



Virginia Register of Regulations

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THE VIRGINIA REGISTER INFORMATION PAGE

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

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

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

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

FAST-TRACK RULEMAKING PROCESS

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

EMERGENCY REGULATIONS

Pursuant to § 2.2-4011 of the Code of Virginia, an agency, upon consultation with the Attorney General, and at the discretion of the Governor, may adopt emergency regulations that are necessitated by an emergency situation. An agency may also adopt an emergency regulation when Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment. The emergency regulation becomes operative upon its adoption and filing with the Registrar of Regulations, unless a later date is specified. Emergency regulations are limited to no more than 12 months in duration; however, may be extended for six months under certain circumstances as provided for in § 2.2-4011 D. Emergency regulations are published as soon as possible in the *Register*.

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

STATEMENT

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

CITATION TO THE VIRGINIA REGISTER

The *Virginia Register* is cited by volume, issue, page number, and date. **26:20 V.A.R. 2510-2515 June 7, 2010**, refers to Volume 26, Issue 20, pages 2510 through 2515 of the *Virginia Register* issued on June 7, 2010.

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

Members of the Virginia Code Commission: **John S. Edwards**, Chairman; **Bill Janis**, Vice Chairman; **James M. LeMunyon**; **Ryan T. McDougle**; **Robert L. Calhoun**; **Frank S. Ferguson**; **E.M. Miller, Jr.**; **Thomas M. Moncure, Jr.**; **Patricia L. West**; **Charles S. Sharp**.

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

PUBLICATION SCHEDULE AND DEADLINES

This schedule is available on the *Register's* Internet home page (<http://register.dls.virginia.gov>).

February 2011 through March 2012

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
27:12	January 26, 2011	February 14, 2011
27:13	February 9, 2011	February 28, 2011
27:14	February 23, 2011	March 14, 2011
27:15	March 9, 2011	March 28, 2011
27:16	March 23, 2011	April 11, 2011
27:17	April 6, 2011	April 25, 2011
27:18	April 20, 2011	May 9, 2011
27:19	May 4, 2011	May 23, 2011
27:20	May 18, 2011	June 6, 2011
27:21	June 1, 2011	June 20, 2011
27:22	June 15, 2011	July 4, 2011
27:23	June 29, 2011	July 18, 2011
27:24	July 13, 2011	August 1, 2011
27:25	July 27, 2011	August 15, 2011
27:26	August 10, 2011	August 29, 2011
28:1	August 24, 2011	September 12, 2011
28:2	September 7, 2011	September 26, 2011
28:3	September 21, 2011	October 10, 2011
28:4	October 5, 2011	October 24, 2011
28:5	October 19, 2011	November 7, 2011
28:6	November 2, 2011	November 21, 2011
28:7	November 15, 2011 (Tuesday)	December 5, 2011
28:8	November 30, 2011	December 19, 2011
28:9	December 13, 2011 (Tuesday)	January 2, 2012
28:10	December 27, 2011 (Tuesday)	January 16, 2012
28:11	January 11, 2012	January 30, 2012
28:12	January 25, 2012	February 13, 2012
28:13	February 8, 2012	February 27, 2012
28:14	February 22, 2012	March 12, 2012

*Filing deadlines are Wednesdays unless otherwise specified.

NOTICES OF INTENDED REGULATORY ACTION

TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Social Services intends to consider repealing the following regulation: **22VAC40-120, Minimum Standards for Licensed Family Day-Care Systems** and promulgating **22VAC40-121, Standards for Licensed Family Day Systems**. The purpose of the proposed action is to establish a new regulation that will improve clarity and consistency and provide greater protection for children in care.

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

Statutory Authority: §§ 63.2-217 and 63.2-1734 of the Code of Virginia.

Public Comment Deadline: March 16, 2011.

Agency Contact: Karen Cullen, Department of Social Services, Division of Licensing Programs, 730 East Broad Street, Room 828, Richmond, VA 23219, telephone (804) 726-7152, FAX (804) 726-7132, TTY (800) 828-1120, or email karen.cullen@dss.virginia.gov.

