



# VIRGINIA

## REGISTER OF REGULATIONS

### Form, Style and Procedure Manual for Publication of Virginia Regulations

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**PART I.  
GENERAL PROVISIONS.**

**Article 1.**

**Purpose and Applicability; Additional Requirements; Definitions.**

**§ 1.1. Purpose and applicability.**

The Form, Style and Procedure Manual for Publication of Virginia Regulations provides guidelines for regulatory agencies to use in preparing information concerning regulatory actions under development or review for publication in the Virginia Register of Regulations and the Virginia Administrative Code. The manual is designed to assist agencies in meeting their responsibilities and establishes the guidelines and procedures to be used in complying with the Virginia Register of Regulations' provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia). Guidance is also provided to assist agencies in complying with the Virginia Register Act (§ 2.2-4100 et seq. of the Code of Virginia) when the Attorney General's office determines that a regulation, regulatory action, or the agency itself is exempt from part or all of the Administrative Process Act. This manual is issued by the Virginia Code Commission under the authority of § 2.2-4104 of the Code of Virginia.

**§ 1.2. Additional requirements.**

A. In addition to this manual, the following documents contain requirements for processing regulations:

1. Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).
2. Most recent executive order from the Governor regarding development and review of regulations proposed by state agencies.
3. Virginia Register Act (§ 2.2-4100 et seq. of the Code of Virginia).
4. Regulations of the Virginia Code Commission for Implementing the Virginia Register Act.

B. The documents referenced in subsection A of this section may be accessed from the Virginia Register of Regulations website (<http://register.dls.virginia.gov/>).

**§ 1.3. Definitions.**

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

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

“Agency” means any authority, instrumentality, officer, board or other unit of state government empowered by the basic laws of Virginia to make regulations or decide cases.

“Agency regulatory coordinator” or “coordinator” means an employee appointed by the head of an agency to coordinate regulatory activities of the agency with the office of the Registrar of Regulations.

“Commission” means the Virginia Code Commission.

“Freedom of Information Act” means Chapter 37 (§ 2.2-3700 et seq.) of Title 2.2 of the Code of Virginia.

“Guidance document” means any document developed by a state agency or staff that provides information or guidance of general applicability to the staff or public to interpret or implement statutes or the agency's rules or regulations, excluding agency minutes or documents that pertain only to the internal management of agencies.

“Manual” means the Form, Style and Procedure Manual for Publication of Virginia Regulations adopted by the Virginia Code Commission pursuant to § 2.2-4104 of the Virginia Register Act.

“NOIRA” means Notice of Intended Regulatory Action.

“Registrar” means the Registrar of Regulations appointed as provided in § 2.2-4102 of the Virginia Register Act.

“Reporting forms” means those forms prepared and required in a regulation by an agency for regulants to provide information to the agency (see § 2.2-4031 of the Code of Virginia). The list of forms appears as an unnumbered section at the end of a regulation in the Virginia Administrative Code.

“Rule” or “regulation” means any statement of general application, having the force of law, affecting the rights or conduct of any person, adopted by an agency in accordance with the authority conferred on it by applicable basic laws.

“Sixty-day public comment period” means the public comment period established by § 2.2-4007.03 of the Administrative Process Act. This public comment period begins upon publication of the proposed regulation in the Virginia Register and ends after a minimum of 60 days or on a later date if specified by the agency.

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

“Virginia Register” means the Virginia Register of Regulations, which is published under the authority of § 2.2-4031 of the Code of Virginia.

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

“VR” means Virginia Regulation and preceded each regulation number in the numbering system used prior to the establishment of the Virginia Administrative Code in 1996. See § 3.5 of this manual for information on the current VAC organization and numbering system.

## **Article 2.**

### **Virginia Register of Regulations.**

#### **§ 1.4. Description; obtaining print or electronic copies of the Register.**

A. The Virginia Register of Regulations, which is published under the authority of § 2.2-4031 of the Code of Virginia, is the official state publication of new and amended regulations, both as proposed and as finally adopted by the Commonwealth’s agencies as defined in § 1.3 of this manual. 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, guidance document lists, general notices to the public, and notices of public hearings on proposed regulations.

B. The Register is published every other Monday on the Virginia Register website and is available to the public at no charge. Information regarding the purchase of an annual subscription (26 issues) for the print version or individual print copies is available at the Register’s website under subscription information.

#### **§ 1.5. Using the Virginia Register Online.**

A. Electronic copies of the Virginia Register in portable document format (PDF) may be accessed from the Register website at [Virginia Register Previous Issues page](#) beginning with Volume 14, Issue 20 (June 22, 1998). Tables of Contents for earlier issues in Volumes 13 (9/30/96 through 9/15/97) and 14 (9/29/97 through 6/8/98) are also available on the Register website. The pdf version of the Virginia Register is the official legal resource.

B. Beginning with Volume 23, Issue 1 (September 18, 2006), regulation text that is new is indicated in the Virginia Register as underscored rather than italic and regulatory actions are published in VAC number order rather than in Proposed, Final, Fast-Track, and Emergency sections.

**§ 1.6. Reserved for searchable database of the Virginia Register.**

**Article 3.**  
**Virginia Administrative Code.**

**§ 1.7. Description; available formats and update schedule; subscriptions; cumulative table.**

A. The Virginia Administrative Code, published by [West, a Thomson Reuters](#) business, under the authority and guidance of the Virginia Code Commission under the provisions of Chapter 15 (§ 30-145 et seq.) of Title 30 of the Code of Virginia, is the official compilation of regulations adopted by the Commonwealth's agencies, departments, boards, commissions, and other authorities empowered by their basic laws to make regulations and decide cases. A description of the VAC numbering system is found in § 3.5 of this manual.

B. The Virginia Administrative Code is available in the following formats:

1. In print form, updated annually in the fall;
2. On CD-ROM, updated quarterly in the spring, summer, fall and winter; and
3. On the Internet at <http://regulations.legis.virginia.gov>, updated daily.

C. Print and CD-ROM subscriptions to the Virginia Administrative Code may be obtained from [West, a Thomson Reuters business](#), telephone 1-800-762-5272.

D. Since the online Virginia Administrative Code is updated daily, the cumulative table is useful in determining the latest version of a regulation:

1. If the person is using the print version of the Virginia Administrative Code, which comes out twice a year;
2. If the person is using the CD version of the Virginia Administrative Code, which comes out four times a year; or
3. If the person is interested in seeing regulatory actions that will become effective in the future.

E. A similar search for the latest version of a VAC section may be accomplished for the print and CD versions of VAC by using the cumulative table link of the Register's website.

F. The cumulative table does not reflect regulatory actions in the NOIRA or proposed stage, only in final, fast-track, or emergency form. To determine if a section has a pending proposed action, check the Virginia Register index, published quarterly by LexisNexis, and the Table of Contents of any issues published since the latest index. Another resource, organized by administrative code chapter, is the Virginia Regulatory Town Hall. Also, upon request, the Registrar's office will provide information using its database of NOIRAs and proposed, final, fast-track, and emergency regulatory actions.

**§ 1.8. Using the searchable database of the Virginia Administrative Code on the Internet.**

A. To locate a specific regulation by its number using the [search box](#), remove spaces before and after "VAC" (e.g., 4VAC20-950-20 and 8VAC20-21-10).

B. It is also possible to search for sections or a group of sections by using the [Table of Contents](#). For instance, to find 4VAC20-950-20: from the VAC home page, click on Table of Contents, then Title 4, Agency 20, Chapter 950, Section 20. To then see Section 10, click on Back, then on Section 10. Alternatively, use the "next section" or "previous section" links to look at various sections of Chapter 20. To look in a completely different part of VAC, choose the "new search" link to return to the search page to begin again by using the Table of Contents or to enter a section number or key words into the search box.

C. See the "[search examples](#)" link provided by the Division of Legislative Automated Systems for examples of searches using words, wildcards, suffixes, phrases and logic conditions.



D. A link to a list of agency reporting forms, if any, is located at the end of the last section of a chapter. Reporting forms are those forms prepared and required by agencies for regulants for the purpose of providing information to the agency. The forms themselves are not published in the Virginia Administrative Code but generally are printed in the Virginia Register of Regulations when they become effective or are revised.

E. Also at the end of a chapter is a link to the list of Documents Incorporated by Reference in the chapter, if any, with information on how to obtain the documents.

F. The phrase “For ..., see Virginia Administrative Code print product” is occasionally found in VAC sections following a link labeled “image,” which is a hyperlink to a .JPEG version of a graphic representation, such as a map, drawing, table, or equation. The language after “For” is the catchline of the section. If there is more than one graphic representation, the phrase and the hyperlink labeled “image” are repeated for each one. For an image that is difficult to read, refer to the print version of VAC or contact the agency that adopted the regulation or the Registrar’s office.

### **§ 1.9. Agency summaries.**

A. Agency summaries are located at the beginning of each agency’s regulations in the Virginia Administrative Code. The agency summary provides other governmental agencies and the general public with a proper understanding of the agency’s rulemaking authority. It is not an exhaustive list of all functions of an agency but rather a general statement of its major statutory responsibilities and a specific list of regulatory powers given by the General Assembly, with Code of Virginia references. In addition, it includes pertinent information such as the secretariat under which the agency operates, if applicable; the address where copies of regulations may be obtained; and the website address of the agency.

B. The Office of the Registrar of Regulations coordinates the update of agency summaries following each annual Virginia legislative session. Regulatory coordinators are asked to review the summaries of their agencies for accuracy, indicate appropriate changes, if any, and submit them by fax, mail, or email.

C. To view current agency summaries on the Internet version of VAC, use the Table of Contents feature to select the title and agency number, then click on the agency number again for the current agency summary.

D. In the print version of VAC, agency summaries are located at the beginning of an agency’s regulations, with updates in the semiannual supplements.

## **Article 4.**

### **Filing Requirements; Publication Schedule; Rejection of Documents.**

#### **§ 1.10. Filing documents with the Registrar.**

A. This manual provides guidelines for filing documents with the Registrar. Filing requirements for regulation submission packages are located in Parts IV (§ 4.1 et seq.) through VIII (§ 8.1) of this manual with style guidelines provided in Part III (§ 3.1 et seq.). Requirements for submitting general notices for publication in the Virginia Register are located in Part IX (§ 9.1 et seq.). Requirements for filing guidance documents as required by §§ 2.2-4008 and 2.2-4103 of the Code of Virginia are located in Part X (§ 10.1).

B. Agencies shall file regulations electronically using the Regulation Information System (RIS) (see § 1.12). Printed copies are not required.

#### **§ 1.11. Deadlines for filing material; publication schedule.**

The Registrar publishes documents filed for publication according to the publication schedule adopted by the Virginia Code Commission. Material received by the Registrar’s office later than noon on the specified deadline are held and published in the next succeeding issue of the Virginia Register. An updated schedule is published in each issue of the Virginia Register and may be accessed from Agency Quick Links on the Virginia Register [homepage](#).

### **§ 1.12. Submitting material electronically-RIS.**

A. Agencies submit materials electronically through the Regulation Information System (RIS). RIS is linked with the Virginia Regulatory Town Hall to facilitate the process agencies use for filing regulatory actions with Town Hall for executive branch review and then filing such actions with the Registrar's office for publication in the *Virginia Register*. Agencies that do not file through Town Hall submit projects directly from RIS.

B. User access to an agency's regulatory actions in RIS is handled by each agency's regulatory coordinator. Agency personnel who need access to RIS should file a User ID request form with the Division of Legislative Automated Systems by contacting their agency regulatory coordinator or Diane Seaborn at DLAS at DSeaborn@dls.virginia.gov. Additional questions may be directed to Anne Bloomsburg in the Registrar's office at abloomsburg@dls.virginia.gov or 804-786-3591, ext. 258.

C. Detailed instructions on using RIS are located on the Virginia Register website at [http://register.dls.virginia.gov/RIS\\_overview.shtml](http://register.dls.virginia.gov/RIS_overview.shtml).

### **§ 1.13. Rejection of documents filed for publication; delay in publication.**

A. The Registrar may reject any document filed for publication, or delay publication, if the requirements contained in this manual or any other applicable requirements are not met.

B. Reasons for rejecting or delaying a regulation submission package filed by an agency for publication may include, but are not limited to, the following:

1. The regulation submission package is subject to the Administrative Process Act but does not meet Administrative Process Act requirements.
2. The regulation submission package is not in the proper format.
3. The regulation submission package is incomplete.
4. The regulation submission package does not contain the required number of copies.
5. The regulation is not submitted to RIS.
6. A proper transmittal sheet is not included.
7. The statutory authority is omitted or incorrect.
8. If claiming an exemption from all or part of the Administrative Process Act, the citation to exemption is omitted or improper or the letter from the Attorney General's office confirming the exemption is not included.
9. The summary of the regulation is not approved by the Registrar of Regulations as required by § 2.2-4031 B of the Administrative Process Act.
10. The basis, purpose, substance, and issues statement required by § 2.2-4007.05 of the Code of Virginia is incomplete.
11. The economic impact analysis prepared by the Department of Planning and Budget is not received by the Registrar.
12. The agency response to the economic impact analysis is not included.
13. The certification statement is omitted from a final or fast-track regulation package.
14. The agency fails to use the latest version of regulatory text in preparing its regulatory action.
15. Additional information required or requested by the Registrar's office is not received in time to proceed with publication.

C. The Registrar or his designee shall notify the affected agency if a determination is made to reject or delay publication of a document. The reason will be provided to the agency regulatory coordinator, and any rejected regulatory submission package will be returned to the agency unless other arrangements are made between the Registrar's office and the agency regulator coordinator.

**Article 5.**  
**Editing Regulations; Correcting Errors.**

**§ 1.14. Editing regulations.**

The staff of the Virginia Register will edit submissions for proper style and format, grammatical correctness, and consistency of language to conform to the journalistic style of the Virginia Register. Part III (§ 3.1 et seq.) of this manual contains style requirements for agencies to use when drafting regulations.

**§ 1.15. Agency review of published text.**

As soon as practical after publication, the agency regulatory coordinator or other designated individual shall compare the published copy against the agency copy to ensure accuracy of the published text. The agency shall notify the Registrar of any errors found in the published text by filing corrections as provided in § 1.16 of this manual.

**§ 1.16. Correcting errors after publication.**

A. If an error is found in the published text of a regulation or other document, the agency shall notify the Registrar in writing within seven days of the date the error was published.

B. The written notification shall include the following information:

1. The name of the agency;
2. The volume, issue, and date of the Virginia Register and the page numbers of the published regulatory action where the error occurred (e.g., 25:2 VA.R. 119-121 September 29, 2008);
3. The section of the Virginia Register where the error occurred (e.g., NOIRAs, Regulations, General Notices);
4. If the error is in a regulation, the type of regulation (i.e., proposed, final, fast-track, or emergency) and the VAC number and chapter title; and
5. The nature of the error, including page numbers.

C. Corrections of errors will be published as soon as possible in the General Notices/Errata section of the Virginia Register. Minor errors may not be published; however, the corrections will be made to the Virginia Administrative Code database and forwarded to the publisher of the Virginia Administrative Code, if applicable.

**PART II.**  
**AGENCY REGULATORY COORDINATOR.**

**§ 2.1. Appointment.**

Agencies shall notify the Registrar of Regulations in writing of the appointment of an agency regulatory coordinator and of any changes that may occur in that appointment. The Registrar's office will periodically send a request to agency heads to request the appointment of an agency regulatory coordinator if one has not been appointed for that agency or to verify that the agency regulatory coordinator's name and contact information on file are correct.

**§ 2.2. Qualifications.**

The agency regulatory coordinator represents the agency in all matters relating to the Virginia Register and the Virginia Administrative Code. The coordinator should be familiar with the Administrative Process Act, the Virginia Register Act, the Freedom of Information Act, and other legislation relating to Virginia regulations; any Governor's Executive Orders relating to the processing of regulations; the statutes governing the coordinator's agency; the agency's public participation guidelines; the regulations of the Virginia Code Commission; and the most recent edition of the Form, Style and Procedure Manual for Publication of Virginia Regulations.

**§ 2.3. Duties.**

A. The agency regulatory coordinator shall review all documents filed by an agency and verify that documents submitted for filing and publication in the Virginia Register contain all required information, are processed properly, and are correct in format and content. When an agency submits documents to be published in the Virginia Register, the coordinator or other designated person shall proofread the agency's documents as published to ensure their accuracy and shall file a correction with the Registrar's office in accordance with §§ 1.15 and 1.16 of this manual if a correction is needed.

B. All questions by the Registrar's office regarding the documents submitted for publication shall be directed to the coordinator or to other agency personnel as directed by the coordinator.

C. Pursuant to § 2.2-4103 of the Code of Virginia, an agency shall:

1. Have on file with the Registrar the full text of all of its currently operative regulations;
2. File, date and supplement all new regulations and amendments, repeals, or additions to its previously filed regulations;
3. Make available for public inspection and copying full texts of all regulations; and
4. File annually with the Registrar a current list of guidance documents.

D. The agency regulatory coordinator shall review its agency summary following each annual Virginia General Assembly session and submit proposed updates to the Registrar's office. Updates may be submitted at any time other elements of the agency summary change, such as the agency's mailing address or website address. See § 1.9 of this manual for information on agency summaries.

E. The agency regulatory coordinator is responsible for obtaining a UserID and password for the RIS system and arranging with the Registrar's office for training in the use of RIS.

**§ 2.4. Resources for agency regulatory coordinators.**

Multiple resources for regulatory coordinators may be accessed from the [Register's website](#), including:

1. The Form, Style and Procedure Manual for Publication of Virginia Regulations.
2. The Administrative Process Act.
3. The Virginia Register Act.

4. Regulations of the Virginia Code Commission for Implementing the Virginia Register Act.
5. The most recent executive order from the Governor regarding development and review of regulations proposed by state agencies.

**PART III.  
STYLE GUIDELINES.**

**Article 1.  
Document Format.**

**§ 3.1. Body of text.**

- A. Use the following guidelines for submitting regulatory actions to the Registrar's office:
1. Prepare regulation text using the Regulation Information System.
  2. Underscore new language. Use the single line form of underlining. Do not use “words only” underlining.
  3. Strike through language to be deleted.
  4. Insert new language after stricken language.

EXAMPLES

**Underscore:**

2. The owner shall install, calibrate, maintain, and operate a device to continuously measure the temperature of the flue gas stream at the inlet of each particulate matter control device.

**Strikethrough:**

~~3. 12VAC5-590-420 Treatment technique requirements.~~

**Strikethrough, then underscore:**

~~7. 9.~~ For any request application made ~~under subdivision A 2 of this section,~~ for a treatment technique variance, the applicant must also include a statement that the owner will perform monitoring and other reasonable requirements prescribed by the ~~division~~ commissioner as a condition to the variance; will be performed.

5. If an entire chapter is being repealed, follow the instructions given in § 4.45 of this manual.
6. If an entire section is being repealed, follow the format given in § 4.46 of this manual.
7. If a new chapter is being proposed, underscore all language.
8. Do not use the “revision” mode or “track changes” mode for creating a document for submission. Such word processing modes provide opportunities for accepting and rejecting revisions that allow language to be inadvertently deleted or changed without showing the changes. In Microsoft Word, use the “strikethrough” and “underline” features located on the RIS toolbar.
9. Do not use the automatic numbering feature when creating a list. Automatic numbering occasionally inserts codes that are difficult to remove later and causes numbers or letters to disappear when applying paragraph styles. In Microsoft Word, the automatic numbering feature can be disabled at Tools - AutoCorrect Options - AutoFormat. Do not use tabs in regulation text. Use a space after paragraph letter and number designations.
10. Use underscoring only for indicating new language. Do not use underscoring for emphasis, for the names of books, or for foreign phrases. Use quotation marks for the names of books, journals, articles, and similar items. The terms “Code of Virginia,” “Virginia Administrative Code” and “Virginia Register of Regulations” should be kept in normal text, i.e., not in italics or underscored.

11. Do not strike a part or portion of a word or number. First, strike through the entire word or number, then insert the new word or number and underscore to indicate that it is new language.

EXAMPLES	
<b>To change a word from plural to singular or vice versa:</b>	
INCORRECT	CORRECT
parking decks	parking <del>decks</del> <u>deck</u>
applications	<del>application</del> <u>applications</u>
<b>To change a cross reference:</b>	
INCORRECT	CORRECT
18VAC65-20-7 <u>120</u>	<del>18VAC65-20-70</del> <u>18VAC65-20-120</u>
§ 2.2-400 <u>23</u>	§ <del>2.2-4002</del> <u>2.2-4003</u>

12. In general, do not put telephone numbers in the text of a regulation.

13. Avoid the use of illustrations when possible. If needed, provide clear versions that will reproduce well for print and electronic publication. See § 3.2 of this manual for additional information.

14. Do not use brackets in the text of a regulation except when needed for naming chemical compounds and when necessary in mathematical equations. To indicate information to be inserted in a form or contract, use parentheses rather than brackets. See subsections B through E of this section for additional discussion of bracket use.

EXAMPLES
2,4,5-TP [Silvex] (ppb)
Benzo(a)pyrene[PAH]
Carefully check the application and write to (insert company name and address) within 10 days if any information is not correct and complete, or if any medical history has been left out of the application.

B. When a final regulation differs from the proposed regulation, highlight the changes made since the proposed regulation was published by enclosing the material in brackets. Do not underscore the brackets themselves. Do not use brackets in proposed regulations, except as provided in subdivision A 14 and subsection D of this section.

