenum <sup>(1)</sup>	
Nickel	420
Selenium	100
Zinc	2800

Note: <sup>(1)</sup>The monthly average concentration is currently under study by USEPA.

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TABLE 9

MAXIMUM CUMULATIVE APPLICATION OF BIOSOLIDS TRACE ELEMENTS THAT CAN BE APPLIED TO SOILS USED FOR CROP PRODUCTION<sup>(1)</sup>

TRACE ELEMENT	Kg/ha	(lbs/AC)
Arsenic <sup>(2)</sup>	41	(36)
Cadmium	39	(35)
Copper	1,500	(1,340)
Lead	300	(270)
Mercury	17	(16)
Molybdenum <sup>(2)</sup>		
Nickel	420	(375)
Selenium	100	(89)
Zinc	2,800	(2,500)

Notes: <sup>(1)</sup>Such total applications to be made on soils with the Biosolids/soil mixture pH adjusted to 6.0 or greater if the Biosolids cadmium content is greater than or equal to 21 mg/kg.

The maximum cumulative application rate is limited for all ranges of cation exchange capacity due to soil background pH in Virginia of less than 6.5, and lack of regulatory controls of soil pH adjustment after Biosolids application ceases.

<sup>(2)</sup>The maximum cumulative application is currently under study by USEPA.

TABLE 10

COMPARISONS OF TIME RESTRICTIONS FOLLOWING COMPLETION OF BIOSOLIDS APPLICATION ASSOCIATED WITH CLASS II TREATMENT LEVELS

Type of Application	Surface <sup>(1)</sup>	Incorporated <sup>(2)</sup>
Control of Access for Public Use <sup>(3)</sup>	12 Months	12 Months
Time lapse required before above ground food crops with harvested parts that touch the biosolids/soil mixture can be harvested.	14 Months	14 Months
Time lapse before food crops with harvested parts below the land surface can be harvested	20 Months	38 Months
Harvesting food crops, feed crops and fiber crops	1 Month	1 Month
Grazing and feeding harvested crops to animals whose products are consumed by humans <sup>(4)</sup>	1 Month	1 Month
Grazing of farm animals whose products are not consumed by humans	1 Month	1 Month
Harvesting turf for placement on land with a high potential for public exposure or a lawn <sup>(5)</sup>	12 Months	12 Months

Notes: <sup>(1)</sup>remains on land surface for four months or longer prior to incorporation.

<sup>(2)</sup>remains on land surface for less than four months prior to incorporation.

<sup>(3)</sup>public access to agricultural sites and other sites with a low potential for direct contact with the ground surface shall be controlled for 30 days.

<sup>(4)</sup>the restriction for lactating dairy cows is two months.

<sup>(5)</sup>this time restriction must be met unless otherwise specified by the permitting authority.

TABLE 11  
NITROGEN REQUIREMENTS FOR AGRONOMIC RATES

A. RECOMMENDED PLANT AVAILABLE NITROGEN (PAN) APPLICATION RATES IN POUNDS OF NITROGEN (N) PER ACRE FOR VARIOUS NON-IRRIGATED CROPS GROWN ON SOILS RECEIVING INFREQUENT BIOSOLIDS APPLICATIONS<sup>(1)</sup>

Crop	Soil Productivity Group									
	I		II		III		IV		V	
	A	B	A	B	A	B	A	B		
	lbs N/acre									
Corn grain [ <del>or silage</del> ]	[ <del>160</del> to 180 ]	[ <del>150</del> to 170 ]	[ <del>140</del> to 160 ]	[ <del>130</del> to 150 ]	[ <del>120</del> to 140 ]	[ <del>110</del> to 130 ]	[ <del>100</del> to 120 ]	[ <del>85</del> to <del>105</del> 100 ]	[ <del>65 to 85</del> 80 ]	
[ <u>Corn Silage</u> ]	<u>200</u>	<u>185</u>	<u>175</u>	<u>165</u>	<u>155</u>	<u>145</u>	<u>130</u>	<u>110</u>	<u>90</u> ]	
Grain sorghum	140	130	120	110	100	[ <del>95</del> <u>90</u> ]	90		80	
Full Season Soybeans <sup>(2)</sup>	160 to 180	150 to 170	140 to 160	130 to 150	120 to 140	110 to 130	100 to 120	85 to 105		65 to 85
Canola <sup>(3)</sup>	100		90		80		60		60	
Wheat	100		90		80		60		60	
Barley	90		80		80		60		60	
Rye	75		75		75		75		75	
Oats	80		80		80		60		60	
Tallgrass hay <sup>(4)</sup>	250		250		200		160		160	
Bermudagrass hay	[ <u>240-</u> ] 300		[ <u>240-</u> ] 300		[ <u>210-</u> ] 260		210 [ <u>-260</u> ]		210 [ <u>-260</u> ]	
Pasture Fescue/Orchardgrass <sup>(5)</sup>	120		120		100		80		80	
Bermudagrass pasture [ <sup>(7)</sup> ]	[ <del>200</del> <u>175-225</u> ]		[ <del>200</del> <u>175-225</u> ]		[ <del>160</del> <u>120-180</u> ]		120 [ <u>-180</u> ]		120 [ <u>-180</u> ]	
Alfalfa [ <sup>(7)</sup> ]	300		300		210		150		150	
Sudangrass, sudan-sorghum, millet <sup>(6)</sup>	70		70		70		70		70	
Stockpiled tall fescue (summer application by August [ <del>31</del> <u>15</u> ] )	[ <del>90</del> <u>60-100</u> ]		[ <del>90</del> <u>60-100</u> ]		[ <del>90</del> <u>50-80</u> ]		[ <del>60</del> <u>50-80</u> ]		[ <del>60</del> <u>50-80</u> ]	

Notes: <sup>(1)</sup>For proposed use of crops or PAN rates (lbs/A) not included in the following tables, adequate yield and PAN Data are to be submitted in accordance with 12VAC5-585-140 G (and Part IV) of these regulations.