VA.R. Doc. No. R11-2732; Filed January 21, 2011, 10:30 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Social Services intends to consider amending the following regulation: **22VAC40-740, Adult Protective Services**. The purpose of the proposed action is to clarify regulation content and to comport with guidance on the data entry requirements in ASAPS, the statewide web-based case management and reporting system for the Adult Protective Services Program.

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

Statutory Authority: § 63.2-217 and Article 2 (§ 63.2-1603 et seq.) of Chapter 16 of Title 63.2 of the Code of Virginia.

Public Comment Deadline: March 16, 2011.

Agency Contact: Paige McCleary, Program Consultant, Department of Social Services, Division of Family Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7536, FAX (804) 726-7895, TTY (800) 828-1120, or email paige.mccleary@dss.virginia.gov.

VA.R. Doc. No. R11-2684; Filed January 14, 2011, 6:06 p.m.

REGULATIONS

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

Symbol Key

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

TITLE 1. ADMINISTRATION

STATE BOARD OF ELECTIONS

REGISTRAR'S NOTICE: The State Board of Elections is claiming an exemption from the Administrative Process Act for the following regulations pursuant to § 2.2-4002 B 8 of the Code of Virginia, which exempts agency action relating to the conduct of elections or eligibility to vote.

Final Regulation

Title of Regulation: **1VAC20-70. Absentee Voting (adding 1VAC20-70-30).**

Statutory Authority: § 24.2-103 of the Code of Virginia.

Effective Date: Effective upon the filing of the notice of the U.S. Attorney General's preclearance with the Registrar of Regulations.

Agency Contact: Martha Brissette, State Board of Elections, 1100 Bank Street, Richmond, VA 23219, telephone (804) 864-8925, or email martha.brissette@sbe.virginia.gov.

Summary:

This action details standards to assist local election officials in determining whether a write-in ballot on a Federal Write-In Absentee Ballot (Form SF-186A) may be counted by distinguishing what omissions are always material and thereby invalidate the ballot from those that are not material. No substantive changes were made to the regulation since publication of the proposed regulation.

CHAPTER 70 ABSENTEE VOTING

1VAC20-70-30. Material omissions from Federal Write-In Absentee Ballots.

A. Pursuant to the requirements of §§ 24.2-702.1 and 24.2-706 of the Code of Virginia, a timely received write-in absentee ballot on a Federal Write-In Absentee Ballot (FWAB) (Form SF-186A) should not be rendered invalid if it contains an error or omission not material to determining the eligibility of the applicant to vote in the election in which he offers to vote.

B. If the applicant is not registered, the FWAB may not be accepted as timely for registration unless the applicant has met the applicable registration deadline. Section 24.2-419 of the Code of Virginia extends the mail registration deadline for certain military applicants. All applicants are subject to the

absentee application deadline in § 24.2-701 of the Code of Virginia.

C. The following omissions are always material and any FWAB containing such omissions should be rendered invalid if any of the following, or combination thereof, exists:

1. The applicant has omitted the signature of the voter or the notation of an assistant in the voter signature box that the voter is unable to sign;
2. The applicant has omitted the signature of the witness;
3. The applicant did not include the declaration/affirmation page; [or]
4. The applicant omitted from the declaration/affirmation information required by § 24.2-702.1 of the Code of Virginia needed to determine eligibility including, but not limited to, current military or overseas address.

D. The ballot should not be rendered invalid if on the FWAB any of the following, or combination thereof, exists:

1. The applicant has not listed the names specifically in the order of last, first, and middle name;
2. The applicant has listed a middle initial or maiden name, instead of the full middle name;
3. The applicant has omitted the street identifier, such as the term "road" or "street" when filling in the legal residence;
4. The applicant has omitted the county or city of registration if the county or city is clearly identifiable by the residence address information provided;
5. The applicant has omitted the zip code;
6. The applicant has omitted the date of the signature of the voter;
7. The applicant has omitted the address of the witness;
8. The applicant has omitted the date of signature of the witness;
9. The applicant has omitted a security envelope; or
10. The applicant has submitted a ballot containing offices or issues for which he is not eligible.

VA.R. Doc. No. R11-2685; Filed January 14, 2011, 10:55 a.m.