EXAMPLES
a. An appraiser may provide market analysis studies or [ <del>counseling</del> <u>consulting</u> ] reports ...
2. Test reports, including supporting calculations that document the results of all [ <del>stack</del> <u>emission</u> ] tests.
“Agency administrator” means any chief of police, sheriff, or any agency head of [ <del>a</del> ] local <del>or</del> <u>state</u> , [ <del>or</del> ] federal [ <del>government</del> ] <u>law enforcement</u> [ <del>agency and college or university law-enforcement agencies sworn under § 23-232.1 of the Code of Virginia</del> ].

C. When amending language in a final regulation that is exempt from the proposed regulatory action stage, do not use brackets. Brackets are used only to distinguish changes made from an earlier regulatory action stage.

D. If a proposed regulatory action is resubmitted with changes as a “reproposed” action, use brackets for all changes made since the last publication. This will mean that all changes in the proposed action will remain in the document, but new changes since the last publication will appear in brackets.

E. If a final regulatory action is suspended and resubmitted with additional changes since the final regulation was published, remove all brackets before making additional changes, then use brackets for all changes made since the last publication. All proposed and initial final changes will remain in the document, but only new changes since the last publication will appear in brackets.

F. Part IV (§ 4.1 et seq.) of this manual provides additional information on preparing proposed and final regulations.

**§ 3.2. Tables and illustrations.**

A. Numerical and textual tables are permitted in the body of regulations. Such tables often provide complicated and large amounts of information in an easy-to-read format or provide simple presentations in a compact format. Use the following guidelines for preparing tables:

1. For larger tables and tables that are referenced in additional parts of a regulation, center the word “TABLE” in uppercase letters above the table.
2. Number tables within a regulation when there is more than one table.
3. Center a table title in title case underneath the word “TABLE” and its number, if any.

EXAMPLE

TABLE 7.  
Minimum Design Chlorine Dosages.

EFFLUENT BOD/SS CONCENTRATION	DOSAGE (Based on Maximum Daily Flow)
30/78 mg/1	20 mg/1
45/45 mg/1	15 mg/1
30/30 mg/1	8 mg/1
20/20 mg/1	6 mg/1
10/10 mg/1	4 mg/1
<10/10 mg/1	<4 mg/1
Odor/Sludge Bulking Control	>20 mg/1

4. For smaller tables or tables that are not referenced in additional parts of a regulation, a title is not necessary.

EXAMPLE

... continuous monitoring on an ongoing basis at the frequencies each day prescribed below:

Waterworks size by population	Samples/Day*
500 or less	1
501 to 1,000	2
1,000 to 2,500	3
2,501 to 3,300	4

\*The day’s samples cannot be taken at the same time. The sampling intervals are subject to commissioner’s review and approval.

5. See § 3.3 B of this manual regarding the use of footnotes associated with tables.



B. RIS has limited table styles. To create a Table in RIS use table grid (in the style box) or select Table from menu bar at the top, then select insert, then select table, and then choose the number of columns and rows. Currently, we have the following styles for tables: **tblleft** (left justify), **tblctr** (center), and **tblrt** (right justify). Table headings are usually in the **tblctr** formatting style.

To merge columns - highlight cells, choose Table from the menu bar at the top, then select merge cells. To split columns - highlight cells, choose Table from the menu bar at the top, then select split cells. Columns without borders - highlight cells, then select Format from the menu bar at the top, select borders and shading, choose none. Do not use tabs when creating tables.

C. Maps, charts, graphs, diagrams, and other illustrations may be included in regulations but because they can be difficult to read, their use is discouraged. Images may be inserted as .tif, .gif, or .jpeg files.

### **§ 3.3. Footnotes; endnotes.**

A. Footnotes (notes that appear at the bottom of the page) may not be used in the Virginia Administrative Code except in tables as specified in subsection B of this section. Endnotes (notes that appear at the end of a chapter) may be used only in unusual circumstances. If information is important enough to include in a regulation, it should be included in the regular text of the regulation. Please contact the Registrar's office prior to using endnotes.

B. Footnotes may appear directly beneath a table when describing components of a table. Superscripted letters or numbers may be used. When possible, use asterisks for footnotes in order to avoid potential problems with superscripted letters and numbers being confused with nearby subdivision designations. See example following subdivision A 4 of § 3.2 of this manual.

### **§ 3.4. Appendices.**

Avoid using appendices as part of a regulation. Material important enough to be set out should be made part of the regulation itself and given a section number accordingly.

## **Article 2. Structure of Regulations.**

### **§ 3.5. VAC organization; numbering system.**

A. The Virginia Administrative Code is organized into 24 broad subject matter titles. Each agency's regulations are organized into one or more titles, according to the responsibility and nature of the agency. Within each title, the agencies are alphabetically ordered and numbered in multiples of five. This system allows for the reorganization of agencies, renaming of agencies, and addition of new agencies within the titles.

B. The chapter and section numbering is usually organized into multiples of 10 to accommodate new regulations and new sections within existing regulations. Questions concerning the numbering of new chapters or sections should be directed to the Registrar's office.

C. It is not appropriate to strike all language in a section and replace it with new language on a different subject. Instead, repeal the current section and add a new section.

D. Current sections may not be renumbered once established in VAC. The integrity of a chapter's original numbering system should remain intact. If major reorganization is needed, replace the current chapter with a new chapter.

E. Each section of a regulation is identified with its own VAC codification number. The numbering system of the Virginia Administrative Code is as follows:

#### *i VAC ii-iii-iv*

1. *i* represents the subject matter title within which the regulation is organized. There are 24 titles.

2. ii represents the promulgating agency. Agencies are generally arranged alphabetically within the titles in multiples of five with new agency names inserted as needed.
3. iii represents a chapter number or grouping of provisions with a common theme.
4. iv represents a section number within the chapter. A section is the basic unit of VAC. Sections are numbered in increments of 10, leaving room to add sections as the need arises. The content of a section is a short, simple presentation of a single regulatory function.

EXAMPLES
<p><b>11VAC10-40-70. Approval of simulcasting contracts.</b></p> <p style="padding-left: 20px;">Title 11 - Gaming Agency 10 - Virginia Racing Commission Chapter 40 - Satellite Facilities</p>
<p><b>16VAC25-50-60. Examination fees.</b></p> <p style="padding-left: 20px;">Title 16 - Labor and Employment Agency 25 - Safety and Health Codes Board Chapter 50 - Boiler and Pressure Vessel Regulations</p>

F. Chapters are cited by using the title number, agency number and chapter number. See § 3.14 of this manual for information on citing other parts (e.g., subsections and subdivisions) of VAC.

EXAMPLES	
<p>4VAC5-30, Virginia State Parks Regulations.</p>	<p>13VAC5-180, Migrant Housing Programs.</p>

G. See Article 3 (§ 1.7 et seq.) of Part I of this manual for additional information on the Virginia Administrative Code.

### § 3.6. Arrangement of a regulation.

A. Concise drafting of a regulation, as well as the general design and logical arrangement of its sections, subsections and subdivisions, better communicates the meaning of the regulation. The major objective in arranging text within a regulation is to make the document as clear and understandable as possible.

B. Use the following sequence of elements as a guideline when preparing new regulations or amending current regulations:

1. Place general provisions before special provisions;
2. Place more important provisions before less important provisions;
3. Place frequently used provisions before less frequently used provisions; and
4. Place permanent provisions before temporary provisions.

C. A regulation may be divided into parts and articles for the purpose of grouping like portions of a regulation. See § 3.14 of this part for examples of citations of parts and articles in VAC.

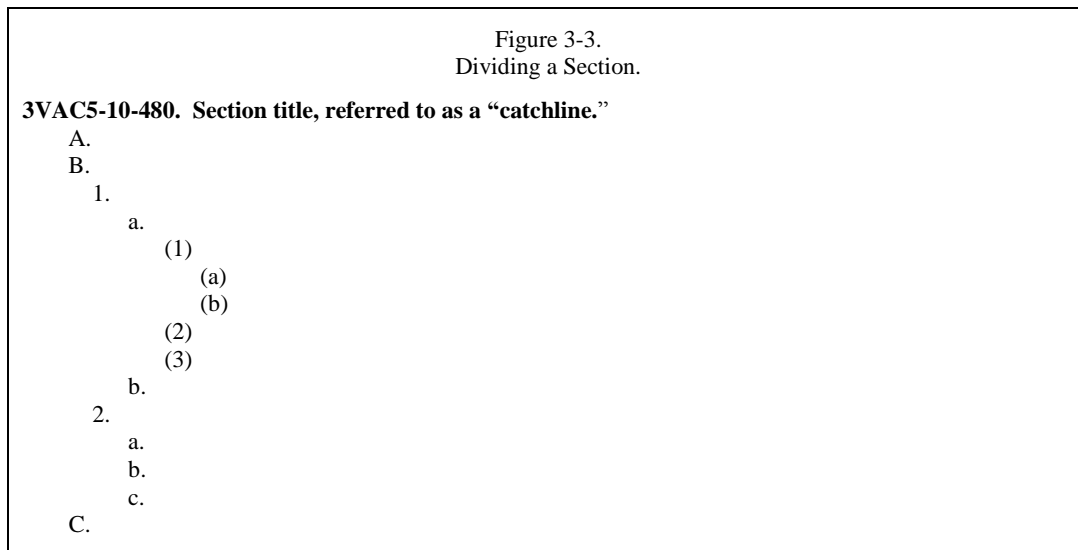
### § 3.7. Sections, subsections and subdivisions.

A. A section is the basic unit of VAC. The content of a section is a short, simple presentation of a single regulatory function. Sections within a chapter are numbered incrementally by 10.

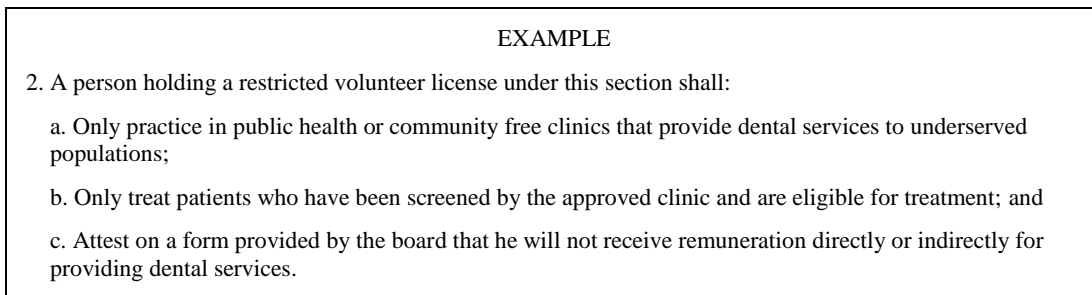
B. Divide separate requirements concerning a single subject into subsections within a section. If there is more than one subsection, they are designated with uppercase letters.

C. A list of requirements, standards, or definitions is clearer and more readable if it is published in the form of numbered subdivisions. Before subdividing a subsection, introduce the list with a complete thought followed by a colon. The first break into subdivisions is indented and numbered 1, 2, 3, etc., and each item listed is numbered and placed on a separate line. Subdivisions may be broken into further subdivisions. The second break is indented again and indicated by a, b, c, etc. Use the following organizational system in the text of regulations:

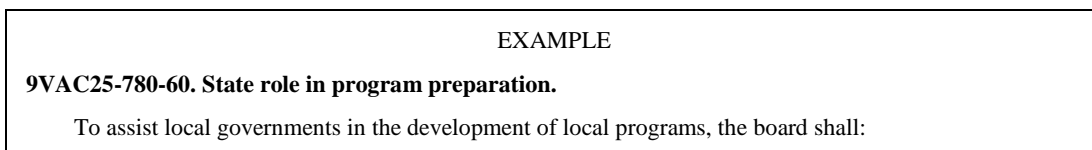
1. Designate subsections by uppercase letters of the alphabet (i.e., A, B, C, etc.).
2. Designate subdivisions (any division designated below or within a subsection) in numeric and alphabetic order. The order of precedence follows and is illustrated in Figure 3-3: A, B, C; 1, 2, 3; a, b, c; (1), (2), (3); (a), (b), (c). The Registrar's office strongly recommends avoiding the use of subdivision designations below the "a, b, c" level because it makes regulations harder to read and use. Consider using more sections to avoid using excessive subdivision levels.



3. When listing information in the form of individual or distinct items, number or letter each item and place it on a separate line. Subdivisions may end with a semi-colon or a period. When using semi-colons, use the conjunction "and" or "or" at the end of the second to last subdivision.



4. Do not designate a subsection or subdivision by letter or number unless there is more than one subsection or subdivision within the section. In the following example, there is only one subsection so it is not labeled "A" since there is no second subsection to label "B." Notice that the listed items are labeled 1, 2, 3, etc., because they are subdivisions of the single subsection; they are not subsections.



1. Provide technical and financial assistance;
2. Provide guidance on compliance options;
3. Facilitate acquisition of existing resource conditions (the department shall prepare and post on its website a list of readily available sources for the items identified in 9VAC25-780-90 B);
- ...
8. At the request of the applicant, convene a technical evaluation committee meeting; and
9. Provide notice of local public hearings on the local program upon notification by the locality.

5. Use lowercase Roman numerals in parentheses (i.e., (i), (ii), (iii), etc.) for internal numbering within sections. Refer to these as clauses within a section, subsection or subdivision as appropriate.

EXAMPLES

“Preadmission screening” means the process to: (i) evaluate the functional, nursing, and social supports of individuals referred for preadmission screening; (ii) assist individuals in determining what specific services the individuals need; (iii) evaluate whether a service or a combination of existing community services are available to meet the individuals’ needs; and (iv) refer individuals to the appropriate provider for Medicaid-funded nursing facility or home and community-based care for those individuals who meet nursing facility level of care.

A. Any person or entity wishing to (i) obtain a new license as a wholesale distributor or register as a nonresident wholesale distributor, (ii) engage in the acquisition of an existing wholesale distributor, (iii) change the location or make structural changes to the prescription drug storage space of an existing wholesale distributor, or (iv) make changes to a previously approved security system shall file an application with the board on a form approved by the board.

A. It shall be unlawful to take or catch soft shell clams from any leased grounds in any of the tidal waters of the Commonwealth by use of a hydraulic dredge without first obtaining (i) a soft shell clam dredge license for each boat used for such a purpose and (ii) a permit for each boat and operator thereof.

D. In general, do not assign catchlines to subsections and subdivisions. Use the section catchline, described in § 3.8, to address the content of the subsections within a section. If they are used, they should be in sentence case followed by a period.

**§ 3.8. Section catchlines or titles.**

A. The title given to each section is called a catchline. It should briefly and accurately describe the subject matter contained in that section. The catchline should indicate to the reader everything covered by that section. If it does not, expand the catchline or divide the section into multiple sections. Avoid catchlines like “General” and “Miscellaneous”; they are not specific enough.

B. Place the section catchline on a separate line with the section number in order to make it easier to locate and use. Capitalize only the first letter and proper names. Separate items in a catchline with semicolons. End each catchline with a period.

C. A change in a catchline requires an amendment in the same format as required for body text (i.e., stricken text for deletions and underscored text for new language).

D. The catchline is not part of the text of the regulation but helps to locate the subject, just like a table of contents. Draft the text of the section so that its meaning is clear independent of the catchline. This means that essential information contained in a catchline must be repeated in the body of the section.

EXAMPLES

**18VAC10-20-17. Replacement of wall certificate.**

Any licensee or certificate holder may obtain a replacement for a lost, destroyed, or damaged wall certificate upon submission of a \$20 fee accompanied by a written request indicating that the certificate was lost, destroyed, or damaged.

**18VAC60-20-105. Inactive license.**

A. Any dentist or dental hygienist who holds a current, unrestricted license in Virginia may, upon a request on the renewal application and submission of the required fee, be issued an inactive license. ...

**12VAC30-120-940. Adult day health care services.**

A. This section contains specific requirements governing the provision of adult day health care (ADHC).  
...

**§ 3.9. Severability provision.**

A. Section 2.2-4004 of the Code of Virginia provides the following blanket severability provision to the Administrative Process Act:

§ 2.2-4004. Severability.—The provisions of regulations adopted under this chapter or the application thereof to any person or circumstances that are held invalid shall not affect the validity of other regulations, provisions or applications that can be given effect without the invalid provisions or applications. The provisions of all regulations are severable unless (i) the regulation specifically provides that its provisions are not severable or (ii) it is apparent that two or more regulations or provisions must operate in accord with one another.

B. This section eliminates the need for agencies to include a severability clause within their regulations. When an agency amends a regulation that currently contains a severability clause, this clause should be repealed. Any new regulations that are promulgated should not include a severability clause.

C. This section does not apply to agencies or regulatory actions that are exempt from the Administrative Process Act.

**§ 3.10. Definitions section.**

A. Include a definitions section early in a regulation. Definitions provide clarification for terms used within a regulation and allow the regulation writer to control the meaning of a word. They also save space in the body of the regulation. For example, “department” may be defined to mean the Department of Social Services and “TANF” to be the acronym for the Temporary Assistance to Needy Families program.

B. Define a term only when its meaning is important and it is used more than once in the regulation. Do not define terms not used in the regulation. It is especially important due to the compilation and publication of the Virginia Administrative Code and for the sake of clarity that individual agencies and officers be defined.

C. Do not include substantive provisions with the meanings of terms in the definitions section. For example, “executive secretary” may be defined in the definitions section, but do not include the duties as part of the definition. The duties must be the subject of a separate section.

D. Use the following guidelines for formatting definitions:

1. Place definitions at the beginning of the regulation, generally as the first numbered section.
2. Use the following language for the first paragraph: “The following words and terms when used in this regulation shall have the following meanings unless the context clearly indicates otherwise:”
3. Arrange the words or specific terms in alphabetical order.

4. Uppercase the first letter of the first word in each definition. All subsequent words in each definition should be lowercase, unless words are proper nouns.
5. Place the word or term being defined within quotation marks.
6. Immediately after the word or term being defined, insert the word “means.”
7. Avoid using dashes, slashes or parentheses in a term being defined. For example, use “Individualized education plan” or “IEP” means... instead of “Individualized education plan (IEP)” means....

EXAMPLE

**22VAC40-170-10. Definitions.**

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

“Certificate of registration” means a document issued by the commissioner to a family day provider acknowledging that the provider has been certified by the contracting organization or the department and has met the Requirements for Providers (22VAC40-180) under the Voluntary Registration Program for Family Day Homes.

“Child” means any individual under 18 years of age.

“Commissioner” means the Commissioner of Social Services.

**§ 3.11. Stating an effective date; indicating inclusion.**

A. To state an effective date, use “become” rather than “be.” The use of “be” limits the action to one day.

USE: shall become effective on March 20, 2006

AVOID: shall be effective on March 20, 2006

B. See § 4.16 D of this manual for an explanation and examples regarding the use of an effective date in regulatory language.

C. To indicate inclusion, use “through” instead of “to” when referring to sections or other subdivisions in consecutive order.

USE: In §§ 22.1-8 through 22.1-20 of the Code of Virginia...

AVOID: In §§ 22.1-8 to 22.1-20 of the Code of Virginia...

USE: subsections B through F of this section

AVOID: subsections B to F of this section

D. In the rare case where an individual section in a regulatory action is being given a different effective date from the other sections in the action, indicate the alternate effective date with language in the text of the section not in the catchline. For example, the first line in the section might read: “The provisions of this section shall become effective September 1, 2006.” This language may be stricken in a later regulatory action when it is no longer needed to distinguish it from the remaining sections in the chapter. Do not include effective date information in the catchline.



B. Whenever possible, avoid citing sections of the Code of Virginia at the subsection or subdivision level as illustrated in subdivisions A 5 and 6 of this section. Instead, use only the section cite as shown in subdivisions A 3 and 4 of this section.

C. The word “section” is not spelled out unless it is used at the beginning of a sentence; in all other cases, use the section symbol. The section symbol in Microsoft Word is found at Insert - Symbol - Special Characters or press and hold Alt + 0167 (use number keypad for "0167").

D. When referring to a specific act of the General Assembly, use the following format: “Chapter 40 of the 2006 Acts of Assembly.” When referring to a particular session of the Virginia General Assembly, use the following format: “...as passed by the 2008 Session of the General Assembly.” It is incorrect to refer to the “2008 General Assembly.”

### § 3.13. Citations to the Virginia Register.

The Virginia Register is cited by volume, issue, page number and date.

EXAMPLE

To refer to the Marine Resources Commission final regulation in Volume 25, Issue 3, on pages 354 through 356 of the Virginia Register issued on October 13, 2008, write:

25:3 V.A.R. 354-356 October 13, 2008

### § 3.14. Citations to the Virginia Administrative Code.

A. Chapters of VAC are cited by the Virginia Administrative Code title number followed by the letters “VAC” then the agency number and the chapter number separated by a hyphen. Chapters may be cited by VAC number or by the name combined with the VAC number.

EXAMPLES

6VAC35-60, Minimum Standards for Virginia Delinquency Prevention and Youth Development Act Grant Programs

9VAC5-80, Regulations for the Control and Abatement of Air Pollution

4VAC5-30, Virginia State Parks Regulations

**In a sentence:**

This sample shall be tested with the methods established by the Virginia Hazardous Waste Management Regulations (9VAC20-60) for determining if a solid waste is a hazardous waste.

B. Parts, articles or sections of the Virginia Administrative Code may be cited as follows:

1. Citing a part.

EXAMPLES

**When in the relevant chapter:**

Part III (6VAC35-60-170 et seq.) of this chapter

**When in a different chapter:**

Part III (6VAC35-60-170 et seq.) of the Minimum Standards for Virginia Delinquency Prevention and Youth Development Act Grant Programs

The site at which the release occurred constitutes an open dump or solid waste management facility under Part IV (9VAC20-80-170 et seq.) of the Virginia Solid Waste Management Regulations.