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<sup>(2)</sup>For doublecrop or late beans planted after 6/21 (of any year) allowable PAN rates are the lowest of the listed values, as rounded to nearest factor of ten.

<sup>(3)</sup>For Fall Application Rate may sidedress up to 60 lbs fertilizer N/acre in late February before spring growth begins.

<sup>(4)</sup>Apply listed PAN rate when application occurs between 3/1 and 9/30 in any year and apply only one-half of listed PAN rates if application will occur between 10/1 of any year and 2/28 of the following year, with remaining PAN applied after 3/1 of that following year.

<sup>(5)</sup>For frequent applications apply 60 lbs PAN/acre per year. Following infrequent application rate, subsequent frequent applications should be adjusted on a case-by-case basis, accounting for residual from other wastes and crops (Part IV, Table A-2).

<sup>(6)</sup>Sudangrass, sudan-sorghum and pearl millet may receive a PAN rate of 120 lbs/A if the application occurs between 3/1 and 6/1 of any year and two cuttings are to be made, weather permitting. For Foxtail or German Millet, cut only once, application will be limited to a PAN rate of 70 LBS/A.

[ <sup>(7)</sup>From 7/1 through 9/14, applications to bermudagrass hay or alfalfa shall only be applied at 50% of the listed rate. ]

## B. ESTIMATED YIELDS IN BUSHELS (bu) OR TONS (T) PER ACRE (A) OF VARIOUS NONIRRIGATED CROPS FOR IDENTIFIED SOIL PRODUCTIVITY GROUPS

Crop	I		II		III		IV		V
	A	B	A	B	A	B	A	B	
Corn Grain(bu/A)	[ <del>160</del> 180 ]	[ <del>150</del> 170 ]	[ <del>140</del> 160 ]	[ <del>130</del> 150 ]	[ <del>120</del> 140 ]	[ <del>110</del> 130 ]	[ <del>100</del> 120 ]	[ <del>85</del> 100 ]	[ <del>65</del> 80 ]
[ Corn ] Silage (T/A)	[ <del>21</del> 25.4 ]	[ <del>20</del> 24.4 ]	[ <del>19</del> 23.4 ]	[ <del>18</del> 22.5 ]	[ <del>17</del> 21.5 ]	[ <del>16</del> 20.5 ]	[ <del>15</del> 19.5 ]	[ <del>13</del> 17.5 ]	[ <del>10</del> 15.6 ]
Grain Sorghum (bu/A)	140	130	120	110	100	90	90		80
Soybeans (bu/A)									
[ -- ] Early season	50	45	40		35		25		20
[ -- ] Late season [ <sup>(7)</sup> ( <sup>8</sup> ) ]	40	34	34	30	25		18		15
Canola [ <sup>(8)</sup> ( <sup>9</sup> ) ]	UNDETERMINED AT THIS TIME								
Wheat(bu/A)									
[ -- ] Standard	64		56		48		40		24
[ -- ] Intensive	80		70		60		50		30
Barley(bu/A)									
[ -- ] Standard	110		70		60		50		30
[ -- ] Intensive	115		88		75		63		38
Oats	80		80		80		60		60
Tallgrass hay (T/A)	>4.0		3.5 - 4.0	[ <del>3-</del> 3.5 [ = 4.0 ]	[ < ] 3.0 [ -3.5 ]		[ NA <3.0 ]		[ NA <3.0 ]
Bermudagrass hay (T/A)	>6.0		[ <del>4.0</del> 5.0 ] - 6.0		[ < ] 4.0 [ -5.0 ]		[ NA 3.0 - 4.0 ]		[ NA <3.0 ]
Alfalfa (T/A)	>6.0		4.0-6.0		<4.0		[ NA <4.0 ]		[ NA <4.0 ]

[ <sup>(7)</sup>Note: Notes: (<sup>8</sup>) ] Late season beans would be planted on or after 6/21 of that year.

[ <sup>(8)</sup>(<sup>9</sup>) ] Sufficient Yield Data not currently available.

C. RESIDUAL PLANT AVAILABLE NITROGEN (PAN) REMAINING FROM GROWTH OF VARIOUS LEGUMES DURING THE PREVIOUS YEAR [ <sup>(9)</sup>(10) ]

Crop	%Stand	Yield Description	Residual Pan (lbs/A)
Alfalfa	50-75	Good (>4T/A)	90
	25-49	Fair (3-4T/A)	70
	<25	Poor (<3T/A)	50
Red Clover	>50	Good (>3T/A)	80
	25-49	Fair (2-3T/A)	60
	<25	Poor (<2T/A)	40
Hairy Vetch	80-100	Good	100
	50-79	Fair	75
	<50	Poor	50
Peanuts			45
Soybeans			20 [ <sup>(11)</sup> ]

Notes: [ <sup>(9)</sup>(10) ] The Residual PAN values must be subtracted from the PAN values listed in Table A of this section to determine Biosolids Application rates following growth of Legume Crops the previous year.

[ <sup>(11)</sup> ] Where yield data is available utilize 0.5 pounds per bushel.