Final Regulation

Title of Regulation: 1VAC20-70. Absentee Voting (adding 1VAC20-70-10, 1VAC20-70-40, 1VAC20-70-50).

Statutory Authority: § 24.2-103 of the Code of Virginia.

Effective Date: Effective upon the filing of the notice of the U.S. Attorney General's preclearance with the Registrar of Regulations.

Agency Contact: Martha Brissette, Policy Analyst, State Board of Elections, 1100 Bank St., Richmond, VA 23219, telephone (804) 864-8925, FAX (804) 786-0760, or email martha.brissette@sbe.virginia.gov.

Summary:

This regulatory action defines "application for an absentee ballot" and "temporary federal only ballot overseas voter"; establishes alternative counting procedures for absentee ballots; and provides that an application on any version of an approved absentee ballot application form will be accepted based on the laws in effect at the time of the election for which the voter is applying. No changes were made to the regulation since publication of the proposed regulation.

**CHAPTER 70
ABSENTEE VOTING**

1VAC20-70-10. Definitions.

"Application for an absentee ballot" means an application for an absentee ballot submitted on any form approved for that purpose according to federal and state laws. The term includes a Virginia Absentee Ballot Application (SBE-701), a Virginia Annual Absentee Ballot Application (SBE-703.1), and a Federal Post Card Application (SF-76A). A Federal Write-In Absentee Ballot (SF-186A) is an absentee ballot application only for the voted ballot being submitted and is not an application for future elections.

"Envelope B" means the envelope required by § 24.2-706 of the Code of Virginia which identifies the voter.

"Temporary federal only ballot overseas voter" means a United States citizen residing outside the United States indefinitely who has not provided his last date of residence in Virginia. The date the applicant has provided next to his affirmation will serve as his last date of residence.

1VAC20-70-40. Alternative counting procedures.

An electoral board that approves use of alternative procedures for counting absentee ballots under § 24.2-709.1 of the Code of Virginia shall ensure that:

1. The general registrar staff assigned follow all previously prescribed instructions for processing and verifying absentee ballots.

2. All absentee ballots are secured at the end of each day following principles of dual control and chain of custody.

3. The general registrar staff assigned follow carefully all the requirements of § 24.2-709.1 of the Code of Virginia, including the requirement that at least two officers of election, one representing each party, be present during all hours that the expedited procedures are used.

4. Notice is given to the local political party chairs of the times and places for processing absentee ballots in sufficient time to allow for the authorized party representatives to be present.

1VAC20-70-50. Version; applicable law.

An application on any version of an approved absentee ballot application form shall be accepted based on the laws in effect at the time of the election for which the voter is applying.

NOTICE: The following forms used in administering the regulation were filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name to access a form. The forms are also available through the agency contact or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

FORMS (1VAC20-70)

- [Absentee Ballot Application Form, SBE-701 \(rev. 7/10\).](#)
- [Annual Absentee Ballot Application, SBE-703.1 \(rev. 1/10\).](#)
- [Federal Post Card Application, Registration and Absentee Ballot Request, Standard Form 76A \(rev. 10/05\).](#)
- [Federal Write-In Absentee Ballot and Instructions, Standard Form 186A \(rev. 10/05\).](#)
- [Envelope B for Statement of UOCAVA Absentee Voter, 42 USC 1973ff-1\(b\) \(rev. 5/04\).](#)
- [Envelope B for Statement of Absentee Voter, SBE 706-2 \(rev. 7/03\).](#)

VA.R. Doc. No. R11-2686; Filed January 14, 2011, 10:56 a.m.



TITLE 3. ALCOHOLIC BEVERAGES

ALCOHOLIC BEVERAGE CONTROL BOARD

Final Regulation

Title of Regulation: 3VAC5-50. Retail Operations (adding 3VAC5-50-230).

Statutory Authority: § 4.1-210 of the Code of Virginia.

Effective Date: March 16, 2011.

Regulations

Agency Contact: W. Curtis Coleburn III, Chief Operating Officer, Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, VA 23220, telephone (804) 213-4409, FAX (804) 213-4411, TTY (804) 213-4687, or email curtis.coleburn@abc.virginia.gov.