**When a part is cited more than once in a section:**



C. If a license or registration condition cites provisions of Part IV (12VAC5-481-600 et seq.) of this chapter in effect prior to September 20, 2006, which do not correspond to any provisions of Part IV of this chapter, the license or registration condition remains in force until there is an amendment or renewal of the license or registration that modifies or removes this condition.

2. Citing an article.

EXAMPLES

**When in the relevant part:**

Article 4 (6VAC35-60-320 et seq.) of this part

**When in a different part, but the same chapter:**

Article 4 (6VAC35-60-320 et seq.) of Part III of this chapter

**When in a different chapter:**

Article 4 (6VAC35-60-320 et seq.) of Part III of the Minimum Standards for Virginia Delinquency Prevention and Youth Development Act Grant Programs

3. Citing a specific section.

EXAMPLES

6VAC35-60-290

12VAC5-481-380

24VAC30-71-50

4. Citing multiple sections.

EXAMPLES

6VAC35-60-10 and 6VAC35-60-20

6VAC35-60-10 through 6VAC35-60-60

6VAC35-60-10, 6VAC35-60-50, or 6VAC35-60-170

C. All uppercase lettered divisions in VAC are called subsections and all divisions of subsections are called subdivisions. So whether a reference is to subdivision A 3 or subdivision A 3 c (1) (a), they are both subdivisions and are cited as illustrated in subdivision 2 of this subsection.

1. Citing a subsection.

EXAMPLES

12VAC5-90-240 A

subsection A of 12VAC5-90-240

**When in another section of VAC:**

B. Current conservation practices, techniques, and technologies shall be considered in projecting water demand pursuant to 9VAC25-780-100 D.

**When in a different subsection of the same section of VAC:**

B. Current conservation practices, techniques, and technologies shall be considered in projecting water demand pursuant to subsection D of this section.

**When in the same subsection of VAC:**

D. Current conservation practices, techniques, and technologies shall be considered in projecting water demand pursuant to this subsection.

2. Citing a subdivision.

EXAMPLES

9VAC20-80-300 B 1 a

subdivision B 1 a of 9VAC20-80-300

D. If a section has only one subsection, then it is not given the letter “A” but its divisions are called subdivisions. Thus, as shown in the following example, since there is only one subsection, it is not labeled “A” and the correct reference to subdivision 2 would be “subdivision 2 of 18VAC110-20-230.”

**Example of a section with only one subsection:**

18VAC110-20-230. Qualification as a nuclear pharmacist.

In order to practice as a nuclear pharmacist, a pharmacist shall possess the following qualifications:

1. Meet Nuclear Regulatory Commission (NRC) standards of training for medically used or radioactive by-product material.
2. Have received a minimum of 200 contact hours of didactic instruction in nuclear pharmacy.
3. Attain a minimum of 500 hours of clinical nuclear pharmacy training under the supervision of a qualified nuclear pharmacist in a nuclear pharmacy providing nuclear pharmacy services, or in a structured clinical nuclear pharmacy training program in an approved school of pharmacy.

E. Avoid ambiguous references. References to other portions of the administrative code should never be “above,” “below,” “hereinabove,” “hereinafter,” or similar vague terms. Always cite the specific part, article, section, subsection or subdivision by number.

EXAMPLES

AVOID:

3. Beginning with the ninth grade classes of 2003-04, students shall earn the required standard and verified units of credit described above.

REVISED:

3. Beginning with the ninth grade classes of 2003-04, students shall earn the required standard and verified units of credit described in subdivision 2 of this subsection.

AVOID: ... and in the case of applications without firm financing commitments (as defined hereinabove) at fixed interest rates, debt service on the proposed mortgage loan.

REVISED: ... and in the case of applications without firm financing commitments as defined in subdivision 2 f of this section at fixed interest rates, debt service on the proposed mortgage loan.

AVOID: In calculating the points for subdivisions 7 a and b above, ...

REVISED: In calculating the points for subdivisions 7 a and b of this subsection, ...

**§ 3.15. Citations to federal statutes and regulations.**

A. When citing federal statutes, use the official name, together with a reference to the United States Code. If a USC number is not available, then a Public Law Number is acceptable. When citing federal regulations, cite the Code of Federal Regulations (CFR) if the regulation has been codified. If the regulation has been adopted but not codified in the CFR, cite the Federal Register (FR) reference.

Public laws (both acts and joint resolutions) are published in the official U.S. Statutes at Large. They are designated by the number of the Congress that passed them, and then in order of their approval. For example, Public Law No. 100-1 is the first public statute the 100th Congress enacted into law. U.S. public laws are the equivalent of Virginia’s Acts of Assembly.

The federal code of laws called the United States Code (USC) is the current subject compilation of permanent federal statutes of general applicability. The United States Code Annotated (USCA) and the United States Code Service (USCS) are commercially published versions of the USC containing the same statutes but providing additional research aids.

References to federal statutory and regulatory compilations are abbreviated as follows:

<b>Federal Material</b>	<b>Abbreviation</b>
U.S. Statutes at Large	Stat.
United States Code	USC
United States Code Annotated	USCA
United States Code Service	USCS
Public Law Number	Pub. L. No. (do not use P.L.)
Code of Federal Regulations	CFR
Federal Register	FR

EXAMPLES
Solid Waste Disposal Act (42 USC § 3251 et seq.)
Endangered Species Act of 1973 (16 USC § 1531 et seq.)
Commercial Motor Vehicle Safety Act of 1986 (49 USC § 2501 et seq.)
Organized Crime Control Act of 1970 (18 USC § 841 et seq.)

For citations at the section level, use the section symbol (§) with the number, letter combination and indicate the source.

EXAMPLES
§ 307(a) of the federal Clean Water Act      § 112(a)(2)(C) of the federal Clean Air Act
§ 141.2 of the federal Safe Drinking Water Act      § 504 of the Rehabilitation Act of 1973

B. When distinguishing a federal statute from a state statute, the term “federal” may be used prior to a reference to a federal act. The term “federal” is lower case unless it is part of the proper name of the statute. For example, it is correct to cite the “Federal Hazardous Substances Act” because the term “Federal” is part of its short title. On the other hand, the short title of the “Safe Drinking Water Act” does not include the word “Federal,” so that act is cited as the “federal Safe Drinking Water Act” when distinguishing it from a state act.

EXAMPLES
“Maintenance area” means any geographic region of the United States previously designated nonattainment under § 107 of the federal Clean Air Act and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan.
“RCRA” means the federal Resource Conservation and Recovery Act (42 USC § 6901 et seq.).
Section 1538 of the federal Endangered Species Act of 1973 (16 USC § 1531 et seq.) makes it illegal for any person subject to the jurisdiction of the United States to “take” any federally endangered or threatened species of fish or wildlife without a special exemption.

C. Cite the Federal Register by volume and page number with the date. The approved short form of citation is “FR.” Thus, 62 FR 52622 (October 8, 1997) refers to text on page 52622 of Volume 62 published on October 8, 1997. See § 8.3 of this manual for more examples.

D. Cite the Code of Federal Regulations by title and section numbers. “CFR” is the approved short form. Thus, 7 CFR 1.1 refers to text at § 1.1 of Title 7. To refer to an entire part of the Code of Federal Regulations, use the following format: 42 CFR Part 70. To refer to a subpart, use the following format: 40 CFR Part 141 Subpart B; 40 CFR Part 763, Subpart E.

EXAMPLES

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

b. The designated representative or any other person specified in this definition for any other purposes under this article or 40 CFR Part 70.

**Article 4.**

**Composition and Style Guidelines for Document Drafting.**

**§ 3.16. Application of composition and style guidelines.**

A. The composition and style guidelines in this manual are intended to provide editorial assistance in drafting documents to be published in the Virginia Register and the Virginia Administrative Code.

These guidelines are not intended to be inflexible rules, nor are they complete in scope. The staff of the Registrar of Regulations hopes that use of these suggestions, together with attention to good English usage, will produce greater clarity and accuracy in the texts of official documents. In preparing documents for publication, the staff will edit text to conform to these guidelines as closely as possible.

B. Specific questions may arise that are not covered within this article due to the general nature of these guidelines. Refer to the following reference books concerning matters of style, spelling, usage, and word division:

1. “The Chicago Manual of Style, 15th Edition,” University of Chicago Press Staff (2003); and
2. “The American Heritage College Dictionary, Fourth Edition,” Houghton Mifflin Company (2004).

**§ 3.17. General guidelines.**

A. In general, keep the language of the text as clear and simple as possible. When drafting, remember that documents should be written so that the general public can understand them. Avoid using language that only individuals with specialized knowledge can understand. Consistency of expression, logical arrangement, and adherence to accepted usage aid readability.

B. Strive for consistency of terminology, expression and arrangement. Avoid using the same word or term in more than one sense. Conversely, avoid using different words to denote the same idea. Apply the principles of consistency to phrases, sentences, paragraphs, arrangement and format. For example, in the text of a regulation, two or more subdivisions that are similar in substance should be parallel in form.

C. When using lists and series, each sentence or sentence portion must be of the same grammatical construction and relate to a common theme. This concept is called parallel structure. See also § 3.20, Lists, for more on keeping lists parallel.

EXAMPLE

AVOID: The committee reviewed the processes for determining claims and how payments were made.

REVISED: The committee reviewed the processes for determining claims and for making payments.

D. In general, keep a document simple and short to avoid confusion and misunderstanding. In the case of regulatory drafting, divide a lengthy text into more than one regulation in order to avoid the complexities entailed in multiple sections and to make the text easier to read. Avoid long sentences where short ones will suffice.

E. Ordinarily, use the present tense of verbs. However, the future tense is appropriate when using the imperative “shall.” Section 3.22 of this part provides additional information on the use of “shall.”

F. Generally, use the active rather than the passive voice.

EXAMPLE

AVOID: Members of the committee are appointed by the chairman.

REVISED: The chairman shall appoint members of the committee.

G. Use the third person.

EXAMPLE

AVOID: You shall file the appropriate forms.

REVISED: The applicant shall file the appropriate forms.

H. If an idea can be accurately expressed either positively or negatively, express it positively. The negative form is appropriate where a provision expresses a prohibition. Negative words should not be used where provisions provide only advisory guidance.

EXAMPLE

AVOID: A person may not ...

REVISED: No person may ...

### § 3.18. Rules of construction.

In the drafting of regulations, the rules of construction and definitions as established in Article 2 (§ 1-202 et seq.) of [Chapter 2.1 of Title 1](#) of the Code of Virginia shall apply.

### § 3.19. Gender.

Avoid using pronouns that indicate gender. When possible, use the noun that the pronoun would replace, such as licensee, certificate holder, etc. However, if pronoun gender must be indicated, use “his” instead of “his/her” and “he” instead of “he/she” or “(s)he.” The use of the masculine gender is addressed in § 1-216 of the Code of Virginia. Do not use “they” or “their” with a singular subject.

EXAMPLE

b. The individual is living with a primary caregiver, who is providing the service voluntarily and without pay, and the primary caregiver indicates that he can no longer care for the individual with mental retardation;

### § 3.20. Lists.

A. There are numerous ways to present information in lists. The main types used in regulations are (i) intext lists, with parallel list items within one sentence, and (ii) numbered displayed lists, with parallel list items shown as separate paragraphs. The latter are sometimes called vertical lists.

EXAMPLES

**Intext list:**

The agency reviewed the processes for determining claims, making payments, and renewing memberships.

**Numbered displayed list:**

The agency reviewed the processes for:

1. Determining claims;
2. Making payments; and
3. Renewing memberships.

B. The following guidelines apply when using lists:

1. The items in the list must form a logical group;
2. Each item must contain only one idea;
3. Anything in common to all the items must be included in the introductory language;
4. Each item must express a complete thought when combined with the introductory language; and
5. Each item must be parallel in structure.

EXAMPLES

The following sentence arranged as a displayed list is incorrect because subdivision c is not parallel in substance or form to the introductory language.

AVOID:

1. An applicant for licensure shall:
  - a. Complete the application for examination;
  - b. Submit in advance the examination fee; and
  - c. Eligibility for licensure by reciprocity.**

REVISED:

1. An applicant for licensure shall:
  - a. Complete the application for examination;
  - b. Submit the examination fee in advance; and
  - c. Be eligible for licensure by reciprocity.**

While each item in the following list begins with a verb, thus following the introductory language, the items are not parallel in substance; therefore, the revised version is preferred.

AVOID:

- A licensee may:
1. Manufacture drugs or medicines;
  2. Distribute drugs or medicines; and
  - 3. Take any license renewal examination that is required.**

REVISED:

- A. A licensee may:
1. Manufacture drugs or medicines; and
  2. Distribute drugs or medicines.
- B. A licensee may take any license renewal examination that is required.**

C. Each item in a list must express a complete thought when combined with the language that introduces the list.

EXAMPLE

The language in the first subdivision 1 c is not parallel to the other subdivisions and does not express a complete thought when combined with the introductory language.

AVOID:

1. An applicant is exempt if the applicant:
  - a. Signs the application under oath;
  - b. Pays the required fee; and
  - c. Any required training courses.**

REVISED:

1. An applicant is exempt if the applicant:
  - a. Signs the application under oath;
  - b. Pays the required fee; and
  - c. Provides proof of completion of the required**

training courses.

D. For intext lists, use commas to separate entries if no entry itself contains a comma. If any entry contains a comma, use semicolons to separate the entries. If further delineation is needed, lower case roman numerals in parentheses may be used to separate items in an intext list. This can be particularly useful when writing summaries of regulatory actions.

EXAMPLES

**Intext list with entries separated by commas:**

The physical environment and furnishings shall be clean, dry, free of foul odors, safe, and well-maintained.

**Intext list with entries separated by semicolons because individual entries have commas:**

“Qualified mental health professional” means a professional having at least one year of documented experience working directly with recipients who have developmental disabilities; at least a bachelor’s degree in a human services field including, but not limited to, sociology, social work, special education, rehabilitation counseling, or psychology; and the required Virginia or national license, registration, or certification in accordance with his profession.

**Intext list with entries designated with lower case roman numerals in parentheses and separated by commas:**

“Waterworks” means a system that serves piped water for drinking or domestic use to (i) the public, (ii) at least 15 connections, or (iii) an average of 25 individuals for at least 60 days out of the year.

**Intext list with entries designated with lower case roman numerals in parentheses and separated by semicolons because individual entries have commas:**

13. If wearing a uniform while employed as an unarmed security officer, that uniform must include no patch or other writing (i) containing the word “police” or any other word suggesting a law-enforcement officer; (ii) containing the word “officer” unless used in conjunction with the word “security”; or (iii) resembling any uniform patch or insignia of any duly constituted law-enforcement agency of the Commonwealth, its political subdivisions, or of the federal government.

E. The following guidelines apply when using displayed lists:

1. In most cases, the introductory language to a displayed list should end in a colon.
2. All items in a displayed list should begin with a capital letter, whether the entry is a word, a sentence fragment, a full sentence, or numerous sentences.
3. Each item should end with a semicolon or period, and a period should be used after the last item if it is the end of a sentence.
4. Items should end with periods if the items are complete sentences or if it is anticipated that the list will be modified often.
5. If using semicolons and the list consists of alternatives, “or” should be placed after the second to last item.
6. If using semicolons and the list is inclusive, “and” should be placed after the second to last item.
7. Language should not be added after a displayed list that continues the sentence of the introductory language.
8. The automatic numbering feature of word processing programs should not be used. Each number should be typed individually. See § 3.1 of this manual for more information on automatic numbering.

**§ 3.21. Modifiers.**

A. Generally place a modifier as close as possible to the term or phrase it modifies.

EXAMPLE

AVOID: The petitioner shall file the petition with the court in writing.

REVISED: The petitioner shall file the petition in writing with the court.

B. Be sure that a modifier clearly refers to the term the modifier is intended to modify.

EXAMPLE

AVOID: A licensed dentist may sign only an authorization for dental laboratory work.

REVISED: Only a licensed dentist may sign an authorization for dental laboratory work.

C. Do not place a modifier so that it is not clear whether the modifier is intended to modify the preceding term or the following term.

EXAMPLE

AVOID: The department and the unit of state government that had state property at the time of its loss or damage jointly shall determine the value of the property.

REVISED: The unit of state government that had state property at the time of its loss or damage and the department shall jointly determine the value of the property.

D. Do not place a modifier so that it is unclear whether it modifies a single item in a series or each item in the series.

EXAMPLE

AVOID: ... a gasoline-powered automobile, truck, or van

REVISED: ... a truck, van, or gasoline-powered automobile

**§ 3.22. Use of “shall,” “may,” and “must.”**

Use “shall” in the imperative sense to express a duty or obligation to act. The term “shall” is generally used in connection with statutory mandates. “May” is permissive and generally expresses a right, privilege or power. When an individual is authorized but not ordered to act, the term “may” is appropriate. If an obligation to act is intended, “shall” is used.

Use “may not” when a right, privilege or power is restricted. “Shall not” negates the obligation but not the permission to act; therefore, “may not” is the stronger prohibition. Wherever possible, the words “shall” or “may” are used in place of other terms such as “is authorized to,” “is empowered to,” “is directed to,” “has the duty to,” “must,” and similar phrases. However, if certain action is intended to be a condition before accruing a right or privilege, the word “must” is used instead of “shall” or “may.” For example, “In order to have regulations published, the agency must file them by the deadline.”

**§ 3.23. Indefinite pronouns: use of “any,” “each,” and “every.”**

Do not use “any,” “each,” “every,” “all,” or “some” if “a,” “an,” or “the” can be used with the same result. If the subject of the sentence is plural, it is seldom necessary to use these adjectives.

EXAMPLE

AVOID: Any qualified employee shall ...

REVISED: Qualified employees shall ...

If the subject of the sentence is singular, the indefinite pronoun is used only when the article “a” or “the” is inadequate, as when the use of “a” would allow the unintended interpretation that the obligation is



to be discharged by applying it to a single member of the class instead of to all of them. If it is necessary to use an indefinite pronoun, follow these rules:

1. If a right, privilege or power is conferred, use “any,” as in “Any qualified employee may ....”
2. If an obligation to act is imposed, use “each,” as in “Each employee shall ....”

### § 3.24. Use of “such” and “said.”

Avoid the use of “such” and “said.” Instead, use “the,” “that” or a pronoun. In many instances “such” and “said” mean nothing at all and can be omitted without any other words being substituted.

EXAMPLES
<p>AVOID:</p> <p>If incorporating material by reference, submit a copy of the document or documents being incorporated by reference and a list of <b>such</b> documents for inclusion in VAC.</p>
<p>REVISED:</p> <p>If incorporating material by reference, submit a copy of the document or documents being incorporated by reference and a list of <b>the</b> documents for inclusion in VAC.</p>
<p>AVOID:</p> <p>When the person being acquired controls a domestic insurer, <b>such</b> person shall be deemed to be a “domestic insurer.”</p>
<p>REVISED:</p> <p>When the person being acquired controls a domestic insurer, <b>the</b> person shall be deemed to be a “domestic insurer.”</p>

### § 3.25. Use of “and/or.”

The term “and/or” should be avoided if possible. In general, the term “and” means to add something to what has already been said. The term “or” means in the alternative. In most cases, the word “or” is proper to convey the thought of “one, or the other, or any of them.” If emphasis is needed, use terms such as “any of the following,” “all of the following,” “either of the following,” or “or both.”

### § 3.26. Use of “affect” versus “effect.”

Whether to use the word “affect” or “effect” in drafting generally depends on whether a verb or noun is needed. The noun “effect” denotes the result of a process, event, or activity. An effect is coupled with a cause. The verb “effect” denotes bringing into existence, or bringing about a state of affairs, such as “to effect a change.” The more common verb usage is “affect,” which denotes producing an influence on, or producing an effect.

EXAMPLES
<p>A statement of the purpose of the product, stated in terms of the claimed or beneficial <b>effect</b> resulting from the use of the product;</p>
<p>This criterion applies during the interim and transitional periods only, except as otherwise provided in 9VAC5-150-440. It applies to the net <b>effect</b> on emissions of all projects contained in a new or revised transportation plan.</p>
<p>The agency may <b>effect</b> change by initiating the following actions ... (effect used as a verb)</p>
<p>Nothing in this chapter shall <b>affect</b> the distribution for sale, offering for sale or sale of gasoline or diesel fuel intended for nonhighway use except as provided in 2VAC5-420-40 C for labeling every dispensing device used in the retail of gasoline or diesel fuel.</p>

Underground mining activities will not cause or contribute to the violation of applicable state or federal water quality standards and will not adversely **affect** the water quantity and quality or other environmental resources of the stream.

### § 3.27. Use of “if” and “when.”

Use “if” not “when” to express a condition. Use “when” only as a reference to time.

#### EXAMPLES

AVOID: When the applicant is qualified...

REVISED: If the applicant is qualified...

AVOID: If the complaint is filed, the director shall schedule a hearing.

REVISED: When the complaint is filed, the director shall schedule a hearing.

### § 3.28. Use of “whether” versus “if.”

If there is an implied “or not,” use “whether” instead of “if.”

#### EXAMPLE

AVOID: The director shall investigate if the licensee is violating the regulation.

REVISED: The director shall investigate whether the licensee is violating the regulation.

### § 3.29. Relative pronouns: use of “who” and “whose.”

A. Use the words “who” and “whose” to refer to an individual or personified entity.

#### EXAMPLES

AVOID: The individual that files the report shall...