TABLE 12

A. ESTIMATED NITROGEN MINERALIZATION RATES FOR BIOSOLIDS

Biosolids Type	Years After Application Year <sup>(1)</sup>			
	First 0-1	Second 1-2	Third 2-3	3-4
Lime Stabilized	0.30	<del>0.15</del> 0.10	<del>0.07</del> 0.10	0.05
Aerobic digestion	0.30	<del>0.15</del> 0.10	<del>0.08</del> 0.10	0.05
Anaerobic digestion [ <sup>(2)</sup> ]	<del>0.20</del> 0.30	0.10	<del>0.05</del> 0.10	0.05
Composted <sup>(2)(2)</sup>	0.10	0.05	0.03	0.00

Notes:

<sup>(1)</sup>Typical anaerobically digested municipal biosolids should be characterized by a total volatile solids fraction of 55% or

~~less total organic nitrogen of 4.0% or less and an ammonia nitrogen content of 1.0% or less. To determine nitrogen available from previous biosolids applications, multiply the initial organic nitrogen analysis by the appropriate mineralization factor.~~

<sup>(2)</sup>~~The mineralization rate may be increased up to a value of 0.3 in accordance with the degree of stabilization achieved. Total organic nitrogen content of 2.0% or less and no significant ammonia nitrogen.~~

<sup>(3)</sup>~~Biosolids compost should be characterized by a total organic nitrogen content of 2.0% or less and no significant ammonia nitrogen.~~

B. ESTIMATED BIOSOLIDS AMMONIA NITROGEN VOLATILIZATION RATES AVAILABILITY FACTORS BASED ON EXPECTED VIOLATILIZATION RATES FOR BIOSOLIDS

Management Practice Method of Application	Percent Ammonia Volatilized Availability Factor <sup>(1)</sup>	
	Biosolids pH Less than 10	Biosolids pH Greater than 10
Injection below surface	<del>0</del> 1.0	<del>0</del> 1.0
Surface application with/		
--Incorporation within 24 hours	<del>45</del> 0.85	<del>25</del> 0.75
--Incorporation within 1-7 days	<del>30</del> 0.70	<del>50</del> 0.50
--Incorporation after 7 days	<del>50</del> 0.50	<del>75</del> 0.25

<sup>(1)</sup>To determine the plant-available biosolids ammonium nitrogen in the soil, multiply the biosolids ammonium nitrogen concentration or total weight applied by the appropriate availability factor.



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TABLE 13

**A. ORGANIC CHEMICAL TESTING THAT MAY BE REQUIRED TO IDENTIFY AN EXCEPTIONAL QUALITY BIOSOLIDS**

- Organic Chemicals
- Aldrin/dieldrin (total)
- Benzo (a) pyrene
- Chlordane
- DDT/DDE/DDD (total)<sup>(1)</sup>
- Dimethyl nitrosamine
- Heptachlor
- Hexachlorobenzene
- Hexachlorobutadiene
- Lindane
- Polychlorinated biphenols
- Toxaphene
- Trichloroethylene

<sup>(1)</sup>Note: <sup>(1)</sup>DDT 2,2-Bis (chlorophenyl)-1,1,1-Trichloroethane

DDE 1,1-Bis (chlorophenyl)-2,2-Dichloroethane

DDD 1,1-Bis (chlorophenyl)-2,2-Dichloroethane

**B. THE RECOMMENDED APPLICATION RATE FOR DOMESTIC SEPTAGE APPLIED TO AGRICULTURAL LAND, FOREST, OR A RECLAMATION SITE SHALL NOT EXCEED THE ANNUAL APPLICATION RATE CALCULATED USING THE FOLLOWING EQUATION:**

$$AAR = N / (0.0026)$$

Where:

AAR = Annual application rate in gallons per acre per 365 day period.

N = Amount of nitrogen in pounds per acre per 305 day period needed by the crop or vegetation grown on the land.

TABLE 14

**A. RECOMMENDED LIME APPLICATION RATES NEEDED TO ADJUST INITIAL SOIL pH TO 6.5 FOR COASTAL PLAINS SOILS**

Initial Soil pH	Soil Type*	
	Coarse Textured	Fine Textured
	Lime, Tons/AC	
4.8	3.5	4.5
5.0	3.0	3.75

5.5	1.75	2.5
6.0	1.25	1.5
6.3	0.75	1.0

**B. RECOMMENDED LIME APPLICATION RATES NEEDED TO ADJUST INITIAL SOIL pH TO 6.8 FOR SOILS LOCATED OUTSIDE THE COASTAL PLAIN**

Initial Soil pH	Soil Type*	
	Coarse Textured	Fine Textured
	Lime, Tons/AC	
4.8	4.25	5.75
5.0	4.0	5.25
5.5	3.0	4.0
6.0	2.0	2.75
6.5	1.25	1.5

Note: \*"Coarse textured soils" include those surface soils designated by USDA SCS soil classification as "sandy loam" or lighter in texture; "fine textured soils" include those classified as having textures heavier than sandy loam.

Part IV

Permit Application Information Required for Land Application, Marketing, or Distribution of Biosolids

**12VAC5-585-620. Minimum information required for completion of a biosolids management practices plan utilizing land application.**

A. General information.

1. Legal Name and Address: The legal name of the owner making application for a permit is to appear on the title page or in the opening paragraph or both. Both the mailing and physical address should be included.

2. Owner Contact: The name, title, address, and telephone number of the individual to be contacted regarding this application should be furnished.

3. A general description of the proposed plan including: name and location of generators and owners involved and copies of agreements developed, biosolids quality, biosolids treatment and handling processes, means of biosolids transport or conveyance, location and volume of storage proposed, general location of sites proposed for application and methods of biosolids application proposed. A description of temporary storage methods should be provided.

4. Written permission of landowners and farmers on a form approved by the department and the board (see Table A-1)

and pertinent lease agreements as may be necessary for operation of the treatment works.

5. Compliance Methods for notification of local government and obtaining compliance with local government zoning and applicable ordinances.