REVISED: The individual who files the report shall...

AVOID: A person that violates...

REVISED: A person who violates...

B. There is no possessive form for “which.” Current usage permits “whose” to mean “of which.”

#### EXAMPLES

Counties whose populations exceed 25,000 residents...

The people who interrupted the demonstration were arrested. (Restrictive meaning; but because the subject is “people,” “that” would be inappropriate.)

### § 3.30. Relative pronouns: use of “that” and “which.”

A. The words “that” and “which” have different meanings and thus are not interchangeable. The choice between them is determined by the type of clause that follows them.

B. “That” is used to introduce a restrictive (necessary) clause, unless “who” or “whose” is appropriate (see § 3.29 of this manual). A restrictive clause answers the question, “Which one?” and is essential to the meaning of the sentence. Do not use commas to set off a restrictive clause.

EXAMPLES OF RESTRICTIVE CLAUSES

**CORRECT:** Construction bonds that are issued by local governments generally carry tax-free interest.

**DISCUSSION:** The clause “that are issued by local governments” has a restrictive meaning; it describes the construction bonds being discussed. It answers the question, “which ones?” – the ones that are issued by local governments. It is not set off by commas.

**INCORRECT:** The requirements which an applicant must meet for certification are listed in the regulation.

**CORRECT:** The requirements that an applicant must meet for certification are listed in the regulation.

**DISCUSSION:** Without the clause “that an applicant must meet for certification,” the meaning of the sentence would be significantly altered; therefore, the clause is restrictive, “that” is used instead of “which,” and commas are not used.

**INCORRECT:** The person, who files the complaint, shall sign the complaint.

**CORRECT:** The person who files the complaint shall sign the complaint.

**INCORRECT:** Direct care staff shall encourage and assist residents, who do not have medical conditions with physician ordered fluid restrictions, to drink water or other beverages frequently.

**CORRECT:** Direct care staff shall encourage and assist residents who do not have medical conditions with physician ordered fluid restrictions to drink water or other beverages frequently.

C. “Which” is used to introduce a nonrestrictive (unnecessary) clause. A nonrestrictive clause generally elaborates on the object of the clause. If the clause can be removed from the sentence and retain its essential meaning, then the clause is nonrestrictive and is set off by commas.

EXAMPLES OF NONRESTRICTIVE CLAUSES

**INCORRECT:** Construction bonds which can be a dependable tax shelter carry different interest rates according to the credit standing of the local government.

**CORRECT:** Construction bonds, which can be a dependable tax shelter, carry different interest rates according to the credit standing of the local government.

**DISCUSSION:** The clause “which can be a dependable tax shelter” has a nonrestrictive meaning. It provides additional information about the bonds, but does not restrict the meaning of the construction bonds. The clause is therefore set off by commas.

**CORRECT:** New rules concerning the licensure of teachers, which I have not read, have been adopted.

**DISCUSSION:** “Which I have not read” does not significantly affect the primary meaning, which is that rules concerning the licensure of teachers have been adopted; therefore, commas are used around this nonrestrictive clause.

**§ 3.31. Use of words both singular and plural.**

Avoid modifying singular words to be both singular and plural (e.g., parent(s)). Instead, indicate one or the other, or both (e.g., parent or parents) or define the term in the definitions section to mean one or the other or both.

**§ 3.32. Capitalization.**

A. Capitalize civil, military, religious and professional titles when they immediately precede a personal name, as part of the name.

EXAMPLES  
Governor McAuliffe  
Secretary Morris  
Chairman Jones

B. Capitalize full names of legislative, deliberative, administrative and judicial bodies, departments, bureaus, and offices. Lowercase common noun substitutes or incomplete designations, except abbreviations.

EXAMPLES	
Uppercase	Lowercase
General Assembly of Virginia	the state legislature
Department of Transportation	the department
State Health Commissioner	the commissioner

C. Do not capitalize the following words unless they are part of a proper name:

1. Board;
2. Commission;
3. Department;
4. Executive branch, legislative branch, or judicial branch;
5. Federal;
6. Government; and
7. State.

EXAMPLES	
Uppercase	Lowercase
The Board for Geology is adopting these emergency regulations ...	The board is adopting these emergency regulations ...
The State Corporation Commission operates ...	The commission operates ...
The Department of Health is required to ...	The department is required to ...
Members of the General Assembly met ...	Members of the legislative branch met ...
Federal Power Act	federal Clean Air Act
Government Accounting Office	The government spokesman answered the question.
Virginia State Capitol	state constitution

D. Capitalize common nouns and adjectives that form an essential part of a place.

EXAMPLES
Hanover County
City of Richmond
Northern Virginia
Counties of Chesterfield, Hanover, and Henrico

E. Capitalize “Commonwealth of Virginia” and “Commonwealth.”

F. Capitalize names of buildings and monuments.

EXAMPLES	
Washington Monument	Monticello

Virginia Supreme Court Building	James Monroe Building
---------------------------------	-----------------------

G. Capitalize only the official names of documents.

EXAMPLE	
<b>Uppercase</b>	<b>Lowercase</b>
Constitution of Virginia	state constitution

H. Capitalize the names of specific acts (e.g., Administrative Process Act or Virginia Register Act).

I. Capitalize the word “Act” when it has previously been referred to or defined and when subsequent references are to the specific act.

J. Capitalize a word describing a part of a document only if it is followed by a specific number or letter designation.

EXAMPLES	
<b>Uppercase</b>	<b>Lowercase</b>
Chapter 40	this chapter
Part IV	this part

This policy does not apply to subsection or subdivision designations.

EXAMPLES	
<b>Lowercase</b>	
subsection A of this section	
subdivision C 1 of this section	
subdivision 4 of this subsection	

K. Lowercase “page” and “line” (e.g., page 10, line 22).

L. Capitalize acronyms, such as “IEP” for “individualized education plan.”

M. In definitions, capitalize only the first word of two or more words being defined, such as “Motor vehicle,” unless the words being defined contain proper nouns, such as “Clean Water Act.”

N. When preparing regulations for submission to the Registrar:

1. Use upper case letters for chapter titles and part titles.
2. Use title case letters for article titles.
3. Use sentence case for section catchlines.

EXAMPLES
CHAPTER 421. FOOD REGULATIONS.
PART IV. EQUIPMENT, UTENSILS, AND LINENS.
Article 6. Cleaning of Equipment and Utensils.
12VAC5-421-1790. Cooking and baking equipment.

**§ 3.33. Commas.**

A. Use commas to set off a nonrestrictive (unnecessary) clause or phrase. A nonrestrictive clause gives added information about the word it modifies but is not needed to complete the meaning of a sentence. “Which” is used to introduce a nonrestrictive clause. Do not use commas to set off a restrictive (necessary) clause or phrase. A restrictive clause cannot be omitted without altering the meaning of the main clause; therefore, it is not parenthetical and thus should not be set off by commas. “That” is used to introduce a restrictive clause unless “who” or “whose” is appropriate. See §§ 3.29 and 3.30 of this manual for examples.

B. Use a comma in a compound sentence to separate independent clauses joined by one of the coordinating conjunctions “and,” “but,” “for,” “or,” “nor,” “so,” and “yet.”

EXAMPLE

The board is responsible for collecting the revenue from all permits and fees, but the legislature sets the rates.

If the second clause is not independent (i.e., it does not have its own subject), then no comma is used.

The board is responsible for collecting the revenue from all permits but doesn't set the rates.

C. The use of a comma without a coordinating conjunction between two independent clauses is known as a comma fault and should be avoided.

COMMA FAULT: The board collects the fees and issues permits, the legislature sets the rates.

The sentence may be corrected by:

1. Using a coordinating conjunction after the comma.

The board collects the fees and issues permits, but the legislature sets the rates.

2. Using a semicolon between the two independent clauses.

The board collects the fees and issues permits; the legislature sets the rates.

3. Dividing the two independent clauses into two simple sentences.

The board collects the fees and issues permits. The legislature sets the rates.

D. Use commas to separate a series of three or more words, phrases, or clauses. If the elements within the sentence contain internal commas or other punctuation, separate the elements with semicolons.

The board is responsible for collecting the revenue from all fees, permits, license certifications, and renewals. “Built-up area” means any area with a substantial portion covered by industrial, commercial, or residential buildings.

The board is responsible for collecting the revenue from fees for examinations; permits for shops, salons and schools; and license certifications.

E. Use a comma to set off a contrasted word or phrase.

The meetings of the commission shall be set by majority vote of the members, not by the chair.

F. A comma is usually used after such expressions as “that is,” “namely,” “etc.,” “i.e.,” and “e.g.” Note that “i.e.” means “that is” and “e.g.” means “for example.” The use of “etc.” is usually not appropriate when using “i.e.”

<b>EXAMPLES</b>
The SWPPP must include a certification that all discharges (i.e., outfalls) have been tested or evaluated for the presence of nonstorm water.
1. For each separate area identified, the description must include a list of:
a. The activities (e.g., material storage, equipment fueling and cleaning, cutting steel beams); and
b. The associated pollutants or pollutant parameters (e.g., crankcase oil, iron, biochemical oxygen demand, pH, etc.) for each activity.

G. In a date, use a comma before and after the year when the day of the month is stated. The commas are not needed if the day is omitted.

<b>EXAMPLES</b>
The program begins on July 1, 2005, and ends on June 30, 2006.
The fisherman shall provide the commission with proof of having harvested channeled whelk from federal waters during the period from January 1, 1997, through October 1, 1999.
The public hearing in July 2005 led to the development of regulations to address the issues presented by the public.

### § 3.34. Colons.

The following principles apply to the use of colons:

1. The terms “as follows” and “the following” require a colon if followed directly by the illustrating or enumerated items.

<b>EXAMPLES</b>
The comprehensive assessment includes: ...
Providers approved for participation shall, at a minimum, perform the following activities: ...

2. Use a colon to introduce a long quote, but keep in mind that long quotes are usually not appropriate in regulations.

3. A colon may be used to precede an extended explanation.

4. Capitalize the first word after a colon when it introduces an independent passage or sentence.

### § 3.35. Semicolons.

The following principles apply to the use of semicolons:

1. Use a semicolon between two main clauses that are not joined by a coordinating conjunction. The coordinating conjunctions are “and,” “but,” “for,” “or,” “nor,” “so,” and “yet.”

2. Use semicolons in a list following a colon. If each of the items is an incomplete sentence, end each item, except the last, with a semicolon. If each of the items in an enumerated list is a complete sentence, end each with a period.

<b>EXAMPLES</b>
1. When reviewing the construction costs, the board may adjust the amount being requested for reimbursement funding as follows:

- a. A reduction in funding when planned facilities vary from the recommended security level proportions contained in the board standards by more than 10% without proper justification;
- b. A reduction in funding when functional areas of the facility, such as kitchen, recreation, visiting, laundry, library and commissary, are not included or are included at a size not in conformance with applicable board standards or normal practice;
- c. An increase in funding when construction is proposed for space to be utilized for inmate industries;
- d. An increase in funding when support services areas are proposed at sizes larger than necessary in anticipation of future enlargements or expansions to the facility; and
- e. An increase in funding when the facility includes areas for extraordinary inmate program activities.

3. Use a semicolon when a conjunctive adverb, such as “however,” “therefore,” or “for example,” is used to connect or provide transition between two main clauses.

EXAMPLES

Revised plans or specifications constitute a resubmittal; therefore, additional time will be necessary for the review and technical evaluation pursuant to 9VAC25-790-80 C.

A motor vehicle that is rented for a period of 12 months or longer is not a rental vehicle but is considered a leased vehicle; therefore, it is not subject to the provisions of this chapter.

With prior approval from the department, coverage may be allowed to commence on an earlier date in limited circumstances when prior coverage is unavailable; for example, a new employee who has moved out of the service area of an HMO.

4. Use semicolons to separate portions of an intext list when they are long or when one or more contain commas.

EXAMPLE

Such procedures shall also require requests for proposals to include and define the criteria of such construction projects in areas such as site plans; floor plans; exterior elevations; basic building envelope materials; fire protection information plans; structural, mechanical (HVAC), and electrical systems; and special telecommunications and may define such other requirements as the public body determines appropriate for that particular construction project.

5. Use semicolons in lists of names with titles or addresses and in other lists that would not be clear if separated by commas.

**§ 3.36. Quotation marks.**

Use quotation marks as follows:

1. Words within text that require emphasis are set off in quotation marks.
2. Brief quotes are enclosed in quotation marks; lengthy quotes are set off in the text but are not enclosed in quotation marks.
3. Quotation marks are used to enclose certain material following the terms “marked,” “designated,” “classified,” “named,” “endorsed” or “signed.”

EXAMPLES

When gift containers meet the requirements of gift grade, such containers need be marked only “gift grade” with a statement of net contents and the name and address of the packer or distributor.

Fees are waived at Natural Tunnel for use of the chairlift on one designated “Customer Appreciation Day” per year.



4. Quotation marks are used to enclose titles of articles, editorials, essays, papers, reports, subjects and themes.

EXAMPLE

Where applicable, sampling and analysis of animal remedies shall conform to “Official Methods of Analysis,” 17th Edition, from the Association of Official Analytical Chemists, Inc.

**§ 3.37. Use of punctuation marks with quotation marks.**

A. Place commas and periods inside a closing quotation mark, even though they sometimes logically do not seem to belong there.

EXAMPLE

All volumetric glassware shall be marked “Class A,” denoting that it meets federal specifications and need not be calibrated before use.

B. Place punctuation marks other than commas and periods outside a closing quotation mark unless they are a part of the quoted material.

EXAMPLES

All volumetric glassware shall be marked “Class A”; other glassware does not need to be marked.

The powers of the stewards shall include:

1. Varying any arrangement for the conduct of a race meeting including, but not limited to, postponing a race or races, canceling a race, or declaring a race “no contest”; ...

**§ 3.38. Parentheses.**

In general, commas rather than parentheses should set off phrases and words. If text is important enough to include in a regulation, generally it should not be included parenthetically. Parentheses may be used in the following circumstances:

1. In equations.
2. In scientific names.
3. Following a proper name, to define an acronym.
4. Following the name of a state or federal statute or regulation, to provide the appropriate citation.
5. When using the terms “Repealed” and “Reserved.”
6. When providing an example or clarification involving the terms “e.g.” or “i.e.” See § 3.33 F of this manual for guidance on the use of these terms.
7. To hold a place for an effective date in the text of a regulation. See § 4.16 of this manual for guidance on effective dates.

EXAMPLES

VOC Content =  $\frac{\text{Certified Emissions} \times 100}{\text{Certified Use Rate}}$

HCFC-124 (2-chloro-1,1,1,2-tetrafluoroethane)

North American Industry Classification System (NAICS)

Solid Waste Disposal Act (42 USC § 3251 et seq.)

Virginia Pesticide Control Act (§ 3.1-249.27 et seq. of the Code of Virginia)

(Repealed.)

(Reserved.)

“Laminate repair or edgebanding adhesive” means an aerosol adhesive designed for the touch-up or repair of items laminated with high pressure laminates (e.g., lifted edges, delaminates, etc.).

### § 3.39. Hyphens and compound words.

A. There are three types of compounds: an open compound, which is a combination of separate words that are closely related and form a single concept; a hyphenated compound, which is a combination of words joined by one or more hyphens; and a closed compound, which is a combination of two or more elements, originally separate words, now spelled as one word.

When considering whether a word is an open, closed, or hyphenated compound, check a dictionary, and if the compound isn't there, then consider whether a hyphen is needed in order to avoid confusion. If it's not, then omit the hyphen.

Also, some compounds are used differently in different fields. For instance, some agencies use “groundwater” while others use “ground water.” The general purpose in the use of hyphens is to promote clarity. Use this section as a guide, but don't stand on the rules if confusion results.

<b>Open compounds:</b>		
reference manual	cross section	Labor Day
<b>Hyphenated compounds:</b>		
right-of-way	well-known	cross-reference
double-check	mass-produced	
cross-contamination	trade-in	
<b>Closed compounds:</b>		
notebook	bookkeeper	rulemaking
website	email	taxpayer
<b>Compound adjectives placed before the nouns they modify (see discussion and more examples in subsection D of this section):</b>		
fact-finding conference	four-lane highway	board-approved courses

B. Not strictly compounds but related in use are words with prefixes or suffixes. Some of these words are closed and some are hyphenated. Use the hyphen to avoid confusion or an awkward combination of letters and syllables between prefix and root or suffix and root.

C. Most prefixes form words that are closed unless the word it is joined with is a proper noun, or if there would be ambiguity owing to, for example, a doubled letter, or if the hyphenated version is in the dictionary. Use a hyphen when the prefix goes with an open compound noun (e.g., non-United States citizen). And use a hyphen when the prefix goes with a hyphenated compound (e.g., non-English-speaking country).

<b>Prefixes forming closed compounds:</b>		
coauthor	multifaceted	reexamine
midcentury	nonnegotiable	semiconductor
nonprofit	semisolid	prerelease
<b>Prefixes and suffixes forming hyphenated compounds:</b>		

capitalized words or numerals – mid-August, anti-American, pre-1950  
 homographs – re-cover, re-create, re-sign  
 more than one word – non-habit forming, pre-World War II  
 repeated vowels – semi-independent, anti-inflammatory  
 prefix ex- (meaning “former”) – ex-senator  
 prefixes self- and all- – self-help, self-propelled, all-knowing, all-inclusive  
 suffix -elect – governor-elect, president-elect

D. Words that function as a compound adjective that are placed before the noun they modify should be hyphenated.

EXAMPLES

will be determined on a case-by-case basis	shall perform an on-site inspection
during a 30-day period	law-enforcement officer

However, when these same word groups are placed after the nouns or pronouns they modify, they are not hyphenated.

EXAMPLES

determine the outcome case by case	perform the inspection on site
within 30 days	a career in law enforcement

ADDITIONAL EXAMPLES

out-of-state transplant facilities	even-numbered years
single-family home	law-abiding citizen
public health-related field	in-service training
part-time employee	<i>but</i> He is employed part time.
board-approved course	<i>but</i> The course is board approved.
state-owned property	<i>but</i> The property is state owned.
on-the-job training	<i>but</i> He will be trained on the job.

E. When the compound adjective contains an open compound noun, use the hyphen after the second word (e.g., public health-related fields).

F. Hyphens should not be used in constructions if the meaning is clear without them (e.g., “sales tax bill,” “foreign aid plan”). The hyphen is not needed in these forms: “navy blue skirt” or “dark green paint.”

G. An adverb ending in “ly” followed by a participle or adjective is always open.

EXAMPLES

officially designated laboratory	officially designated agent
officially declared disasters	highly developed

H. Hyphens are not used in titles such as “commander in chief,” “director general,” “editor in chief,” or “secretary general.” Do use the hyphen in titles like “secretary-treasurer” or “law-enforcement officer.”

I. In a series of hyphenated phrases, use the complete phrase in each instance.

EXAMPLE	
AVOID: fixed- or rotary-wing aircraft	USE: fixed-wing or rotary-wing aircraft

**§ 3.40. Writing numbers.**

Use Arabic numerals for numbers greater than nine (e.g., 10, 11, 23, and 400). Numbers from one to nine are spelled out, except for proper names such as “Chapter 1,” not “Chapter One.” Zero is written “0.”

**§ 3.41. Percentages.**

Use numerals followed by a percentage symbol (%) for all percentages. All percentages consist of at least two digits.

EXAMPLES				
Percentages greater than or equal to 10:	10%	12%	13.4%	15.63%
Percentages less than 10:	8.0%	8.64%	9.6%	48.7%
Percentages less than one:	0.002%	0.5%	0.621%	0.75%

**§ 3.42. Money figures.**

A. Use numerals preceded by a dollar symbol (\$) for most monetary listings.

B. Amounts less than \$1.00 are written with a dollar symbol followed by a space, a decimal, and the cent value.

EXAMPLES		
\$ .04	\$ .50	\$ .99

C. Amounts greater than \$ .99 but less than \$10 are written with a dollar symbol followed by the dollar value followed by a decimal and the cent value, even if the cent value is “.00.”

EXAMPLES		
\$2.00	\$3.40	\$9.99

D. Amounts greater than \$9.99 are written with a dollar symbol followed by the dollar value followed by a decimal point followed by the cent value, unless the cent value is “.00,” in which case no decimal point or cent value is included.

EXAMPLES		
\$10	\$10.06	\$100

E. For monetary listings incorporating seven or more digits, use the dollar symbol followed by the abbreviated numeral and the appropriate term such as million, billion, etc.

EXAMPLES			
USE:	\$1 million	AVOID:	\$1,000,000
USE:	\$4.2 million	AVOID:	\$4,200,000

**§ 3.43. Dates.**

In the text of documents, spell out the month of the year. Do not use the number of the month to signify the month. Do not abbreviate the name of the month.

EXAMPLE	
USE: December 2, 2006	AVOID: 12/2/06 and Dec. 2, 2006

**§ 3.44. Temperature.**

Forms of temperatures (i.e., Fahrenheit, Celsius and Kelvin) are written using numerals only. The temperature value is followed by a degree symbol (°) and the appropriate letter, “F,” “C,” or “K,” as the case may be.

EXAMPLES			
75°F	30°C	-4°F	0°K

**§ 3.45. Fractions; mixed numbers.**

A. Fractions are written in numeric form (e.g., 1/2, 3/4, 1/4). The Registrar’s office recommends using numerals with slashes for fractions in order to avoid confusion when material is presented on the Internet. For instance, use 1/2 instead of the symbol ½.