6. A copy of a letter of approval of the nutrient management plan for the operation from the Department of Conservation and Recreation if required in 12VAC5-585-630 A 3.

B. Design information.

1. Biosolids Characterization.

a. Amounts and volumes to be handled.

b. Biosolids laboratory analytical data of a representative number of samples of biosolids in accordance with the guideline specified in accordance with Tables 2 and 3. Statement that the biosolids is nonhazardous, documentation statement for treatment and quality and description of how treated biosolids meets other standards in accordance with this chapter.

2. If a facility construction permit must be issued the appropriate certificate shall be obtained from the State Water Control Board and a Permit To Operate obtained in accordance with 12VAC5-585-200 or 12VAC5-585-240, with plans and specifications for storage facilities of all biosolids to be handled, including routine and emergency storage, depicting the following information:

a. Site layout on a recent 7.5 minute topographic quadrangle or other appropriate scaled map with the following information.

(1) Location of any required soil, geologic and hydrologic test holes or borings will be submitted.

(2) Location of the following field features within 0.25 miles of the site boundary (indicate on map) with the approximate distances from the site boundary.

(a) Water wells (operating or abandoned).

(b) Surface waters.

(c) Springs.

(d) Public water supplies.

(e) Sinkholes.

(f) Underground and/or surface mines.

(g) Mine pool (or other) surface water discharge points.

(h) Mining spoil piles and mine dumps.

(i) Quarries.

(j) Sand and gravel pits.

(k) Gas and oil wells.

(l) Diversion ditches.

(m) Occupied dwellings, including industrial and commercial establishments.

(n) Landfills - dumps.

(o) Other unlined impoundments.

(p) Septic tanks and drainfields.

(q) Injection wells.

b. Topographic map (10-foot contour preferred) of sufficient detail to clearly show the following information:

(1) Maximum and minimum percent slopes.

(2) Depressions on the site that may collect water.

(3) Drainageways that may attribute to rainfall run-on to or runoff from this site.

(4) Portions of the site (if any) which are located within the 100-year floodplain.

c. Data and specifications for the liner proposed for seepage control.

d. Scaled plan view and cross-sectional view of the facilities showing inside and outside slopes of all embankments and details of all appurtenances.

e. Calculations justifying impoundment capacity.

f. Groundwater monitoring plans for the facilities including pertinent geohydrological data to justify upgradient and downgradient well location and depth.

3. Generic plans for on-site temporary storage.

4. A legible topographic map of proposed application areas to scale as needed to depict the following features:

~~(a)~~ a. Property boundaries.

~~(b)~~ b. Surface water courses.

~~(c)~~ c. Water supply wells and springs.

~~(d)~~ d. Roadways.

~~(e)~~ e. Rock outcrops.

~~(f)~~ f. Slopes.

~~(g)~~ g. Frequently flooded areas (SCS designation).

The map shall also show the acreage to be amended with biosolids together with the net acres for biosolids application computed.

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5. County map or other map of sufficient detail to show general location of the site and proposed transport vehicle haul routes to be utilized from the treatment plant.
6. A USDA soil survey map, if available, of proposed sites for land application of biosolids.
7. Representative soil samples are to be collected to address each major soil types for each field and analyzed for the soil parameters indicated in accordance with Table 5, and test results should be submitted with the operational plan.
8. For projects utilizing frequent application of biosolids the following additional site information will be necessary.
  - a. Information specified (2 a and 4),
    - b. Representative soil borings and test pits to a depth of five feet or to bedrock if shallower, are to be coordinated for each major soil type and the following tests performed and data collected.
      - (1) Soil type.
      - (2) Soil texture for each horizon (USDA classification).
      - (3) Soil color for each horizon.
      - (4) Depth from surface to mottling and bedrock if less than two feet.
      - (5) Depth from surface to subsoil restrictive layer.
      - (6) Indicated infiltration rate (surface soil).
      - (7) Indicated permeability of subsoil restrictive layer.
    - c. Additional soil testing in accordance with Table 5.
    - d. Groundwater monitoring plans for the land treatment area including pertinent geohydrologic data to justify upgradient and downgradient well location and depth.
9. Description of agricultural practices including a list of proposed crops to be grown, their respective anticipated yield, planting and harvesting schedules, proposed biosolids application rates on a field-by-field basis and how biosolids application will be integrated with these schedules.
10. Pertinent calculations justifying storage and land area requirements for biosolids application including an annual biosolids balance incorporating such factors as precipitation, evapotranspiration, soil percolation rates, wastewater loading, monthly storage (input and drawdown).

## **12VAC5-585-630. Operation [ ~~Minimum site specific Site-specific~~ ] information required for a management practices plan [ (to be made available for field use and farmer/owner information) ].**

~~A. Comprehensive, general description of the operation including biosolids source(s), quantities, flow diagram illustrating treatment works biosolids flows and solids handling units, site description, crops utilized, application rates, methodology of biosolids handling for application periods, including storage and nonapplication period storage, and alternative management methods when storage is not provided. Information in accordance with a nutrient management plan as approved by the Department of Conservation and Recreation shall be submitted for all frequent at agronomic application sites. The nutrient management plan information shall also be submitted for proposed application sites owned or operated in conjunction with operations in which: (i) domestic livestock have been, are, or will be stabilized or confined and fed or maintained for a total of 45 days or more in any 12-month period; and (ii) crops, vegetation, forage growth or post harvest residues are not sustained over any portion of the operation site. The approved nutrient management plan shall account for all sources of nutrients to be applied to the site and include at a minimum the following information: (i) a site map indicating the location of any waste storage facilities and the fields where biosolids will be applied; (ii) site evaluation and assessment of soil types and potential productivities; (iii) nutrient management sampling including soil monitoring; (iv) biosolids application rates based on the overall nutrient requirements of the proposed crop and soil monitoring results; and (v) biosolids and other nutrient source application schedules and land area requirements.~~

### A. Site management [ ~~plans~~ ].

1. A comprehensive, general description of the operation shall be provided, including biosolids source(s), quantities, flow diagram illustrating treatment works biosolids flows and solids handling units, site description, methodology of biosolids handling for application periods, including storage and nonapplication period storage, and alternative management methods when storage is not provided.

2. A nutrient management plan prepared by a person who is certified as a nutrient management planner by the Commonwealth of Virginia shall be developed for all application sites prior to biosolids application. Copies of the nutrient management plan shall be provided to the farmer operator of the site, the Department of Conservation and Recreation regional office and the chief executive officer or designee for the local government, unless they request in writing not to receive the nutrient management plan.

3. A nutrient management plan approved by the Department of Conservation and Recreation shall be

required for land application more frequently than once every three years at greater than 50% of the annual agronomic rate on application sites and application sites owned or operated in conjunction with a confined animal feeding operations. Confined animal feeding operation means (i) domestic livestock have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period; and (ii) crops vegetation, forage growth or post-harvest residues are not sustained over any portion of the operation site.

4. All nutrient management plans shall account for all sources of nutrients to be applied to the site and include at a minimum the following information: (i) a site map indicating the location of any waste storage facilities and the fields where biosolids or animal waste will be applied, (ii) site evaluation and assessment of soil types and potential productivities, (iii) nutrient management sampling including soil monitoring, (iv) biosolids or animal waste application rates based on the overall nutrient requirements of the proposed crop and soil monitoring results, and (v) biosolids and other nutrient source application schedules and land area requirements.

B. Biosolids transport.

1. Description and specifications on the bed or the tank vehicle.
2. Haul routes to be used from the biosolids generator to the storage unit and land application sites.
3. Procedures for biosolids off-loading at the biosolids facilities and the land application site together with spill prevention, cleanup, (including vehicle cleaning), field reclamation and emergency spill notification and cleanup measures.
4. Voucher system used for documentation and recordkeeping.

C. Field operations.

1. Storage.
  - a. Routine storage -- supernatant handling and disposal, biosolids handling, and loading of transport vehicles, equipment cleaning, freeboard maintenance, inspections for structural integrity.
  - b. Emergency storage -- procedures for department/board approval and implementation.
  - c. Temporary or field storage -- procedures to be followed including either designated site locations provided in the "Design Information" or the specific site criteria for such locations including the liner/cover requirements and the time limit assigned to such use.
  - d. Field reclamation of off-loading (staging) areas.

2. Application methodology.

- a. Description and specifications on spreader vehicles.
- b. Procedures for calibrating equipment for various biosolids contents to ensure uniform distribution and appropriate loading rates on a day-to-day basis.
- c. Procedures used to ensure that operations address the following constraints: Application of biosolids to frozen ground, pasture/hay fields, crops for direct human consumption and saturated or ice/snow covered ground; maintenance buffer zones, slopes, prohibited access for beef and dairy animals, soil pH requirements, and proper site specific biosolids loading rates on a field-by-field basis.

VA.R. Doc. No. R05-190; Filed October 22, 2007, 2:49 p.m.



**TITLE 22. SOCIAL SERVICES**

**STATE BOARD OF SOCIAL SERVICES**

**Final Regulation**

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

Title of Regulation: **22VAC40-72. Standards for Licensed Assisted Living Facilities (adding 22VAC40-72-55, 22VAC40-72-367).**

Statutory Authority: §§63.2-217 and 63.2-1732 of the Code of Virginia.

Effective Date: December 12, 2007.

Agency Contact: Judy McGreal, Program Development Consultant, Department of Social Services, Division of Licensing Programs, 7 North Eighth Street, Room 5214, Richmond, VA 23219, telephone (804) 726-7157, FAX (804) 726-7132, TTY (800) 828-1120, or email [judith.mcgreal@dss.virginia.gov](mailto:judith.mcgreal@dss.virginia.gov).

Summary:

*The amendments implement 2007 amendments to the Code of Virginia that require assisted living facilities to (i) register with the Department of State Police to receive notice of the registration of any sex offender within the same or a contiguous zip code area to that of the facility, and (ii) ascertain, prior to admission, whether a potential*

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*resident is a registered sex offender if the facility anticipates the potential resident's length of stay will exceed three days or if the resident in fact stays longer than three days.*

## **22VAC40-72-55. Registration.**

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

## **22VAC40-72-367. Sex offender screening.**

The assisted living facility shall ascertain, prior to admission, whether a potential resident is a registered sex offender if the facility anticipates the potential resident will have a length of stay greater than three days or in fact stays longer than three days.

VA.R. Doc. No. R08-959; Filed October 23, 2007, 10:26 a.m.

## **Final Regulation**

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

Title of Regulation: **22VAC40-375. Economic and Employment Improvement Program for Disadvantaged Persons (repealing 22VAC40-375-10 through 22VAC40-375-60).**

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

Effective Date: December 12, 2007.

Agency Contact: Faye Palmer, Manager Workforce Development, Department of Social Services, Division of Benefit Programs, 7 North 8th Street, Richmond, VA 23219, telephone (804) 726-7938, FAX (804) 726-7946, TTY (800) 828-1120, or email faye.palmer@dss.virginia.gov.

### Summary:

*This action eliminates the regulation made obsolete by the repeal of the Economic Employment Improvement Program for Disadvantaged Persons by Chapter 428 of the 2003 Acts of Assembly. The program has not been operational since 2004.*

VA.R. Doc. No. R08-975; Filed October 23, 2007, 10:27 a.m.