B. Mixed numbers (whole numbers and fractions) are also written in their numeric form with a hyphen to separate the whole number from the fraction (e.g., 1-1/2, 2-3/4, 13-7/8).

**§ 3.46. Units of measure.**

Generally, abbreviations are not used in the Virginia Register and Virginia Administrative Code; however, there are a few exceptions when referring to units of measure particularly when using measurements in lists and in tables and charts. The following table serves as a guide to writing units of measure:

USE	AVOID
barrel	bbl.
by	X
Btu	British thermal unit
and	&
°F	Fahrenheit
°C	Celsius
°K	Kelvin
Watts	W.
No.	#

**§ 3.47. Time.**

Indicate time in Arabic numerals, with the exception of 12 p.m., which is written as “noon,” and 12 a.m., which is written as “midnight.”

EXAMPLES	
USE: 10 a.m. 10:30 a.m. noon	AVOID: 10:00 a.m.  12 p.m. or 12 noon

**§ 3.48. Commonly used words with their plain language translations.**

A. Listed in this section are commonly used words and phrases. The use of the words in the right column is preferred.

AVOID	USE
and/or	“A” or “B” or both

<b>AVOID</b>	<b>USE</b>
appear	seem
ascertain	find out
at such time as	when
at this point in time	now
commence	begin
complete	fill out
comply	follow
constitute	be
disclose	show
elect	choose
endeavor	try
ensue	follow
execute	sign
experience	have, feel
following section	§ (fill in the number)
for the duration of	during
forthwith	immediately
forward	send
hereby	by this
herein	to this
hereof	of this
hereto	to this
hereunder	under this, below
herewith	with this
in lieu of	instead of
in the event	if
inasmuch as	because
indicate	state, show
initial	first
insufficient	not enough
negative	not
obtain	get
personnel	people, staff
presently	now, soon
prior to	before, earlier
prohibit	forbid
purchaser	buyer
subsequent to	after, later
such, same, said	the, this, that, them, those, it
terminate	end
thereby	by that
therein	in that
thereof	of that
thereto	to that
therewith	with that
thus	so, that way
transpire	happen
upon	on
vendor	seller
whereas	avoid using this term
wherein	where, in which

B. Do not use the words “above,” “below,” “hereinabove,” “hereinafter,” or “hereinbelow” when referring to the position of a section or other provision. If a reference is necessary, specify the part, article, section, subsection or subdivision of the regulation by number.

**§ 3.49. Problem words and expressions defined.**

A. Do not use the term “subparagraph.” Use the term “paragraph” only when referring to a division that is not labeled with a letter or number. Use the term “subsection” for paragraphs with capital letters

and the term “subdivision” to indicate any division under a subsection. See § 3.7 of this manual for additional information regarding labeling and references to sections, subsections, and subdivisions.

B. The following list defines problem words and expressions.

affect:	verb – “To influence” or “to change”
effect:	noun – “Result” or “accomplishment”; verb – “to cause” or “to bring about”
assure:	“To convince” or “to guarantee” and applies only to persons
ensure:	“To make certain” or “to guard against loss” and applies to both persons and property
insure:	To cover with insurance or “to guard against loss”
capital:	The seat of government of a state or country (e.g., Richmond is the capital of Virginia); money invested in a business
capitol:	A building in which a state legislative body meets; with uppercase, the building in which the U.S. Congress meets in Washington, D.C.
e.g.:	For example
i.e.:	That is
farther:	Refers to a measurable distance or space
further:	“Moreover.” Also indicates greater in quantity, time, and degree
imply:	The speaker implies
infer:	The hearer infers

**PART IV.  
PROCEDURE FOR PUBLISHING REGULATIONS.**

**Article 1.  
General Requirements.**

**§ 4.1. Executive branch review.**

Pursuant to the Administrative Process Act, each Governor is required to issue an executive order regarding development and executive branch review of regulations proposed by state agencies. Unless exempted from such review by the APA, the promulgating agency should refer to the most recent executive order for instructions that supplement this manual.

**§ 4.2. Public participation guidelines.**

Section 2.2-4007.02 of the Administrative Process Act requires agencies to adopt public participation guidelines, which are procedures for obtaining public input from interested parties in the formation and development of an agency's regulations. An agency may promulgate regulations only after developing public participation guidelines through the Administrative Process Act.

The guidelines shall include but are not limited to (i) methods for identifying and notifying persons interested in the regulation under consideration and how this input will be sought; (ii) a general policy for using advisory committees and consulting with interested individuals who would like to work with the agency in developing the regulation; and (iii) provisions for offering interested persons an opportunity to submit comments, either orally or in writing.

The guidelines may also include (i) requirements for holding public hearings, if any, other than the requirements specified in § 2.2-4007.01 of the Code of Virginia; (ii) the time frame allowed for the public comment period after publication of the Notice of Intended Regulatory Action, not to be less than 30 days; (iii) requirements for agency response to petitioners; and (iv) provisions for conducting a periodic review of agency regulations.

**§ 4.3. Letter from Attorney General's office.**

Prior to submitting a regulatory action to the Registrar, the agency consults with the Attorney General's office and obtains a letter ensuring that the agency has statutory authority to adopt, amend or repeal the regulations. Include this letter with regulation submission packages filed with the Registrar.

**§ 4.4. Rejection.**

Material filed with the Registrar's office that does not meet publication or Administrative Process Act requirements may be rejected and returned to the agency for correction. When submitted material is rejected, the reason or reasons for rejection will be provided to the agency regulatory coordinator. In order to be considered for publication, the agency must resubmit the material with the deficiency corrected.

**Article 2.  
Response to Petition for Rulemaking (Form RR13).**

**§ 4.5. Agency response to petitions for rulemaking.**

A. Section 2.2-4007 A of the Code of Virginia provides that any person may petition an agency to develop, amend, or repeal a regulation. Two types of notices, the initial agency notice and the notice of the agency's decision, shall be published when an agency is requested to develop, amend, or repeal a regulation. The agency shall use the Response to Petition for Rulemaking form ([Form RR13](#)) when filing (i) the initial agency notice of the petition for rulemaking and (ii) the agency decision granting or denying the petitioner's request.



B. Initial agency notice. When an agency receives a petition for rulemaking, it shall submit notice of the petition to the Registrar for publication in the Virginia Register. The initial agency notice shall identify the petitioner, the nature of the petitioner's request, and the agency's plan for disposition of the petition.

A 21-day written comment period begins upon publication of the notice requesting comment on the petition for rulemaking in the Virginia Register. After the close of the 21-day comment period, the agency has 90 days to issue a written decision as to whether it will grant or deny the petition. An exception to this 90-day response requirement is provided for a regulatory entity that has not met within the 90-day time period. In such cases, a response is required within 14 days after the regulatory entity's next meeting.

C. Agency decision. Once a decision is made, the agency's written decision granting or denying the petitioner's request and the rationale for that decision shall be submitted to the Registrar for publication.

### **Article 3. Notice of Intended Regulatory Action.**

#### **§ 4.6. Purpose; comment period; public hearing.**

A. The agency shall file the Notice of Intended Regulatory Action (NOIRA) with the Registrar for publication in the Virginia Register in accordance with § 2.2-4007.01 of the Administrative Process Act. The purpose of this notice is to alert interested individuals or groups of the purpose of the regulatory action and allow them to provide input by submitting comments to the agency. A description of the subject matter and intent of the planned regulation or of the planned amendments to the regulation shall be included in the NOIRA.

B. The public comment period shall be a minimum of 30 days as specified in § 2.2-4007.01 of the Code of Virginia. This comment period begins on the date of initial publication of the NOIRA in the Virginia Register. The proposed regulation submission package may not be filed with the Registrar until this published comment period has ended. Do not mistake the 30-day comment period for the NOIRA with the 60-day notice of comment period that begins at the time the proposed regulation is published in the Virginia Register.

C. The agency shall state in the NOIRA if it plans to hold a public hearing on the proposed regulation during the 60-day public comment period. If the agency does not intend to hold a public hearing during the 60-day comment period, the agency shall indicate in the NOIRA that no public hearing is intended.

D. An agency is required to hold a public hearing if (i) a public hearing is required by the agency's basic law, (ii) the agency states an intent to hold a public hearing on the proposed regulation in the NOIRA, (iii) an agency's public participation guidelines require that a public hearing be held, (iv) the Governor directs the agency to hold a public hearing, or (v) the agency receives requests for a public hearing from at least 25 persons.

#### **§ 4.7. Submission and publication.**

The agency inputs the information on Town Hall and then clicks on "Submit to Registrar." This automatically populates RIS. Hard copy submission to Registrar's office is not required.

The Registrar shall publish the notice in the Notices of Intended Regulatory Action section of the Virginia Register. The publication schedule approved by the Virginia Code Commission that lists the deadlines for receiving documents for publication on a certain date is available on the Register's website. The agency may use this schedule to determine the date its notice will be published and the comment period deadline.

#### **§ 4.8. Withdrawing a Notice of Intended Regulatory Action.**

If the agency decides not to proceed with a regulatory action that has been published in the Register as a Notice of Intended Regulatory Action, the agency shall notify the Registrar in writing that a published

NOIRA is being withdrawn. The written statement shall include the VAC number and title of the regulation and the volume, issue and page number of the Virginia Register in which the NOIRA was published. The withdrawal notice will be published as soon as possible in the Notices of Intended Regulatory Action section of the Virginia Register.

**Article 4.**  
**Proposed Regulation Submission Package.**

**§ 4.9. Documents to be filed for proposed regulatory actions.**

A. Once a Notice of Intended Regulatory Action is published in the Virginia Register, an agency may file a proposed regulation submission package after the 30-day public comment period has ended. When the agency is ready to file its package with the Registrar, it shall do so according to Article 4 (§ 1.10 et seq.) of Part I of this manual, including submitting data via RIS as specified in § 1.12.

B. The agency shall refer to the current Governor's executive order concerning review of regulations for requirements related to executive branch review of the proposed regulation package.

C. The following documents are requested by the Registrar's office when filing proposed regulations for publication in the Virginia Register:

1. A transmittal sheet including public hearing date, time and location; and deadline for receiving public comments;
3. A letter from the Attorney General's office stating that the agency has statutory authority to adopt, amend, or repeal the regulation pursuant to § 4.3;
4. A statement of basis, purpose, substance, and issues (BPSI) as required by § 2.2-4007.05 of the Administrative Process Act;
5. The economic impact analysis (EIA) prepared by the Department of Planning and Budget (DPB) as required by § 2.2-4007.04 of the Administrative Process Act;
6. The agency's response to the economic impact analysis prepared by DPB;
7. A brief summary of the major proposals or amendments to the regulation;
8. Text of the proposed regulation;
9. A list of reporting forms, if any, used in administering the regulation for inclusion in VAC and any new or revised reporting forms in electronic and print versions for publication in the Register; and
10. If incorporating material by reference, other than material exempted in § 8.3 of this manual, one copy of the document or documents being incorporated by reference and the list of the documents incorporated by reference for inclusion in VAC.

D. Appendix B of this manual provides two examples of the preface of a proposed regulatory action as printed in the Virginia Register. The preface includes the title of the regulation; the statutory authority; the public hearing date, if any; the public comment deadline; the BPSI statement; the economic impact analysis prepared by DPB; the agency's response to the EIA; and the summary. This information is compiled by the Registrar's office from the documents submitted as part of the proposed regulation submission package. In the Virginia Register, the preface is followed by the text of the proposed action.

**§ 4.10. Transmittal sheet.**

A. The transmittal sheet provides the Registrar's office with pertinent information needed for processing the agency's proposed regulation submission package for publication.

1. Townhall agencies submit the information from Townhall. This automatically transmits the info to RIS.

2. NonTownhall agencies fill out the transmittal sheet in RIS. To do so, go to the create report feature and click on transmittal sheet. The transmittal sheet is a generic one for all types of regulations. For a proposed regulation, fill out the regulatory coordinator information, the VAC chapter and title, the statutory authority, whether or not a public hearing is scheduled and if so, the dates, public comment period information, date NOIRA was published, and whether or not the regulation is exempt from the APA.

B. The agency shall include the name, address and telephone number of an agency contact person from who interested persons may obtain a copy of the regulation. If no name is given, the Registrar will list the agency regulatory coordinator in the Virginia Register as the contact person. If there are any costs to the public for obtaining copies of the regulation, indicate those costs on the form.

C. Section 2.2-4007.03 of the Code of Virginia requires that an agency, when formulating any regulations, afford interested persons an opportunity to submit data, views and arguments, either orally or in writing, to the agency. A notice of this opportunity to submit oral or written comments must be published in the Virginia Register. The agency may also, in its discretion, (i) publish the notice in any newspaper and (ii) publicize the notice through press releases and such other media as will best serve the purpose and subject involved. If a public hearing is scheduled, the date, time, and location of the public hearing must be included in the notice. The agency shall receive public comment on the proposed regulation for a minimum of 60 days from the date of publication in (i) the Virginia Register and (ii) any newspaper.

D. Holding public hearings on regulations is not required by the Administrative Process Act; however, an agency shall hold a public hearing if (i) a public hearing is required by the agency's basic law; (ii) the agency states an intent to hold a public hearing on the proposed regulation in the NOIRA; (iii) an agency's public participation guidelines require that a public hearing be held; (iv) the Governor directs the agency to hold a public hearing; or (v) the agency receives requests for a public hearing from 25 persons or more.

E. If the agency is required by its public participation guidelines or basic law to publish notices of public comment periods in a newspaper, or if the agency chooses to publish in the newspaper, the agency is responsible for making arrangements for newspaper publication. To meet statutory requirements, it is essential that the agency arrange for newspaper publication to occur at least 60 days in advance of the last date prescribed in the notice for receiving public comment.

F. If the agency is repealing one chapter and replacing it with a chapter on the same subject, refer to § 4.45 of this part regarding submission of transmittal forms and other requirements.

#### **§ 4.11. Letter from the Attorney General's office.**

File a copy of the letter provided by the Attorney General's office stating that the agency has statutory authority to adopt, amend, or repeal the regulation as provided in § 4.3 of this manual.

#### **§ 4.12. Statement of basis, purpose, substance, and issues.**

A. Section 2.2-4007.05 of the Code of Virginia requires agencies to submit a separate and concise statement of the basis, purpose, substance, and issues (BPSI statement) of a proposed and fast-track regulatory action. (See Part VI (§ 6.1 et seq.) of this manual for the complete requirements for fast-track regulatory actions.) This statement will be published in the Regulations section of the Virginia Register along with the proposed regulation. See individual examples following subdivisions B 1 through 4 of this section. See recent issues of the Register for additional examples.

B. Section 2.2-4007.05 of the Code of Virginia requires that BPSI statements meet the following criteria:

1. Basis. Cite the statutory authority for promulgating the regulation, including an identification of the section number or section numbers and a brief statement relating the content of the authority to the specific regulation.

EXAMPLE A

**9VAC25-640. Aboveground Storage Tank and Pipeline Facility Financial Responsibility Requirements (adding 9VAC25-640-10 through 9VAC25-640-250).**

Basis: The legal basis for the proposed regulation is the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia). Specifically, § 62.1-44.34:16 D requires operators to demonstrate financial responsibility as a condition of operation and authorizes the board to promulgate regulations requiring operators of facilities to demonstrate financial responsibility sufficient to comply with the requirements of Article 11 (§ 62.1-44.34:14 et seq.) of the State Water Control Law.

EXAMPLE B

**17VAC15-20. Standards for Microfilming Public Records (amending 17VAC15-20-20 through 17VAC15-20-50, 17VAC15-20-70 through 17VAC15-20-120, 17VAC15-20-150, 17VAC15-20-160, and 17VAC15-20-170).**

Basis: Section 42.1-8 of the Code of Virginia requires the Library Board to make rules and regulations, not inconsistent with law, for the government and use of The Library of Virginia. Section 42.1-82 of the Code of Virginia authorizes the board to issue regulations to facilitate the preservation and storage of records by all agencies.

EXAMPLE C

**3VAC5-70. Other Provisions (amending 3VAC5-70-170).**

Basis: The Alcoholic Beverage Control Board is required by § 4.1-111 of the Code of Virginia to adopt a regulation prescribing the terms and conditions under which credit or debit cards may be accepted from licensees at government stores.

2. Purpose. Explain the need for the new or amended regulation and provide the rationale or justification for the new or amended provisions of the regulation from the standpoint of the public's health, safety or welfare. If the agency promulgating the regulation determines that the regulation has no bearing on the public's health, safety, or welfare, the agency shall include a statement to that effect.

EXAMPLE A

Purpose: The purpose of this regulation is to protect the health, safety and welfare of the citizens of the Commonwealth by ensuring aboveground storage tank and pipeline facility operators maintain adequate financial resources to contain and clean up discharges of oil that may occur at their facilities.

EXAMPLE B

Purpose: The recent changes for revision are minor and mostly technical in nature. This standard is required to ensure that public records transferred to microfilm are retained in that form for the life of the record, that the vital and historical records of the Commonwealth will be preserved, and that the legal requirements for maintaining these records on film are met. The amendments have no impact on the public's health, safety or welfare.

EXAMPLE C

Purpose: The purpose of these amendments is to carry out the mandate of Chapter 98 of the 1999 Acts of Assembly and to allow mixed beverage restaurant licensees to pay for alcoholic beverages purchased at government stores using credit or debit cards. The proposed amendment promotes the public safety and welfare by reducing the needs for employees of licensees to carry large sums of cash in purchases of distilled spirits at government stores.

3. Substance. Identify and explain the key provisions of the new or amended regulation that make changes to current law.

EXAMPLE A

Substance: The proposed regulation requires aboveground storage tank and pipeline facility operators to demonstrate that they have the financial ability to pay for containment and clean up of oil discharges that may occur at their facilities. Six methods of financial assurance are provided: (i) financial test of self-insurance, (ii) guarantee, (iii) insurance, (iv) surety bond, (v) letter of credit, and (vi) trust fund. The proposed regulation requires financial assurance mechanisms to be updated annually.

EXAMPLE B

Substance: 17VAC15-20-30 has been updated to reflect the current versions of the American National Standards Institute (ANSI), Association for Information and Image Management Institute (AIIM) and the International Standards Organization (ISO); 17VAC15-20-80 has been amended to provide resolution requirements for procedural microfilm recording; and 17VAC15-20-160 has been amended to clarify the splicing process.

EXAMPLE C

Substance: The proposed amendments expand the present acceptance of credit or debit cards at government stores to include purchases by mixed beverage restaurant licensees.

4. Issues. Identify the primary advantages and disadvantages for the public and to the agency or the Commonwealth of implementing the new or amended regulatory provisions. If there are no disadvantages, the agency shall add a sentence indicating this information.

EXAMPLE A

Issues: For the public, the primary advantage of implementation of this regulation is that it helps to ensure that operators will have adequate financial resources to perform containment and clean up of oil discharges that occur at their facilities. Prompt containment and clean up should help reduce or prevent impacts to humans and the environment.

The requirement for operators to demonstrate financial responsibility as a condition of operating a facility already exists pursuant to § 62.1-44.34:16 D of the Code of Virginia. Therefore, the proposed regulation does not add any additional disadvantage. Rather, the proposed regulation provides the regulatory basis for implementing the statutory requirement. Operators will incur some cost to comply with the financial responsibility requirements; however, for most operators, the cost should be negligible.

For the department, the regulation will increase the department's workload in that it will result in the need to perform compliance reviews; however, the advantages of the regulation should outweigh the additional burden. The regulation will assist the department by helping to ensure that operators have funds available to perform containment and clean up. This should help to reduce the need for clean ups conducted by the state and associated cost recovery efforts.

EXAMPLE B

Issues: These regulations have been in effect since 1986 with periodic updates to the references and changes in text to reflect national standards. The changes have no economic impact on the regulations already in effect, and there are no disadvantages to the agency or the Commonwealth as a result of the changes. Revision of this regulation means that the most recent and accurate reference standards will be followed ensuring that public records are preserved for the agency and the citizens of the Commonwealth. The revision therefore is an advantage for the agency and the Commonwealth.

EXAMPLE C

Issues: The proposed amendments will have some advantages for mixed beverage restaurant licensees of the board. They will have the option of paying for their alcoholic beverage purchases by credit or debit card. Presently they are limited to payment by cash or check. The board may also receive an advantage from a reduction in checks returned for lack of sufficient funds. A possible disadvantage to the board is the payment of additional credit card processing fees.

C. A statement of basis, purpose, substance, and issues failing to meet the criteria set out in this section is cause for rejecting the entire proposed regulation submission package.

**§ 4.13. Economic impact analysis prepared by the Department of Planning and Budget.**

A. Section 2.2-4007.04 of the Administrative Process Act requires the Department of Planning and Budget (DPB) to prepare an economic impact analysis (EIA) for all proposed and fast-track regulations and to deliver (i) a copy of the analysis to the agency drafting the regulation and (ii) a copy to the Registrar for publication with the proposed regulation. The Administrative Process Act provides DPB up to 45 days to develop the statement in coordination with the agency. Contact DPB for details about this process.

B. The agency shall include a copy of the analysis to the Registrar with its proposed regulation submission package. Unless exempted by statute, the economic impact analysis and the agency’s response shall be part of the regulatory package submitted to the Registrar.

**§ 4.14. Agency’s response to the Economic Impact Analysis prepared by the Department of Planning and Budget.**

After receiving a copy of the economic impact analysis prepared by the Department of Planning and Budget, the agency shall respond in writing to the EIA as required by §§ 2.2-4007.04 and 2.2-4007.05 of the Code of Virginia. The agency shall provide this response to the Registrar with its proposed regulation submission package.