# GENERAL NOTICES/ERRATA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

### Restore Water Quality in Parts of Accotink Creek and Difficult Run

Announcement of total maximum daily load (TMDL) studies to restore water quality in parts of Accotink Creek and Difficult Run that have benthic and bacteria impairments.

Purpose of notice: The Department of Environmental Quality (DEQ) and the Department of Conservation and Recreation announce the second technical advisory committee (TAC) meeting for the Accotink Creek and Difficult Run TMDL studies.

Technical Advisory Committee meeting:

Wednesday, November 28, 2007 from 1:30 p.m. – 3:30 p.m.  
Fairfax County Government Center  
Conference Rooms 9 and 10  
12000 Government Center Parkway, Fairfax, VA 22035

Meeting description: This is the second technical advisory committee meeting for this project. The purpose of this meeting is to update the TAC on the project, and solicit comments and feedback on new materials presented at the meeting.

Description of study: Portions of Accotink Creek and Difficult Run have been identified as impaired on the Clean Water Act §303(d) list for not supporting the primary contact recreation use due to elevated levels of bacteria and the aquatic life use due to poor health in the benthic biological community. Virginia agencies are working to identify the sources of bacteria contamination and benthic stressors for these two stream segments. The impaired segment of Difficult Run is located in portions of the City of Fairfax, and Fairfax County. The impaired segment of Accotink Creek is also located in portions of the City of Fairfax, and Fairfax County. Below is a description of the impaired portions of Accotink Creek and Difficult Run that will be addressed in this study:

Stream Name	Locality	Impairments	Area (miles)	Upstream Limit	Downstream Limit
Accotink Creek	Fairfax County City of Fairfax	Fecal Coliform Bacteria Benthic	7.35	Confluence of Accotink Creek with Calamo Branch	Start of the tidal waters of Accotink Bay
Difficult Run	Fairfax County City of Fairfax	E. Coli Bacteria Benthic	2.93	Confluence of Difficult Run with Captain Hickory Run	Confluence of Difficult Run with the Potomac River

During the study, DEQ will develop a total maximum daily load, or a TMDL, for each impaired stream segment, for each specific impaired use. A TMDL is the total amount of a pollutant a water body can receive and still meet water quality standards. To restore water quality, contamination levels have to be reduced to the TMDL allocated amount.

How to comment: The public comment period on the materials presented at the TAC Meeting will extend from November 28, 2007, to December 27, 2007. DEQ accepts written comments by email, fax, or postal mail. Written comments should include the name, address, and telephone number of the person commenting, and be received by DEQ during the comment period. Please send all comments to the contact listed below.

Contact for additional information: Katie Conaway, Virginia Department of Environmental Quality, 13901 Crown Court, Woodbridge, VA 22193, email [mkconaway@deq.virginia.gov](mailto:mkconaway@deq.virginia.gov).

### Total Maximum Daily Load - Looney Creek

The Department of Environmental Quality and the Department of Conservation and Recreation seek written and oral comments from interested persons on the development of an implementation plan (IP) for a bacteria total maximum daily load (TMDL) for Looney Creek. A TMDL for the Looney Creek 2.48 miles in length bacteria impairment was approved by EPA in June 2004. Looney Creek is located in Botetourt County.

Section 62.1-44.19:7 C of the Code of Virginia requires the development of an IP for approved TMDLs. The IP should provide measurable goals and the date of expected achievement of water quality objectives. The IP should also include the corrective actions needed and their associated costs, benefits and environmental impacts.

The second and final public meeting on the development of the IP for the Looney Creek bacteria TMDL will be held on Tuesday, November 27, 2007, at 7 p.m. in the Buchanan Elementary School, 255 School House Road, Buchanan, Virginia.

The public comment period will end on December 28, 2007. A fact sheet on the development of the IP is available upon request. Questions or information requests should be addressed to Charlie Lunsford. Written comments and inquiries should include the name, address, and telephone number of the person submitting the comments and should be sent to Mr. Charlie Lunsford, Department of Conservation and Recreation, 203 Governor Street, Richmond, VA 23219, telephone (804) 786-3199, FAX (804) 786-1798, or email [charles.lunsford@dcr.virginia.gov](mailto:charles.lunsford@dcr.virginia.gov).

### BOARD OF HEALTH AND DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

#### **Proposed Notice of Request for Certificate of Public Need Applications for Development of Additional Nursing Home Beds Planning Target Year 2010**

Legal Notice of Request for Certificate of Public Need Applications.

Pursuant to the authority vested in the State Board of Health (board) and the Department of Medical Assistance Services by §32.1-102.3:2 of the Code of Virginia, notice is hereby given of the issuance of a proposed request for applications (RFA). This RFA is a request for certificate of public need (COPN) applications for projects that will result in an increase in the number of beds in which nursing home services are provided in the Commonwealth of Virginia. The RFA process is outlined in 12VAC5-220-335 of the Virginia Medical Care Facilities Certificate of Public Need Rules and Regulations.

Eligible Planning District and Total Nursing Home Beds Available for Authorization.

In the review cycle established by this RFA, the Commissioner of Health will consider requests for COPNs that propose an increase in nursing home beds in the planning district identified below and that propose an increase in beds no greater than the number of available beds shown below for that planning district. COPN requests that propose an increase in nursing home beds in any other planning district not identified below or propose an increase in beds greater than the number of available beds shown below for the eligible planning district will not be accepted for review.

Planning District 14, also known as Piedmont Planning District, consisting of the counties of Amelia, Buckingham, Charlotte, Cumberland, Lunenburg, Nottoway, and Prince Edward.