<p>EXAMPLES</p> <p><u>Agency’s Response to the Department of Planning and Budget’s Economic Impact Analysis:</u> The agency concurs with the analysis of the Department of Planning and Budget.</p> <p><u>Agency’s Response to the Department of Planning and Budget’s Economic Impact Analysis:</u> The agency disagrees with the analysis of the Department of Planning and Budget in the following areas: ...</p>
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**§ 4.15. Summary of proposed regulation.**

The agency shall submit on a separate sheet of paper (i) a summary of the regulation if a new regulation is being promulgated, (ii) a summary of the amendments being made to the regulation if an existing regulation is being amended, or (iii) the reason for repeal if a regulation is being repealed. If a chapter of VAC is being repealed and replaced with a new chapter, only one summary is needed.

The agency shall prepare the summary for approval by the Registrar as specified in § 2.2-4031 of the Code of Virginia prior to publication in the Virginia Register. In the summary, the agency shall explain the regulatory action in a general way using plain and clear language and give notice of the substantive provisions contained in a new regulation that is being promulgated or of substantive changes to an existing regulation that is being amended.

<p>EXAMPLES</p> <p><b>13VAC10-160. Rules and Regulations for Administration of Rent Reduction Tax Credits (amending 13VAC10-160-10, 13VAC10-160-30, 13VAC10-160-55, 13VAC10-160-60, 13VAC10-160-80, and 13VAC10-160-90).</b></p> <p><u>Summary:</u></p> <p><i>The amendments continue the rent reduction tax credit program through December 31, 2010, if (i) rent reduction tax credits were validly claimed for the dwelling unit for all or part of December 1999 and (ii) the tenant was an occupant of such unit on December 31, 2005. The amendments to such rules and regulations implement the amendments to § 58.1-339.9 of the Code of Virginia enacted in the 2005 Session of the General Assembly.</i></p> <p><b>18VAC85-40. Regulations Governing the Practice of Respiratory Care Practitioners (amending 18VAC85-40-66).</b></p> <p><u>Summary:</u></p>
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*The amendment recognizes courses directly related to the practice of respiratory care that are approved by the American Medical Association for Category 1 CME credit as meeting the required hours for renewal of licensure as a respiratory care practitioner.*

**12VAC5-380. Regulations for the Licensure of Home Health Agencies (repealing 12VAC5-380-10 through 12VAC5-380-600).**

**12VAC5-381. Regulations for the Licensure of Home Care Organizations (adding 12VAC5-381-10 through 12VAC5-381-360).**

Summary:

*This regulatory action repeals the existing Regulations for the Licensure of Home Health Agencies (12VAC5-380) and promulgates the Regulations for the Licensure of Home Care Organizations (12VAC5-381).*

*The changes (i) add supervision, continuing education, and qualification requirements for personnel; (ii) add one year of experience or training in direct health care delivery services to administrator qualifications and require all back-up administrators to have the same qualifications as administrators; (iii) increase license fees; (iv) switch from annual inspections to biennial inspections; and (v) eliminate the restriction requiring home care agencies to provide services only in a defined geographic area.*

*Other changes include adding a statutorily required background check requirement for compensated employees, clarifying the type of insurance coverage required, requiring home visits to be part of the inspection protocol, clarifying the quality improvement assessment indicators, removing any requirements that contradict with Medicaid and Medicare certification requirements, detailing consumer complaint procedures, clarifying financial control standards for initial licensure, and adding provisions for drop sites.*

**§ 4.16. Text of proposed regulation.**

A. When an agency is amending an existing regulation and submits the proposed regulation for publication, the agency must (i) strike through any text to be deleted or changed and (ii) underscore any text to be added. Agencies shall submit only the VAC sections that are being amended, added or repealed in the regulatory action being filed. The agency should find the project in RIS for the NOIRA and then follow the instructions in § 1.12 H to insert the sections that are being amended, added or repealed.

B. When an agency is proposing a new regulation, the text shall be underscored to indicate that the language is proposed text. If the new regulation will replace an existing regulation, the regulation that will be replaced shall be repealed in accordance with § 4.45 of this part. If an entire chapter is being repealed, the individual sections are not filed. To repeal an entire section, follow the instructions in § 4.46 of this part.

C. The agency shall prepare the text of the proposed regulation using the guidelines established in Part III (§ 3.1 et seq.). Brackets may not be used in the proposed regulation, except in the case of an agency filing a revised proposed regulation as provided in § 2.2-4007.03 of the Code of Virginia; brackets are reserved specifically for highlighting changes made to the final regulation to show any additional changes adopted since the regulation was published in its proposed form. See subdivision A 14 and subsections D and E of § 3.1 for additional information on the use of brackets.

D. Generally, the effective date is not included in the text of a regulation. If it is necessary to refer to the effective date in the text, estimate the effective date or use the following language as a spacer in the proposed regulation submission and fill in the date in the final regulation submission: “(insert effective date of this regulation).” Use parentheses, not brackets, for the temporary language.

EXAMPLES

In proposed taken from 12VAC5-640-220. Permits; general:

A. After (insert effective date of this regulation), no person shall construct, alter, rehabilitate, modify or extend a discharging system or allow the construction, alteration, rehabilitation, or extension of a discharging system, without a written construction permit from the commissioner.

In final with effective date of July 30, 2005:

A. After [ (insert effective date of this regulation) July 30, 2005 ], no person shall construct, alter, rehabilitate, modify or extend a discharging system or allow the construction, alteration, rehabilitation, or extension of a discharging system, without a written construction permit from the commissioner.

E. The Virginia Register staff shall review and edit the regulation. The stricken and underscored changes indicated by the agency and any editing changes made by the Virginia Register staff shall be made to the most recent version of the regulation. Contact the Registrar's office if further help is needed.

F. If the agency makes a change to an existing regulation, no matter how minor, without striking or underscoring the change, the Virginia Register staff may not discover the change and it will not be made to the proposed regulation document and, therefore, will not be published or incorporated into the Virginia Administrative Code.

#### **§ 4.17. Reporting forms.**

A. Agencies shall submit for publication reporting forms that the agency intends to incorporate or use in administering the regulation being proposed or amended as provided in § 2.2-4031 A of the Code of Virginia. The agency shall include a form number and the date of issuance or revision on each form.

B. Forms used in administering a regulation are listed in the Virginia Administrative Code following the regulation. When a regulation is amended, the agency shall treat this list as a separate unnumbered section of the regulation and amend it to reflect changes in the use of forms (adding them to or deleting them from the list) and to reflect revisions of the forms (amending the name or revision date on the list), as appropriate.

New and revised forms and forms that have not been published previously will be published in the Regulations section of the Virginia Register except as provided in subsection E of this section.

C. Agencies shall submit a list of reporting forms with any new or amended regulations. The current list of agency reporting forms, if any, is located at the end of the chapter. When an agency revises any of its reporting forms, it shall submit those forms in their corrected versions (i.e., without strikes and underscores) and a list of the forms using strikes and underscores to indicate changes. Also, email an electronic copy of each form, preferably in a pdf format, to varegs@dls.virginia.gov. The list and forms will be published in the Virginia Register, except in cases where only the list is published pursuant to subsection E of this section.

D. Forms should be submitted electronically in RIS. An existing Forms section will be listed as 9998 in a chapter in RIS. When adding a Forms List to a chapter or a chapter that does not currently have a forms list, after you click on create new section, select the existing chapter for the new section, input the section number and "Forms" in the section catchline, then select "Forms" from the dropdown menu and click the box next to it. Then hit create section. The new section will show on the project detail page.

E. If the agency submits a large number of forms for publication or based on other publication considerations, at the Registrar's discretion, only the list of the forms will be published. When forms are not published, a notice shall be given stating that the forms may be viewed at the agency or at the Registrar's office.

F. Use the following formats for form lists:



1. For new forms, “Form name, form number (eff. month/year).”; or
2. For revised forms, “Form name, form number (rev. month/year).”

<p>EXAMPLES</p> <p><b>DEPARTMENT OF MINES, MINERALS AND ENERGY</b></p> <p><b>4VAC25-101. Regulations Governing Vertical Ventilation Holes and Mining Near Gas and Oil Wells.</b></p> <p>Application for a Permit to Drill a Vertical Ventilation Hole, DM-VVH-1 (rev. 9/00).</p> <p>Drilling Report, DM-DR-1 (eff. 3/01).</p> <p>Plugging Affidavit, DM-PLG-1 (eff. 3/01).</p> <p style="text-align: center;"><b>DEPARTMENT OF STATE POLICE</b></p> <p><b>19VAC30-70. Motor Vehicle Safety Inspection Rules and Regulations.</b></p> <p>Inspection Sticker Inventory Report, Form SP-221 (rev. <del>8/1/94</del> <u>12/05</u>).</p> <p>Mechanics Certification Application, Form SP-170-B (rev. 9/04).</p> <p>Criminal History Record Name Search Request, Form SP-167 (rev. <del>9/04</del> <u>1/06</u>).</p>
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**§ 4.18. Documents incorporated by reference.**

A. The title of the document incorporated by reference should be submitted on RIS. An existing documents incorporated by reference (DIBR) section will be listed as 9999 in a chapter. DIBRs should be submitted electronically in RIS. When adding a DIBR List to a chapter or a chapter that does not currently have a DIBR list, after you click on create new section, select the existing chapter for the new section, input the section number and "Documents Incorporated by Reference" in the section catchline, then select "Documents Incorporated by Reference" from the dropdown menu and click the box next to it. Then hit create section. The new section will show on the project detail page.

B. The agency shall file one copy of each document incorporated by reference and a list of the documents prepared according to Part VIII (§ 8.1 et seq.) of this manual, unless the incorporated document is exempt as provided in § 8.3.

**Article 5.**

**Publication, Agency Review, and Withdrawal of Proposed Regulation.**

**§ 4.19. Publication of proposed regulation.**

Regulations properly prepared and filed and meeting all applicable requirements shall be published according to the publication schedule described in § 1.11 of this manual, unless a request to withdraw the regulation from publication is made in writing in time to remove it from publication. An up-to-date publication schedule is posted on the Virginia Register website. The title of the regulation with sections being amended, added, or repealed; the statutory authority; the public hearing information, if any; the public comment deadline; an agency contact; the statement of basis, purpose, substance, and issues; the economic impact analysis; the agency’s response to the EIA; the summary; the proposed text of the regulatory action; and lists of forms and documents incorporated by reference, if any, will be published in the Regulations section of the Virginia Register.

**§ 4.20. Agency review of proposed regulation after publication.**

As soon as practical after publication, the agency regulatory coordinator or other designated individual shall proofread the published copy against the agency copy to ensure the accuracy of the published regulation. The agency shall notify the Registrar of any errors found in the published text so that corrections may be made to the Virginia Register database. The agency shall file corrections with the Registrar as provided in § 1.16 of this manual.

The staff of the Virginia Register may find it necessary to edit proposed regulations for proper style and format before publishing in the Virginia Register. In almost all instances, editorial or stylistic changes are made to regulations.

#### **§ 4.21. Gubernatorial review.**

Section 2.2-4013 of the Code of Virginia requires the Governor to review the proposed regulation to determine if the proposed regulation is (i) necessary to protect the public health, safety and welfare and (ii) 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 (i) adopt the proposed regulation if the Governor has no objection to the regulation; (ii) modify and adopt the proposed regulation after considering and incorporating the Governor's suggestions, if any; or (iii) adopt the regulation without changes despite the Governor's recommendations for change.

Regardless of whether the Governor's comments are received by the agency and the Registrar by the end of the 60-day public comment period, § 2.2-4013 of the Code of Virginia requires the agency to wait an additional 15 days from the completion of the 60-day public comment period before (i) adopting the final regulation and (ii) filing the final regulation with the Registrar for publication. If the agency and the Registrar do not receive comments from the Governor by the end of this 15-day period, the agency may adopt the final regulation and file it with the Registrar for publication.

#### **§ 4.22. Legislative review.**

The appropriate standing committee of each house of the General Assembly and the Joint Commission on Administrative Rules may meet during the promulgation 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 committee, and the Governor. The agency's response shall be attached to a completed Agency Response to Legislative Objections form ([Form RR08](#)) and transmitted to the Registrar. The agency's response will be published in an upcoming issue of the Virginia Register.

#### **§ 4.23. Withdrawing a proposed regulation.**

If an agency decides to withdraw a proposed regulation, the agency shall notify the Registrar in writing that the regulation is being withdrawn. The written notification shall include the VAC number and title of the regulation and the volume, issue and page number of the Virginia Register in which the proposed regulation appeared. The notification will be date and time stamped upon receipt by the Registrar's office. The date stamped by the Registrar's office will become the official withdrawal date. The withdrawal notice will be published as soon as possible in the Regulations section of the Virginia Register.

### **Article 6.**

#### **Final Regulation Submission Package.**

#### **§ 4.24. Documents to be filed for final regulatory actions.**

A. Once the 60-day public comment period has elapsed and the agency has waited the required additional 15 days beyond the completion of the 60-day public comment period to receive Governor's comments, if any, the agency may take action on the proposed regulation. When final action is taken, the promulgating agency shall again submit for publication the text of the regulations as adopted, highlighting all changes in the final regulation and explaining any substantive changes to the proposed regulation. The agency must use the same project in RIS that was used for the NOIRA and proposed.

B. The agency shall refer to the current Governor's executive order concerning review of regulations for requirements related to executive branch review of the final regulation package.

C. The agency shall file a revised summary and an up-to-date basis, purpose, substance, and issues statement with the regulation. The agency shall file the final regulation submission package according to the provisions of Article 4 (§ 1.10 et seq.) of Part I of this manual. A 30-day final adoption period begins upon publication of the final regulation in the Virginia Register.

D. Except where indicated, the agency shall submit the following documents to the Registrar's office when filing final regulations for publication in the Virginia Register:

1. A transmittal sheet;
2. A letter from the Attorney General's office stating that the agency has statutory authority to adopt, amend, or repeal the regulation;
3. A statement of final agency action;
4. A summary of public comments and the agency's response. If no public comments are received, the agency shall include a statement to that effect;
5. An explanation of substantive changes from the proposed regulation;
6. A summary of the regulation updated to reflect changes made since publication of the proposed regulation;
7. An updated statement of basis, purpose, substance, and issues;
8. Text of the final regulation and certification statement as specified in § 4.33 of this manual;
9. A list of reporting forms, if any, used in administering the regulation for inclusion in VAC and any new or revised reporting forms in electronic and print versions for publication in the Register; and
10. If incorporating material by reference, other than material exempted in § 8.3 of this manual, one copy of the document or documents being incorporated by reference and the list of the documents for inclusion in VAC.

#### **§ 4.25. Transmittal sheet.**

A. The transmittal sheet or approved equivalent provides pertinent information needed for processing the agency's final regulatory submission package for publication. This form must be filled in completely and signed by the person authorized by law, or delegated by the head of the agency, to transmit regulations to the Registrar.

1. Townhall agencies submit the information in Townhall and print out from Townhall then click on Submit to Registrar. This automatically transmits the info to RIS.

2. NonTownhall agencies fill out the transmittal sheet in RIS. To do so, go to the create report feature and click on transmittal sheet. The transmittal sheet is a generic one for all types of regulations. For a final regulation, fill out the regulatory coordinator information, the VAC chapter and title, the statutory authority, date and volume and issue the proposed was published, whether or not there are any changes from the proposed, and whether or not the regulation is exempt from the APA.

B. The agency shall include the name, address and telephone number of an agency contact person from whom interested persons may obtain a copy of the regulation. If no name is given, the Registrar will list the agency regulatory coordinator in the Virginia Register as the contact person. If there are any costs to the public for obtaining copies of the regulation, indicate those costs on the form.

C. If the agency is repealing one chapter and replacing it with a chapter on the same subject, refer to § 4.45 of this part regarding submission of transmittal forms and other requirements.

**§ 4.26. Letter from the Attorney General’s office.**

A copy of the letter provided by the Attorney General’s office stating that the agency has statutory authority to adopt, amend, or repeal the regulation shall be obtained by the agency and filed as provided in § 4.3 of this manual. If an exemption to the Administrative Process Act is being claimed, the letter from the Attorney General’s office shall state the exemption and concur that it applies to the regulatory action being filed.

**§ 4.27. Statement of final agency action.**

The agency shall submit a statement of the final action taken by the promulgating agency. This statement may generally be made in one sentence. It should include the date the action was taken, the name of the agency taking the action, and the title of the regulation.

EXAMPLES

On September 13, 2005, the Board of Pharmacy adopted final amended regulations for 18VAC110-30, Regulations for Practitioners of the Healing Arts to Sell Controlled Substances, to implement changes recommended in a periodic review of regulations.

On September 15, 2005, the Commonwealth Transportation Board approved the promulgation of 24VAC30-121, Comprehensive Roadside Management Program.

**§ 4.28. Summary of public comments and agency’s response.**

A. On a separate sheet of paper, the agency shall submit a summary of the oral and written comments presented during the notice of comment period and the agency’s response to the comments. To satisfy the requirements of the Administrative Process Act, at least five days before the agency’s approval of the final regulations, the agency shall provide copies of its summary of public comments to individuals who submitted comments during the comment period.

B. If the agency receives no comments during the public comment period, the agency shall submit a statement notifying the Registrar that no comments were received by the agency and, therefore, no response is required.

**§ 4.29. Explanation of substantive changes.**

On a separate sheet of paper, the agency shall submit a brief statement summarizing any substantive changes made after the proposed regulation was published in the Register. If the substantive changes are included in the updated summary, a separate statement is not needed.

EXAMPLES

**4VAC5-15. Nutrient Management Training and Certification Regulations (amending 4VAC5-15-10, 4VAC5-15-40, 4VAC5-15-60, 4VAC5-15-80, 4VAC5-15-100, 4VAC5-15-110, 4VAC5-15-140, 4VAC5-15-150; repealing 4VAC5-15-130).**

The changes to the proposed regulation (i) eliminate the scheduled reduction of the soil phosphorus saturation level of 50% where phosphorus applications would cease; (ii) allow for a minimum phosphorus application rate of crop removal until December 31, 2010, for specified types of liquid manures and liquid sewage sludges; and (iii) expand the potential application times prior to spring crop planting for certain types of organic nutrient sources and provide more flexibility if a trap crop exists meeting specified performance criteria.

**9VAC20-80. Solid Waste Management Regulations (amending 9VAC20-80-60, 9VAC20-80-400, 9VAC20-80-480, 9VAC20-80-485).**

Changes to the proposed regulation allow for an extension of the 90-day timeframe for disposal of wastes after industrial operations cease at a site and require a fire suppression program when storing organic waste materials.

#### **§ 4.30. Summary of final regulation.**

On a separate sheet of paper, the agency shall submit a summary of the final regulation if a new regulation is being promulgated or a summary of the amendments being made to the regulation if an existing regulation is being amended. After making final changes to the proposed regulation, the agency shall update the proposed summary to accurately reflect any substantive changes made to the regulation since it was published in its proposed form.

#### **§ 4.31. Statement of basis, purpose, substance, and issues.**

The agency shall revise the basis, purpose, substance, and issues statement filed with the proposed regulation as needed to reflect changes made to the final regulation and resubmit it with the final regulation submission package. Details on preparing this statement and examples may be found in § 4.12 of this manual.

#### **§ 4.32. Text of final regulation.**

A. The agency shall use the proposed regulation as published in the Virginia Register to prepare its final regulation. The agency should find the project in RIS for the proposed and use that project to show changes.

B. The agency shall prepare the text of the final regulation using the guidelines established in Part III (§ 3.1 et seq.) of this manual.

C. All underscored and stricken text published in the proposed regulation remains in the final text of the regulation; however, any additional changes are indicated by (i) striking through text to be deleted, (ii) underscoring text to be added, and (iii) enclosing these changes in brackets to highlight that the change has been made since the proposed regulation was published.

#### **§ 4.33. Certification.**

As provided in § 2.2-4103 of the Virginia Register Act, final regulations filed with the Registrar of Regulations shall include a certification statement specifying that the regulations are full, true, and correctly dated. Town Hall will prompt the certifying official to certify the regulation before clicking "Submit to Registrar." For Non-Town Hall agencies, the certification is provided on the transmittal sheet.

#### **§ 4.34. Reporting forms.**

A. Agencies shall submit for publication reporting forms that the agency intends to incorporate or use in administering the regulation using the guidelines provided in § 4.17 of this manual. The agency shall submit the forms and the forms list with the final regulation package even if no changes have been made to the forms since the proposed package was filed.

B. Forms should be submitted electronically in RIS. An existing Forms section will be listed as 9998 in a chapter in RIS. When adding a Forms List to a chapter or a chapter that does not currently have a forms list, after you click on create new section, select the existing chapter for the new section, input the section number and "Forms" in the section catchline, then select "Forms" from the dropdown menu and click the box next to it. Then hit create section. The new section will show on the project detail page.

#### **§ 4.35. Incorporation by reference.**

A. The title of the document incorporated by reference should be submitted on RIS. An existing documents incorporated by reference (DIBR) section will be listed as 9999 in a chapter. DIBRs should be submitted electronically in RIS. When adding a DIBR List to a chapter or a chapter that does not currently have a DIBR list, after you click on create new section, select the existing chapter for the new section, input the section number and "Documents Incorporated by Reference" in the section catchline, then select "Documents Incorporated by Reference" from the dropdown menu and click the box next to it. Then hit create section. The new section will show on the project detail page.

B. The agency shall file one copy of each document incorporated by reference and a list of the documents prepared according to Part VIII (§ 8.1 et seq.) of this manual, unless the incorporated document is exempt as provided in § 8.3 and then only the list shall be filed.