Total nursing home beds available for authorization: 30.

Evaluation of Need for Additional Nursing Home Beds. The Nursing Home Services component of the Virginia State Medical Facilities Plan contains a nursing home bed need forecasting method (12VAC5-360-40 C). This method has been employed by the Virginia Department of Health to compute a forecast of needed nursing home beds in 2010 in each of Virginia's 22 planning districts.<sup>1</sup>

Consistent with the Virginia State Medical Facilities Plan (12VAC5-360-40 A), no planning district is considered to have a need for additional nursing home beds unless the estimated average annual occupancy of all existing nonfederal, Medicaid-certified nursing home beds in the planning district was at least 95% for the most recent three years for which bed utilization has been reported to the

Virginia Department of Health (through nursing home filings with Virginia Health Information, Inc.).<sup>2</sup>

For purposes of this document, reporting years 2003 through 2005 are considered to be the most recent three years. The estimated average annual occupancy rates of some planning districts were adjusted to take into account certain regulatory sanctions (i.e., denial of payment for new admissions) that could have affected the ability of some nursing homes to admit Medicare and/or Medicaid patients for varying periods of time during 2003 through 2005.

Also, no planning district will be considered to have a need for additional nursing home beds if there are uncompleted nursing home beds authorized for the planning district that will be Medicaid-certified beds. The following table displays, by planning district, the nursing home gross bed need forecast for 2010, the current licensed bed inventory and COPN-authorized additions of nursing home beds, and the net bed need forecast for 2010.

The table also shows the estimated average annual occupancy rate of Medicaid-certified nursing home beds for each planning district for the reporting years 2003 through 2005, adjusted for regulatory sanctions in some cases, and identifies the status of each planning district with respect to authorized but uncompleted nursing home beds. The final column of the table states whether the planning district qualifies for additional nursing home beds for 2010.

**Nursing Home Bed Need Forecast and  
Whether a Planning District Qualifies for Additional Nursing Home Beds in 2010**

<b>Planning District</b>	<b>Gross Bed Need Forecast For 2010</b>	<b>Existing and Authorized Beds</b>	<b>Projected Net Bed Need In 2010</b>	<b>Estimated Avg. Occupancy Medicaid Beds 2003-2005</b>	<b>Authorized But Uncompleted Medicaid Beds</b>	<b>Planning District Qualifies for Additional NH Beds</b>
1	625	641	(16)	92.2%	no	no--no need
2	537	547	(10)	83.6%	no	no--no need
3	1,322	1,405	(83)	92.5%	no	no--no need
4	765	788	(23)	80.9%	no	no--no need
5	2,050	2,301	(251)	91.5%	no	no--no need
6	1,650	1,528	122	93.5%	no	no--low occu.
7	949	972	(23)	89.6%	no	no--no need
8	4,868	4,402	466	90.9%	no	no--low occu.
9	881	746	135	94.6%	yes	no--uncom. beds
10	1,083	1,007	76	94.2%	no	no--low occu.
11	1,509	1,550	(41)	93.6%	no	no--no need
12	1,847	1,869	(22)	92.3%	no	no--no need
13	803	851	(48)	92.1%	yes	no--no need
14	677	635	42	95.2%	no	yes--30 beds
15	3,976	4,089	(113)	92.9%	yes	no--no need
16*	910	787	123	94.1%	no	no--low occu.
17	388	342	46	83.5%	no	no--low occu.
18	592	575	17	93.1%	no	no-- low occu.
19	1,130	1,075	55	95.4%	yes	no--uncom. beds
20	4,488	4,421	67	91.7%	no	no--low occu.
21	1,966	1,875	91	90.8%	no	no--low occu.
22	491	389	102	90.9%	no	no--low occu.
<b>Total VA</b>	<b>33,507</b>	<b>32,795</b>	<b>712</b>			

Sources: Virginia State Medical Facilities Plan (12 VAC 5-360-40)  
Virginia Employment Commission (population projections, 2007 edition)  
2002 Virginia Nursing Home Patient Survey, Virginia Association of Regional Health Planning Agencies (for age-specific nursing home use rates)  
Office of Licensure and Certification, VDH (for bed inventory)

\*Note to table: There are 90 authorized but uncompleted nursing home beds in PD 16 that are expected to be Medicaid-certified. However, by virtue of provisions of HB 267 of the 2006 General Assembly (Chap. 816, Acts of Assembly), the existence of these uncompleted beds is not to keep PD 16 from being the subject of an RFA, if PD 16 otherwise qualifies for an RFA. Therefore, PD 16 is shown above as having no uncompleted beds expected to be certified for Medicaid.



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# General Notices/Errata

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## Basis for Review.

The commissioner, in his review of COPN requests submitted pursuant to this RFA, will consider each of the 20 factors enumerated in §32.1-102.3 B of the Code of Virginia, as applicable. He will also consider applicable standards of the State Medical Facilities Plan (12VAC5-360).

## Projection of Potential Fiscal Impact.

The Department of Medical Assistance Services projects total additional expenditures for medical services provided to Medicaid recipients of approximately \$0.96 million for the fiscal year ending June 30, 2010, if all the beds included in this RFA are authorized and available for occupancy by June 30, 2009. This projection is based on the following principal assumptions:

Average proportion of beds filled during FY 2010	91.20%
Assumed Medicaid proportion of bed-days of service	63.82%
Average estimated payment rate per day (direct, indirect, and capital costs)	\$182.89
Estimated patient-pay portion	\$30.67

## Schedule for Review.

COPN requests filed in response to this RFA shall be filed in accordance with the provisions of 12VAC5-220-355. The review schedules shown below will apply. Letters of intent and applications must be received by the Virginia Department of Health Division of COPN and by the Central Virginia Health Planning Agency by the dates shown below in order to qualify for consideration in the specified review cycle.