## **Article 7.**

### **Publication, Agency Review, and Withdrawal of Final Regulation.**

#### **§ 4.36. Publication of final regulation.**

Regulations properly prepared and filed and meeting all applicable requirements shall be published according to the publication schedule described in § 1.11 of this manual, unless a request to withdraw the regulation from publication is made in writing in time to remove it from publication. An up-to-date publication schedule is posted on the Virginia Register website. The title of the regulation with sections being amended, added, or repealed; the statutory authority; the effective date; an agency contact; the summary; a statement regarding the availability of a summary of public comments and the agency's response; the final text of the regulatory action; and lists of forms and documents incorporated by reference, if any, will be published in the Regulations section of the Virginia Register.

#### **§ 4.37. Agency review of final regulation after publication.**

As soon as practical after publication, the agency regulatory coordinator or other designated individual shall proofread the published copy against the agency copy to ensure the accuracy of the published regulation. The agency shall notify the Registrar of any errors found in the published text so that corrections may be made to the Virginia Register and Virginia Administrative Code databases. The agency shall file corrections with the Registrar as provided in § 1.16 of this manual. Agencies may request a copy of final regulations as prepared for the publisher of the Virginia Administrative Code be emailed to them for review and use in updating the agency's database.

#### **§ 4.38. Withdrawing a final regulation that has not become effective.**

If a regulation has been published as final but has not become effective, the agency may withdraw the regulation by notifying the Registrar in writing any time before the effective date. The written notification shall include the VAC number and title of the regulation and the volume, issue and page number of the Virginia Register in which the final regulation appeared. The agency may include a reason for withdrawal if desired. The notification will be date and time stamped upon receipt by the Registrar's office. The date stamped by the Registrar's office will become the official withdrawal date. The withdrawal notice will be published as soon as possible in the Regulations section of the Virginia Register.

## **Article 8.**

### **Effective Date; Gubernatorial and Legislative Review.**

#### **§ 4.39. Effective date.**

The final regulation shall become effective 30 days after it is published in the Virginia Register, or a later date if specified, unless (i) the Governor requires the agency to solicit additional public comment as described in § 4.40 of this manual, (ii) an objection is filed by the appropriate standing legislative committee or the Joint Commission on Administrative Rules (JCAR) as described in § 4.41, (iii) the regulation is suspended by the legislative standing committees or JCAR in concurrence with the Governor as described in § 4.42, (iv) the agency suspends the regulatory process as described in § 4.44, or (v) the agency withdraws the regulation as described in § 4.44.

#### **§ 4.40. Additional comment period; Governor's objection.**

A. 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 comment period. Notice that the agency shall solicit comments for an additional 30 days must be transmitted to the agency and the Registrar within the 30-day

adoption period. The additional 30-day comment period required by the Governor begins upon publication of the notice in the Virginia Register. After the conclusion of the comment period, the agency shall make any necessary changes to the final regulation submission package and file the package as provided in Article 6 (§ 4.24 et seq.) of this part.

B. If, during the 30-day final adoption period, the Governor objects to any portion or all of a regulation, he may file a formal objection. The Governor shall forward the objection to the Registrar and the agency prior to the conclusion of the 30-day final adoption period. The Registrar will publish the Governor's objection in the Virginia Register.

#### **§ 4.41. Objection filed by legislative standing committee or JCAR; agency response.**

The appropriate legislative standing committee or the Joint Commission on Administrative Rules may meet to discuss a regulation during the final adoption period and may file an objection to the final regulation. The objection shall be forwarded to the agency and to the Registrar, who will publish the objection in the Virginia Register. The agency has 21 days after receiving the objection to file a response with the Registrar, the objecting legislative committee or commission, and the Governor. The agency's response shall be attached to a completed Agency Response to Legislative Objections form ([Form RR08](#)) and transmitted to the Registrar. The regulation may become effective after the conclusion of the 21-day period on a date specified by the agency.

#### **§ 4.42. Suspension by legislative standing committees or JCAR in concurrence with the Governor.**

The appropriate legislative standing committees of both houses of the General Assembly or the Joint Commission on Administrative Rules in concurrence with the Governor may suspend the effective date of a portion or all of the 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 standing committees and the Governor. This action must be taken before the expiration of the 30-day adoption period, and the directive shall be published in the Virginia Register after being forwarded to the Registrar. If after the next regular session of the General Assembly legislation is not enacted to repeal all or a portion of the regulation, (i) the agency may promulgate the regulation according to the public participation requirements of the Administrative Process Act or (ii) if no changes are made other than those required by statutory law or the appropriation act, the agency may claim an exemption from the Administrative Process Act pursuant to § 2.2-4006 A 4 a of the Code of Virginia. When the agency claims an exemption, the agency shall comply with the requirements of Part V (§ 5.1 et seq.) of this manual.

#### **§ 4.43. Regulatory process suspended when agency petitioned.**

A. Unless the agency determines that the changes made are minor or inconsequential in their impact, the agency shall (i) suspend the regulatory process for at least 30 days when it receives requests from 25 or more individuals to solicit additional public comment and (ii) file notice of the additional 30-day public comment period with the Registrar.

B. The agency shall provide the Registrar a written statement when the regulatory process is suspended. The comment period shall begin on the date of publication of the notice in the Virginia Register. The statement shall include the VAC number and title of the regulation; the date the final regulation was published in the Virginia Register; the last date that comments will be received; the date and location of additional public hearings, if any; the reason for the additional comment period; a notation that the effective date will be delayed; and the name, address, and telephone number of the agency contact person. After the conclusion of the comment period, the agency shall file the final regulation submission package with changes, if any, as provided in Article 6 (§ 4.24 et seq.) of this part.

#### **§ 4.44. Regulation withdrawn by agency.**

The agency may withdraw a proposed or final regulation at any time prior to the date the regulation becomes effective. See §§ 4.23 and 4.38 of this part. After the regulation becomes effective, it can no longer be withdrawn but may be repealed as provided in Article 9 (§ 4.45 et seq.) of this part.

**Article 9.**  
**Repealing Regulations.**

**§ 4.45. Repealing a chapter of the Virginia Administrative Code.**

A. A chapter of the Virginia Administrative Code that is in effect may be repealed if the agency determines that the chapter is no longer necessary. The promulgation process used for adopting a chapter shall be used when repealing a chapter. A summary stating the reason the chapter is being repealed shall accompany the transmittal sheet. The agency should not submit the full text of the chapter that is being repealed.

B. Frequently, an agency makes revisions so extensive that it is more efficient to repeal the existing chapter and promulgate a new chapter in its place. As specified in the requirements of Articles 4 (§ 4.9 et seq.) and 6 (§ 4.24 et seq.) of this part, when filing the regulation submission package, the agency shall include a separate transmittal form for each regulatory action. On one transmittal form, the agency checks the repeal box for the chapter being replaced and indicates the existing VAC number. On a second transmittal form, the agency checks the new regulation box and indicates a different VAC number for the new chapter. Generally, a replacement chapter is given the chapter number immediately following the current chapter number.

EXAMPLES

8VAC20-20, Regulations Governing the Licensure of School Personnel, was repealed and replaced by 8VAC20-21, Licensure Regulations for School Personnel.

9VAC20-100, Yard Waste Composting Facility Regulations, was repealed and replaced by 9VAC20-101, Vegetative Waste Management and Yard Waste Composting Regulations.

24VAC30-40, Rules and Regulations Governing Relocation Assistance, was repealed and replaced by 24VAC30-41, Rules and Regulations Governing Relocation Assistance.

C. The agency shall provide only one summary when repealing a chapter of VAC and replacing it with a new chapter. The agency shall include in the summary the reasons for repealing the current chapter and replacing it with the new chapter and the major differences between the two chapters.

D. Consider the repeal of the current chapter and the adoption of the replacement chapter as one regulatory action. For example, it is not necessary to obtain separate letters from the Attorney General's office for the repeal and the replacement chapters; one letter may verify statutory authority for both chapters.

**§ 4.46. Repealing a section of the Virginia Administrative Code.**

A. When repealing an individual section, the agency shall strike through the catchline and the full text of the section but not the section number. The word "Repealed" shall be underscored, placed between parentheses, and inserted after the stricken catchline.

EXAMPLE

**12VAC30-110-890. ~~Resources transferred pursuant to § 1917 of the Act.~~ (Repealed.)**

~~Provided transfers are made within one month of the initial determination of eligibility or within the protected period specified in 12VAC30-110-860, resources held by an institutionalized spouse shall not be counted in determining continuing eligibility when § 1917 transfers are made to parties for which there is no penalty for failure to receive equitable value, or transfer for which equitable value is received.~~

B. If a section is repealed, the number is not used over again, and sections following a repealed section are not renumbered. It is important that the content of sections stay basically the same. If the basic topic



of a section is changed, rather than strike the catchline and text and replace it with new language, repeal the section and insert a new section following the repealed section or in the appropriate location. Once a section number has been used, it cannot be reserved for future use. Chapters are set up with sections numbered in multiples of 10 so that the numbers in between may be used to amend the chapter at a later time.

**Article 10.  
Forms Only Revisions.**

**§ 4.47. Forms Only Revisions.**

If an agency wants to update Forms lists only, follow the procedures below for submission to the Registrar's Office. The revised Forms lists will be updated in the online VAC on the publication date of the Register in which they appear. (NOTE: Agencies may only use this process to update forms if the forms contain no regulatory requirements. All regulatory provisions must be contained in the text of the regulation.)

1. From project list view in RIS, create a new project with an appropriate name to distinguish the project from other agency projects in RIS. Example: Forms revisions for Board of Nursing.
2. Open the new project and use the Create Entry feature to load the desired forms into the project. Forms lists from multiple chapters may be inserted into the same project.
3. Make revisions to the forms lists using strikethroughs and underlines as appropriate.
4. Use the following formats for forms lists:
  1. For new forms, "Form name, form number (eff. MM/YY)."; or
  2. For revised forms, "Form name, form number (rev. MM/YY)."

<p>EXAMPLES</p> <p><b>DEPARTMENT OF MINES, MINERALS AND ENERGY</b></p> <p><b>4VAC25-101. Regulations Governing Vertical Ventilation Holes and Mining Near Gas and Oil Wells.</b></p> <p><u>Application for a Permit to Drill a Vertical Ventilation Hole, DM-VVH-1 (rev. 9/00).</u></p> <p>Drilling Report, DM-DR-1 (eff. 3/01).</p> <p>Plugging Affidavit, DM-PLG-1 (eff. 3/01).</p> <p><b>DEPARTMENT OF STATE POLICE</b></p> <p><b>19VAC30-70. Motor Vehicle Safety Inspection Rules and Regulations.</b></p> <p>Inspection Sticker <u>Inventory</u> Report, Form SP-221 (<del>eff. 8/1/94</del>) (<u>rev. 12/05</u>).</p> <p>Mechanics Certification Application, Form SP-170-B (rev. 9/04).</p> <p>Criminal History Record Name Search Request, Form SP-167 (rev. <del>9/04</del> <u>1/06</u>).</p>
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5. The forms list updates should correspond with the forms filed as follows:
  - a. Repealed Forms - If a form is being repealed, strike it on the list and there will be no corresponding form to submit.
  - b. Amended Forms - If a form is being amended, make changes by striking through text to be deleted and underscoring new text. Make sure that the effective/revision dates noted on the list match those on the forms and that the titles are the same on both the list and the form.
  - c. Added Forms - If a form is being added, underscore the name on the list.

6. File the following documents with the Registrar's Office:
  - a. Cover sheet with (i) RIS project number and description; (ii) agency name and address where copies of forms may be viewed by the public; (iii) chapter numbers given for Forms lists; and (iv) agency contact name, title, address, phone number, and email address.
  - b. Text of project made by printing "Sections (Double spaced)" in the Create Report feature of RIS.
  - c. Forms being added or amended.
7. File the electronic versions of the cover sheet and the forms (if available) by sending them to [VaRegs@dls.virginia.gov](mailto:VaRegs@dls.virginia.gov).

**PART V.**  
**EXEMPTIONS AND EXCLUSIONS WITHIN THE APA.**

**Article 1.**  
**General Provisions.**

**§ 5.1. General provisions.**

A. Certain agencies, subjects or agency actions are exempted or excluded from all of or certain provisions of the Administrative Process Act (APA). Sections 2.2-4002, 2.2-4006, 2.2-4018 and 2.2-4025 of the Code of Virginia contain exemptions and exclusions.

B. Although § 2.2-4002 of the Code of Virginia exempts certain agencies, subjects and actions from certain aspects of the APA, agencies must comply with § 2.2-4103 of the Virginia Register Act, which requires that all agencies have on file with the Registrar the full text of all currently operative regulations. The section further provides that “No regulation or amendment or repeal thereof shall be effective until filed with the Registrar.” The effective date of an exempt regulation varies depending on the exemption being claimed. In most cases, an exempt regulation becomes effective 30 days after the regulation is published in the Virginia Register; however, §§ 2.2-4002 and 2.2-4011 C allow regulations exempt pursuant to these sections to become effective upon filing with the Registrar.

C. Except in the case of an exclusion of regulations adopted in order to meet the requirements of federal law or regulations as set out in § 2.2-4006 A 4 c of the Code of Virginia and described in § 5.10 of this manual, the agency determines whether it is entitled to an exemption from any portion or all of the Administrative Process Act.

The agency shall contact the Office of the Attorney General to confirm if it is appropriate to claim a specific exemption or exclusion. The agency claiming an exemption shall include in its exempt regulatory package filed with the Registrar (i) a statement citing the specific Virginia Code section referencing the exemption being claimed and (ii) a letter from the Office of the Attorney General stating that the exemption is valid.

D. Articles 4 (§ 1.10 et seq.) and 5 (§ 1.14 et seq.) of Part I of this manual apply to all agencies filing regulations for publication pursuant to this part.

E. A regulation for which an exemption is claimed under § 2.2-4002, 2.2-2006, or 2.2-4011 and that is placed before a board or commission for consideration is required by § 2.2-4006 C to be provided at least two days in advance of the board or commission meeting to members of the public that request a copy of the regulation. A copy of the regulation also must be made available to the public attending the meeting.

**Article 2.**  
**Section 2.2-4002 A Exemptions.**

**§ 5.2. Applicability.**

Section 2.2-4002 A of the Code of Virginia exempts a number of specific agencies from the provisions of the Administrative Process Act, except to the extent they are subject to §§ 2.2-4024 (hearing officers), 2.2-4030 (costs and attorneys’ fees) and 2.2-4031 (publication of proposed and final regulations in the Virginia Register). While § 2.2-4002 A exempts certain agencies from the Administrative Process Act, § 2.2-4031 requires these agencies to file with the Registrar and publish their regulations in a style and format conforming to this manual.

**§ 5.3. Proposed regulations.**

An agency claiming a § 2.2-4002 A exemption shall first publish proposed regulations. The proposed regulation submission package shall include the information required by the following sections of this manual:

- § 4.10, Transmittal sheet.
- § 4.11, Letter from the Attorney General's office.
- § 4.15, Summary of proposed regulation.
- § 4.16, Text of proposed regulation.
- § 4.17, Reporting forms, if any.
- § 4.18, Incorporation by reference, if any.

**§ 5.4. Final regulations.**

After the proposed regulation is published, the agency may file its final regulation for publication. The final regulation submission package shall include the information required by the following sections of this manual:

- § 4.25, Transmittal sheet.
- § 4.26, Letter from the Attorney General's office.
- § 4.27, Statement of final agency action.
- § 4.30, Summary of final regulation.
- § 4.32, Text of final regulation.
- § 4.33, Certification.
- § 4.34, Reporting forms, if any.
- § 4.35, Incorporation by reference, if any.

**§ 5.5. Effective date.**

The final regulation becomes effective on the date stamped by the Registrar's office on the final regulation submission package, unless a later date is specified by the agency.

**Article 3.**  
**Section 2.2-4002 B Exemptions.**

**§ 5.6. Applicability; filing requirements; publication not required.**

A. Section 2.2-4002 B of the Code of Virginia exempts a number of agency actions from the Administrative Process Act in its entirety, but not from the provisions of the Virginia Register Act. As with agencies exempt under § 2.2-4002 A, regulations relating to agency actions exempt under § 2.2-4002 B must still be filed with the Registrar according to § 2.2-4103.

B. An agency shall meet the requirements of § 5.1 C for a letter from the Attorney General's office when filing regulations under the § 2.2-4002 B exemption.

**§ 5.7. Effective date.**

Unless otherwise specified in the Code of Virginia, regulations filed under the § 2.2-4002 B exemption become effective on the date stamped by the Registrar's office, unless a later date is specified by the agency. NOTE: Whenever possible, the agency should specify an effective date later (preferably two business days), than the filing date to provide ample time for the Registrar's Office to take the necessary steps to update the online Virginia Administrative Code.

**Article 4.**  
**Section 2.2-4006 Exemptions.**

**§ 5.8. Applicability; publication of final regulation; effective date.**

A. Section 2.2-4006 of the Code of Virginia exempts a number of agency actions from Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act; however, these particular agency actions are otherwise subject to the filing and publication requirements of the APA and § 2.2-4103 of the Virginia Register Act.

B. If a determination is made that a regulation is exempt from the Administrative Process Act pursuant to § 2.2-4006, the agency may bypass the public participation process and file with the Registrar a final regulation submission package. Whenever regulations are adopted under § 2.2-4006, the agency shall state that it will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision. If claiming the federal exemption per § 2.2-4006 A 4 c, see § 5.10 of this manual for additional requirements.

C. The agency shall include in the final regulation submission package the information required by the following sections of this manual:

§ 4.25, Transmittal sheet.

§ 4.26, Letter from the Attorney General's office.

§ 4.27, Statement of final agency action.

§ 4.30, Summary of final regulation.

§ 4.32 B, Text of final regulation.

§ 4.33, Certification.

§ 4.34, Reporting forms, if any.

§ 4.35, Incorporation by reference, if any.

D. Unless otherwise provided in the Code of Virginia, a 30-day final adoption period will begin upon publication in the Virginia Register. The regulation shall become effective 30 days after publication, unless a later date is specified by the agency.

**§ 5.9. Technical changes exemption (§ 2.2-4006 A 3 of the Code of Virginia).**

A. Section 2.2-4006 A 3 of the Code of Virginia requires each promulgating agency to review all references to sections of the Code of Virginia within their regulations each time a new supplement or replacement volume to the Code of Virginia is published to ensure the accuracy of each section, subsection or subdivision cited.

B. After the necessary technical changes are made, the agency shall have the Attorney General's office review the regulations to determine whether the changes are subject to Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act. If the Attorney General's office determines that the changes are exempt pursuant to § 2.2-4006 of the Code of Virginia, the regulations shall be filed with the Registrar's office as described in § 5.8 of this manual.

**§ 5.10. Federal law and regulations exemption (§ 2.2-4006 A 4 c of the Code of Virginia).**

A. Certain regulations promulgated in order to comply with the requirements of federal law or regulations, provided the state regulations do not differ materially from those required by federal law or regulation, are exempt from Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act.

B. An agency claiming an exemption pursuant to § 2.2-4006 A 4 c of the Code of Virginia shall submit to the Registrar (i) the agency's regulations and (ii) copies of the federal law or regulations being relied

upon in determining the exclusion. The agency shall submit these documents to the Registrar at least seven working days prior to the scheduled deadline for the publication date of the Virginia Register in which the regulations are to appear. The agency shall indicate any change or deviation from the federal law or regulations. For example, if the federal regulations refer to the “State Welfare Office,” the Virginia regulations would refer to the “Department of Social Services.” If the state regulations are an exact duplication of the federal law or regulations, the agency shall submit a statement to that effect. Any amendments made to the regulations after their adoption will require that the regulations be repromulgated.

C. The Registrar shall make a determination on the exclusion in writing. Notice of the adoption of the regulations and the Registrar’s determination shall be published in the Virginia Register. The Registrar’s determination letter will be filed with the permanent regulation package. The regulation becomes effective as provided in § 5.8 D of this manual.

**§ 5.11. Marine Resources Commission exemption (§ 2.2-4006 A 12 of the Code of Virginia).**

A. The Marine Resources Commission is exempt only from Article 2 (§ 2.2-4006 et seq.) of the APA. Section 2.2-4103 of the Virginia Register Act remains applicable. Actions of the Marine Resources Commission relating to the authorization for any general permit or guidelines for activity undertaken pursuant to Title 62.1 of the Code of Virginia must be in accordance with the APA. In cases not related to any general permit or guidelines for activity governed by Title 62.1, the Marine Resources Commission may directly file final regulations.

B. Final regulations filed under this exemption must be filed according to the following sections of this manual:

- § 4.25, Transmittal sheet.
- § 4.27, Statement of final agency action.
- § 4.30, Summary of final regulation.
- § 4.32 B, Text of final regulation.
- § 4.33, Certification.
- § 4.34, Reporting forms, if any.
- § 4.35, Incorporation by reference, if any.

C. Final regulations become effective upon filing with the Registrar, unless a later date is specified by the agency.

**Article 5.  
Other Exemptions.**

**§ 5.12. Section 2.2-4018 exemptions.**

Certain agency actions are exempt from Article 3 (§ 2.2-4018 et seq.) of the Administrative Process Act (Case Decisions), but are otherwise subject to the provisions of the Administrative Process Act and the Virginia Register Act.

**§ 5.13. Virginia Code Commission exemptions.**

A. Section 2.2-4002 C exempts the Virginia Code Commission from the APA when making minor changes to regulations being published in the Virginia Administrative Code under the Virginia Register Act.