- Letter of intent must be received by TBA.
- Application must be received by TBA.
- Review cycle will begin on TBA.

## Application Fees.

The Virginia Department of Health shall collect fees for COPN applications filed in response to this RFA. No application may be deemed to be complete for review until the required application fee is paid. The fee is one percent of the proposed capital expenditure for the project, but not less than \$1,000 or more than \$20,000.

## Acceptance of written comments regarding this proposed RFA

Written comments regarding this proposed RFA will be accepted until 5 p.m. on Monday, November 26, 2007, and can be mailed to: Erik Bodin, Office of Licensure and Certification, Virginia Department of Health, 9960 Mayland Drive, Suite 401, Richmond, VA 23233-1463, or faxed to (804) 527-4501.

<sup>1</sup>For conduct of the certificate of public need program, the Virginia Department of Health continues to recognize the former Planning District 20, Southeastern Virginia, and the former Planning District 21, Peninsula, rather than Planning District 23, Hampton Roads, which combined the former PD 20 and PD 21.

<sup>2</sup>The inventory and utilization of the Virginia Veterans Care Center are excluded, by regulation, from consideration in the determination of nursing home bed need.

## SAFETY AND HEALTH CODES BOARD

### Notice of Periodic Review

Pursuant to Executive Order 36 (2006), the Department of Labor and Industry is conducting a periodic review and invites public comment on the following regulation.

#### 16VAC25-50, Boiler and Pressure Vessel Regulations

The department will consider whether this existing regulation is essential to protecting public health, safety and welfare. The department welcomes specific comments on the performance and effectiveness of this regulation and also requests suggestions to improve the content and organization of the regulation to make it more understandable and useful.

The goals of this regulation are as follows:

1. To continue evaluation for the need of other changes to the regulation to assure meeting current technical standards.
2. To protect the public's health, safety, and welfare with the least possible cost and intrusiveness to citizens and businesses in the Commonwealth.

Comments on this regulation are welcome. The comment period begins on November 12, 2007, and comments will be accepted until 5 p.m. on December 3, 2007. Comments may be mailed to Reba O'Connor, Virginia Department of Labor and Industry, Powers-Taylor Building, 13 South 13th Street, Richmond, VA 23219, or email [reba.oconnor@doli.virginia.gov](mailto:reba.oconnor@doli.virginia.gov).

Commenters should include full name and mailing address.

Regulations may be viewed online at the Virginia Regulatory Town Hall site located at <http://www.townhall.state.va.us>.

## STATE LOTTERY DEPARTMENT

### Director's Orders

The following Director's Orders of the State Lottery Department were filed with the Virginia Registrar of Regulations on October 17, 2007. The orders may be viewed at the State Lottery Department, 900 E. Main Street, Richmond, Virginia, or at the office of the Registrar of Regulations, 910 Capitol Street, 2nd Floor, Richmond, Virginia.

Final Rules for Game Operation:

Director's Order Number Fifty-Seven (07)

Virginia's Instant Game Lottery 1014; "Diamond White 7's"  
(effective 10/15/07)

Director's Order Number Fifty-Eight (07)

Virginia's Thirteenth On-Line Game Lottery; "New Year's  
Millionaire Raffle" (effective 10/15/07)

## VIRGINIA CODE COMMISSION

### Elimination of the Calendar of Events Section

Effective July 1, 2007, the Calendar of Events section will no longer be published in the Virginia Register of Regulations. Chapter 300 of the 2007 Acts of Assembly amended the Administrative Process Act by eliminating the requirement that all state agency meeting notices be published in the Virginia Register. In lieu of publication in the Virginia Register, the Virginia Freedom of Information Act was amended to require that agencies post meeting notices on the agency's website and on the Commonwealth Calendar maintained by the Virginia Information Technologies Agency. To access the Commonwealth Calendar, please visit the Commonwealth of Virginia's homepage at [www.virginia.gov](http://www.virginia.gov) and click on the calendar on the right side of the screen. Public hearing information will still be published in the Register and can be found with the corresponding proposed regulation.

### Notice to State Agencies

**Mailing Address:** Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219.

### Filing Material for Publication in the Virginia Register of Regulations

Agencies are required to use the Regulation Information System (RIS) when filing regulations for publication in the Virginia Register of Regulations. The Office of the Virginia Register of Regulations implemented a web-based application called RIS for filing regulations and related items for publication in the Virginia Register. The Registrar's office has worked 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.

The Office of the Virginia Register is working toward the eventual elimination of the requirement that agencies file print copies of regulatory packages. Until that time, agencies may file petitions for rulemaking, notices of intended regulatory actions and general notices in electronic form only; however, until further notice, agencies must continue to file

print copies of proposed, final, fast-track and emergency regulatory packages.

## ERRATA

### MARINE RESOURCES COMMISSION

Title of Regulation: **4VAC20-720, Pertaining to Restriction on Oyster Harvest (amending 4VAC20-720-20, 4VAC20-720-40 through 4VAC20-720-80, 4VAC20-720-110; adding 4VAC20-720-95).**

Publication: 24:4 VA.R. 475-480 October 29, 2007.

Correction to Final Regulation:

4VAC20-720-20, definition of "Rappahannock River Area 8," lines 3 and 4, change "Jones Point (37° 48.786', N., 76° 40.835', W.)" to "Jones Point (37° 46.786', N., 76° 40.835', W.)"

VA.R. Doc. No. R08-971; Filed October 1, 2007, 9:41 a.m.