B. Subdivision 3 of § 2.2-4104 provides that the Virginia Code Commission may “Formulate and issue, without reference to or limitation by the requirements of the Administrative Process Act, general or

special regulations respecting the nature and content of the Virginia Administrative Code, making exceptions thereto, supplementing or limiting the duties of agencies hereunder, and otherwise carrying out the purposes of [the Virginia Register Act].”

**PART VI.**  
**FAST-TRACK REGULATIONS.**

**§ 6.1. Authority to use fast-track exemption; Governor's concurrence; notice to legislative committees.**

A. Section 2.2-4012.1 of the Administrative Process Act establishes an exemption from certain provisions of the Administrative Process Act for agency regulations expected to be noncontroversial.

B. Prior to filing a fast-track regulatory action with the Registrar, the agency must obtain the Governor's concurrence that the intended new regulation or amendment or repeal of an existing regulation is noncontroversial and appropriate for promulgation as provided in § 2.2-4012.1. (NOTE: As soon as you receive approval to file from the Governor, contact the House and Senate clerks as described in subsection C BEFORE filing with the Registrar's office.)

C. Contact the House and Senate clerks' offices to alert them that a regulation is being processed under the fast-track exemption and advise them which House and Senate standing committees the agency plans to notify. The House and Senate clerks' offices will send the agency a response noting agreement or disagreement with the agency's determination. If the House or Senate clerk disagrees with the committee chosen by the agency, the clerk's office will specify which committee that the agency should notify.

To notify the House clerk's office, send an email to Paul Nardo, Clerk of the House of Delegates ([gpnardo@house.virginia.gov](mailto:gpnardo@house.virginia.gov)) and copy Scott Maddrea, Deputy Clerk for Committee Operations ([smaddrea@house.virginia.gov](mailto:smaddrea@house.virginia.gov)).

To notify the Senate clerk's office, send an email to Susan Schaar, Clerk of the Senate ([sschaar@senate.virginia.gov](mailto:sschaar@senate.virginia.gov)) and copy Rose Ramsey ([r Ramsey@senate.virginia.gov](mailto:r Ramsey@senate.virginia.gov)) and Nathan Hatfield ([nhatfield@senate.virginia.gov](mailto:nhatfield@senate.virginia.gov)).

Include the following information in emails to the clerks:

1. VAC number and chapter title of the regulation (e.g., 12VAC30-120, Waivered Services);
2. Subject matter of the regulatory action (e.g., update documents incorporated by reference);
3. Brief summary of amendments to an existing regulation, key provisions of a new regulation, or justification for repeal of an entire regulation chapter, as applicable.
4. Attach a copy of the regulation with changes highlighted (i.e., with strikes and underscores).

D. After each clerk's office has responded to the agency's email, the agency may provide notice of intent to promulgate the new regulation or amendment or repeal of an existing regulation using the fast-track exemption to the appropriate House and Senate standing committees and to the Joint Commission on Administrative Rules. (NOTE: The [Regulatory Town Hall](#) is set up to email this notice, including links to the applicable regulatory documents, to the members of the selected standing committees and to the Joint Commission on Administrative Rules.)

**§ 6.2. Documents to be filed for fast-track regulatory actions.**

A. Once the agency obtains the Governor's concurrence, provides written notice to the appropriate legislative committees, and receives the economic impact analysis from the Department of Planning and Budget, it may file a fast-track regulation submission package.

B. The agency shall use the procedures for preparing a proposed regulation submission package (Article 4 (§ 4.9 et seq.) of Part IV of this manual) when preparing a fast-track regulation submission package, except as follows:

1. Include the reasons for using the fast-track process;



2. Include the comment period deadline, which must run for a minimum of 30 days from publication in the Register; and
3. Provide the estimated effective date, which may be no earlier than 15 days from the close of the public comment period.

C. Section 2.2-4012.1 specifically requires compliance with §§ 2.2-4007.03, 2.2-4007.04 and 2.2-4007.05 of the Administrative Process Act. Therefore, in addition to the above items, the following documents, shown with appropriate sections of this manual in parentheses, are required to be part of the regulatory package:

1. Statement of basis, purpose, substance, and issues (§ 4.12);
2. Economic impact analysis prepared by the Department of Planning and Budget (§ 4.13);
3. Agency's response to the economic impact analysis prepared by the Department of Planning and Budget (§ 4.14);
4. Summary of the regulation (§ 4.15);
5. Text of the fast-track regulation (§ 4.16);
6. A letter from the Attorney General's office ensuring that the agency has statutory authority to promulgate the regulation (§§ 4.3 and 4.11);
7. A list of reporting forms, if any, used in administering the regulation for inclusion in VAC and any new or revised reporting forms in electronic and print versions for publication in the Register (§ 4.17); and
8. If incorporating material by reference, other than material exempted in § 8.3 of this manual, one copy of the document or documents being incorporated by reference and the list of the documents incorporated by reference for inclusion in VAC (§§ 4.18, 8.1, 8.2 and 8.3).

### **§ 6.3. Estimated effective date.**

The agency shall include the date on which the agency expects the fast-track regulation will become effective. A fast-track regulation may become effective no earlier than 15 days after the last date prescribed for receiving public comments. Therefore, the earliest date that a fast-track regulation can become effective is 45 days from publication of the action in the Register. A later date may be specified by the agency.

### **§ 6.4. Objection to fast-track regulation.**

A. The agency shall file notice of any objection to the fast-track rulemaking with the Registrar if an objection to the use of the fast-track rulemaking process is received within the public comment period from:

1. Ten or more persons;
2. Any member of the applicable standing committee of the House of Delegates;
3. Any member of the applicable standing committee of the Senate of Virginia; or
4. Any member of the Joint Commission on Administrative Rules.

B. The notice of objection shall include the following information:

1. The VAC number and chapter title of the regulation (e.g., 18VAC85-120, Regulations Governing the Licensure of Athletic Trainers);
2. The volume, issue, page number and date of the Virginia Register in which the fast-track regulation was published (e.g., 22:2 VA.R. 253-254 December 5, 2005);

3. The name, address, telephone number, and email address of the agency contact person; and
4. A statement indicating the subject matter of the regulatory action and explaining the agency's decision to terminate the fast-track process.

C. The Registrar will publish notice of the objection in the Regulations section of the Virginia Register.

D. If objections meeting the requirements of § 2.2-4012.1 are made, the agency shall (i) proceed with the normal promulgation process set out in Article 2 (§ 2.2-4006 et seq.) of the APA with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action or (ii) if the agency chooses not to continue pursuing the action in its current form, notify the Registrar's office that it is withdrawing the action.

**§ 6.5. Inclusion in the Virginia Administrative Code.**

The Registrar of Regulations will notify the publisher of the Virginia Administrative Code (VAC) to incorporate into VAC a regulation promulgated through the fast-track rulemaking process if an objection or withdrawal is not filed with the Registrar prior to the effective date noticed in the Virginia Register.

**PART VII.**  
**EMERGENCY REGULATIONS.**

**§ 7.1. Emergency situation defined; adoption of emergency regulations.**

A. Pursuant to § 2.2-4011 of the Code of Virginia, upon consultation with the Attorney General, and at the discretion of the Governor, an agency may adopt emergency regulations that are necessitated by an emergency situation:

B. Agencies may also adopt an emergency regulation when Virginia statutory law, the appropriation act, federal law, or federal regulation requires a regulation to take effect no later than (i) 280 days from its enactment, in the case of Virginia or federal law or the appropriation act, or (ii) 280 days from the effective date of a federal regulation.

C. An agency shall request the Governor's approval to adopt an emergency regulation. The agency shall refer to the current Governor's executive order concerning requirements for approving emergency regulations.

**§ 7.2. Effective date of emergency regulations.**

The emergency regulation shall become effective on the date it is filed with the Registrar of Regulations, unless a later date is specified by the agency. The regulation is considered to be filed with the Registrar at the time it is electronically submitted to RIS.

**§ 7.3. Duration of emergency regulation; extending an emergency regulation.**

A. Emergency regulations are limited to addressing specifically defined situations and may not exceed 18 months in duration, unless certain circumstances provided for in § 2.2-4011 D are met. During the 18-month period, an agency may issue additional emergency regulations as needed addressing the subject matter of the initial emergency regulation, but the additional emergency regulations may not be effective beyond the 18-month period from the effective date of the initial emergency regulation.

B. The emergency regulation lapses when the prescribed time limit expires; therefore, the agency must promulgate the regulation in accordance with the Administrative Process Act if the agency wishes to continue regulating the subject matter governed by the emergency regulation beyond the 18-month limitation.

C. Section 2.2-4011 D of the Code of Virginia establishes provisions for an agency to request approval of the Governor to extend an emergency regulation for an additional six months beyond the initial expiration date. Additionally, the section provides that "Agencies shall notify the Registrar of Regulations of the new expiration date of the emergency regulation as soon as practicable."

Current practice is to remove emergency regulations from the Registrar's website ([http://register.dls.virginia.gov/emergency\\_regs.shtml](http://register.dls.virginia.gov/emergency_regs.shtml)) upon expiration unless notice of an extension has been filed with the Registrar's office.

To notify the Registrar when the Governor's office approves a six-month extension of the effective date of an emergency regulation, email the following information to [varegs@dls.virginia.gov](mailto:varegs@dls.virginia.gov) (if possible, send notification PRIOR to the initial expiration date):

- VAC number and title of regulation
- Statutory authority
- Effective date and new expiration date
- The approval form (TH-11), which describes the agency's efforts to adopt a replacement regulation together with the reasons that a replacement regulation cannot be adopted before the expiration of the emergency regulation
- Volume and issue of the Virginia Register in which the emergency was initially published
- Agency contact (name, agency, address, telephone and email address)

#### **§ 7.4. Filing requirements for emergency regulations; publication.**

A. The agency may file the emergency regulation submission package after the Governor has approved the emergency regulation. Emergency regulations submitted electronically to RIS are considered to have been formally approved by the Governor. The emergency regulation submission package consists of the following items:

1. The transmittal sheet.
2. A statement that the emergency regulation is necessary and the reason for the emergency regulation.
3. If the regulation is new, a summary describing the substantive provisions, or if it is amending an existing regulation, a summary of the substantive changes.
4. The name and contact information of the agency representative who can answer questions from the public about the regulation.
5. The text of the emergency regulation prepared using the guidelines established in Part III (§ 3.1 et seq.) of this manual.
6. A copy of a letter from the Attorney General's office stating that the agency has statutory authority to promulgate the regulation.

B. The Registrar will make every effort to post the emergency regulations on the website ([http://register.dls.virginia.gov/emergency\\_regs.shtml](http://register.dls.virginia.gov/emergency_regs.shtml)) within two business days. The regulation will be published in the Regulations section of the next available issue of the Virginia Register.

#### **§ 7.5. Replacing the emergency regulation with a permanent regulation.**

If the regulation is to become permanent, the agency shall begin the adoption process through the Administrative Process Act. To begin promulgating the replacement regulation, § 2.2-4011 of the Administrative Process Act requires an agency (i) to file the Notice of Intended Regulatory Action with the Registrar within 60 days of the effective date of the emergency regulation and (ii) to file the proposed regulation with the Registrar within 180 days of the effective date of the emergency regulation.

**PART VIII.  
INCORPORATION BY REFERENCE.**

**§ 8.1. Filing requirements for material incorporated by reference.**

A. When an agency needs to make applicable requirements, prohibitions, policies, standards, forms, instructions, or procedures prescribed or established in other documents, except statutes, whether issued by governmental agencies or by private organizations, the agency may incorporate by reference the text of the document into its regulations. When incorporating textual matter of other publications by reference, the agency shall file with the Registrar the incorporated publications in their entirety, except when the material is exempted by the Registrar per § 8.2 of this manual or is not required to be filed per § 8.3 of this manual. Whether the referenced material is required to be filed in full, is filed by descriptive statement as set out in § 8.2, or is not required to be filed pursuant to § 8.3, the agency shall make copies of all referenced publications available for public inspection and copying along with its other regulations.

B. Documents incorporated by reference (DIBR) and a list of all DIBR documents associated with a regulation shall be filed at the time the proposed or exempt final regulation is filed or whenever the reference to the incorporated document itself is amended. A document is incorporated by reference and becomes an enforceable part of the regulation when the regulation is adopted by the agency.

C. Whenever a regulation incorporates other textual material by reference, the agency shall specify the date of adoption, revision or publication, or the effective date, of the adopted material in the text of the regulation. If the document is updated, the agency shall amend the text of the regulation and the list of documents incorporated by reference to reflect the changes. Regulations must refer to a specific edition or source to which the public may refer; therefore, the agency shall avoid phrases like “as amended” or “including future amendments.”

D. An agency incorporating outside material into a regulation shall create a list of documents incorporated by reference that will be treated as an unnumbered section of the regulation. The list will appear in the Virginia Administrative Code following the numbered sections of the regulation and the forms list, if any. When documents are updated, added, or removed, the DIBR list shall be amended using strikes and underscores as required for numbered sections of VAC.

E. Each item in the list of documents incorporated by reference shall be provided in the following format: title, edition, date of publication, and author or publishing entity from whom the publication may be obtained.

EXAMPLES

***DIBR in list form:***

Standard Methods for the Examination of Water and Wastewater, 1992, American Public Health Association, American Waterworks Association, Water Pollution Control Federation.

Methods for Determination of Inorganic Substances in Environmental Samples, August 1993, United States Environmental Protection Agency.

Wisconsin Mound Soil Absorption System Siting, Design and Construction Manual, January 1990, College of Agricultural and Life Sciences, University of Wisconsin-Madison.

Standard Industrial Classification Manual, 1987, Office of Management and Budget.

Standard Methods for the Examination of Water and Wastewater, 18th Edition, 1992, American Public Health Association.

Method 8270C, Semivolatile Organic Compounds by Gas Chromatography/Mass Spectrometry (GC/MS), Revision 3, December 1996, U.S. Government Printing Office.

Virginia Erosion and Sediment Control Handbook, Third Edition, 1992, Department of Conservation and Recreation.

***DIBR in text of regulation:***

f. All analyses will be made in accordance with Standard Methods for the Examination of Water and Wastewater, 1992 (American Public Health Association), or analytical methods approved by the division.

C. Mound systems shall be designed and constructed in accordance with the Wisconsin Mound Soil Absorption System Siting, Design and Construction Manual prepared by the Small Scale Waste Management Project, School of Natural Resources, College of Agricultural and Life Sciences, University of Wisconsin-Madison, January 1990.

F. An agency incorporating outside material shall affix the following information on the face of the incorporated material:

1. The title of the document;
2. The specific VAC number and chapter title into which the outside material is being adopted;
3. The name of the agency;
4. The filing date of the document; and
5. The address where the referenced document may be obtained.

EXAMPLE

Information to affix to the face of the document when incorporating by reference:

Title of Document:	Control of Communicable Diseases Manual, 17th Edition, 2000.
Reference to:	12VAC5-90, Regulations for Disease Reporting and Control
Filed by:	State Board of Health
Date filed:	August 15, 2003
Document available from:	American Public Health Association 800 I Street, NW Washington, D.C. 20001

**§ 8.2. Filing an incorporated document by description in lieu of full text.**

A. In certain limited instances, on a case-by-case basis, the Registrar may allow an agency to file an incorporated document by description in lieu of full text where justification is provided to the Registrar that filing the full text would be impractical. The Registrar may exempt an agency from filing in full if:

1. The document exceeds 500 pages and is generally available to the public;
2. The material is not available in document form; for example, the material is only available on computer tape or disks or on the Internet;
3. The material is updated more than twice yearly; or
4. The material is copyrighted or is otherwise the property of an individual or an organization other than the state government.

B. Any request for exemption to these filing requirements shall be made to the Registrar by the agency in writing on forms provided by the Registrar ([Form RR11](#)). Any approval granted by the Registrar shall also be made in writing. The agency shall continue to provide full text of documents incorporated by reference for which a request for exemption from these filing requirements has been made until such time as the Registrar grants written approval to the agency.

C. The granting of an exemption under this section does not relieve an agency from the requirement of maintaining on file, and making available to the public, the full text of all materials incorporated by reference.

### § 8.3. Exemptions to filing of documents incorporated by reference.

A. Notwithstanding the requirements of § 5.10 B of this manual, the requirements established in §§ 8.1 and 8.2 of this manual do not apply to incorporation of textual matter by reference to the Federal Register or the Code of Federal Regulations, or by reference to regulations of other Virginia agencies. Where such references are made, however, the citation shall be sufficient for accurate identification of the referenced material. Where the material has been published in the Code of Federal Regulations, the title and section numbers shall be cited as described in § 3.15 D of this manual and the date of publication shall be given.

When the referenced material has not been published in the Code of Federal Regulations (CFR) but appears in the Federal Register, the volume and page number shall be cited as described in § 3.15 C of this manual and the date of that publication shall be given, and if the material is in codified form, the CFR citation should be given.

#### EXAMPLES

*from the agency summary of the Department of Social Services:*

The department is authorized to develop a state plan for refugee resettlement with necessary procedures and reporting requirements pursuant to the Refugee Act of 1980, Pub. L. No. 96-212, and 45 FR 35359 (May 27, 1980).

*from 9VAC5-190-110:*

B. The following documents (October 8, 1997, 62 FR 52622) from the United States Environmental Protection Agency are incorporated herein by reference:

*from 9VAC5-60-130:*

“Source category schedule for standards” means the schedule issued pursuant to § 112(e) of the federal Clean Air Act for promulgating MACT standards issued pursuant to § 112(d) of the federal Clean Air Act and published in the Federal Register at 67 FR 6521, February 12, 2002.

**9VAC5-60-91. National Performance Track Program.**

The Environmental Protection Agency (EPA) National Performance Track Program as promulgated in 40 CFR 63.2, 63.10, and 63.16 is, 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 specific version of the provisions adopted by reference shall be that promulgated on April 22, 2004 (69 FR 21737).

B. In addition to the Federal Register and the Code of Federal Regulations, it is not necessary to file the following documents when they are incorporated by reference:

1. United States Code;
2. Code of Virginia; and
3. Supreme Court decisions.

C. The granting of an exemption under this section does not relieve an agency from the requirement of maintaining on file, and making available to the public, the full text of all materials incorporated by reference.

**PART IX.**  
**SUBMITTING GENERAL NOTICES FOR PUBLICATION IN THE VIRGINIA REGISTER.**

**§ 9.1. General notices.**

A. Miscellaneous notices filed for publication that are not categorized under a specific section of the Virginia Register will be published in the General Notices section at the discretion of the Registrar.

B. General notices may be submitted through the Virginia Regulatory Town Hall or submitted electronically as follows:

1. Prepare notice in Microsoft Word.
2. Prepare the email as follows:
  - a. In the subject line, key “General Notice:” and the general subject of the notice.

<b>EXAMPLES</b>
General Notice: State Water Control Board enforcement action
General Notice: DEQ notice of public meeting
General Notice: Lottery Director’s orders
General Notice: DOT notice of periodic review
General Notice: SCC insurance order
General Notice: Milk Commission order
General Notice: VDH funding order

- b. In the body of the email, use the following format:

(Name of state agency) requests publication of the attached notice in the Virginia Register.

Submitted by:

Name:  
Agency:  
Address:  
Telephone:  
Email:

<b>EXAMPLES</b>
The State Water Control Board requests publication of the attached notice in the Virginia Register.
Submitted by:
Name: Cindy Bernt
Agency: Department of Environmental Quality
Address: 629 E. Main Street, Richmond, VA 23219
Telephone: 804-698-4378
Email: cberndt@deq.virginia.gov

- c. Attach notice to email.
      - d. Send email with attachment to [VARegs@dls.virginia.gov](mailto:VARegs@dls.virginia.gov).

C. The date that the email is received will normally dictate the date of publication in the Virginia Register. As long as there are no problems with the email and attachment, the Registrar will publish the general notice according to the Virginia Register publication schedule. If there are problems, the Registrar will notify the submitter.



D. When submitting Notices of Periodic Review through the Department of Planning and Budget's Regulatory Town Hall, the requirements of subsection B of this section are met.

E. An agency contact person with address and telephone number must be named in all general notices submitted for publication in the Virginia Register.

**PART X.**  
**GUIDANCE DOCUMENTS.**

**§ 10.1. Filing annual guidance document lists.**

A. Chapter 11 of the 1997 Acts of Assembly amended the Administrative Process Act and Virginia Register Act by adding the definition of a guidance document to both acts. Sections 2.2-4008 and 2.2-4103 require each agency, on or before January 1, to annually file with the Registrar of Regulations a list of any guidance documents upon which the agency currently relies. These lists are published in the Virginia Register and made available on the Internet at <http://register.dls.virginia.gov/guidancedocs.aspx>

B. Agencies subject to the Virginia Register Act or the Virginia Administrative Process Act are required to file a guidance document list as set out in §§ 2.2-4008 and 2.2-4103 of the Code of Virginia. An agency that does not have the statutory authority to promulgate regulations may, however, be subject to filing the guidance document listing if (i) the agency is not specifically exempted from the Virginia Register Act and (ii) the agency or staff has developed any document meeting the definition of guidance document as set out in §§ 2.2-4001 and 2.2-4101 of the Code of Virginia.

C. Detailed instructions on filing guidance document lists are located on the Virginia Register website at [http://register.dls.virginia.gov/documents/agency\\_resources/guidance\\_doc\\_instructions.pdf](http://register.dls.virginia.gov/documents/agency_resources/guidance_doc_instructions.pdf).