Summary:

Chapter 172 of the 2008 Acts of Assembly amended the provisions of subdivision A 12 of § 4.1-210 of the Code of Virginia, adding "dessert wines as defined by Board regulation" to the types of alcoholic beverages that may be sold and served by holders of limited mixed beverage restaurant licenses. This action creates a new section, defining "dessert wines" for the purposes of the act. No changes were made to the regulation since publication of the proposed regulation.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

3VAC5-50-230. Dessert wines.

For the purposes of § 4.1-210 A 12 of the Code of Virginia, "dessert wines" shall mean any wine having an alcohol content of more than 14% by volume, any wine whose label contains a statement that it contains more than 2.0% residual sugar, or any wine described on its label as a "dessert," "late harvest," or "ice" wine.

VA.R. Doc. No. R09-1605; Filed February 2, 2011, 11:28 a.m.

Final Regulation

Title of Regulation: **3VAC5-70. Other Provisions (amending 3VAC5-70-210).**

Statutory Authority: §§ 4.1-103 and 4.1-227 of the Code of Virginia.

Effective Date: March 16, 2011.

Agency Contact: Jeffrey L. Painter, Chief Administrative Officer, Department of Alcoholic Beverage Control, P.O. Box 27491, Richmond, VA 23261, telephone (804) 213-4621, FAX (804) 213-4411, TTY (804) 213-4687, or email jeffrey.painter@abc.virginia.gov.

Summary:

This action carries out the mandate of Chapter 513 of the 2008 Acts of Assembly, which amends § 4.1-227 of the Code of Virginia and requires the Alcoholic Beverage Control Board to promulgate a regulation providing for a reduction in penalty in certain disciplinary actions against licensees, where the licensee can demonstrate that it has provided certified alcohol server training to its employees. The amended regulation encourages alcoholic beverage seller/server training.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

3VAC5-70-210. Schedule of penalties for first-offense violations.

A. Any licensee charged with any violation of board regulations or statutes listed below, if the licensee has no other pending charges and has not had any substantiated violations of regulation or statute within the three years immediately preceding the date of the violation, may enter a written waiver of hearing and (i) accept the period of license suspension set forth below for the violation, or (ii) pay the civil charge set forth below for the violation in lieu of suspension. In the case of a violation involving the sale of beer, wine, or mixed beverages to a person at least 18 but under 21 years of age, or to an intoxicated person, or allowing consumption of such beverages by such person, any retail licensee that can demonstrate that it provided alcohol seller/server training certified in advance by the board to the employee responsible for such violation within the 12 months immediately preceding the alleged violation may accept the lesser period of license suspension or pay the lesser civil charge listed below for the violation in lieu of suspension. Any notice of hearing served on a licensee for a violation covered by this section shall contain a notice of the licensee's options under this section. Any licensee who fails to notify the board of its intent to exercise one of the options provided for under this section within 20 days after the date of mailing of the notice of hearing shall be deemed to have waived the right to exercise such options and the case shall proceed to hearing. For good cause shown, the board may, in its discretion, allow a licensee to exercise the options provided for under this section beyond the 20-day period.

Regulations

VIOLATION	SUSPENSION	CIVIL CHARGE	<u>SUSPENSION WITH CERTIFIED TRAINING</u>	<u>CIVIL CHARGE WITH CERTIFIED TRAINING</u>
Sale of beer, wine or mixed beverages to a person at least 18 but under 21 years of age.	25 days	\$2,000	<u>5 days</u>	<u>\$1,000</u>
Allowing consumption of beer, wine, or mixed beverages by a person at least 18 but under 21 years of age.	25 days	\$2,000	<u>5 days</u>	<u>\$1,000</u>
Aiding and abetting the purchase of alcoholic beverages by a person at least 18 but under 21 years of age.	10 days	\$1,000		
Keeping unauthorized alcoholic beverages on the premises, upon which appropriate taxes have not been paid.	10 days	\$1,000		
Keeping unauthorized alcoholic beverages on the premises, upon which appropriate taxes have been paid.	7 days	\$500		
Allow gambling on the premises, if licensee, agent, or employee is participant, but is not conducting the gambling event or operation.	10 days	\$1,000		
Allow gambling on the premises, if licensee, agent, or employee is not participant nor conducting the gambling event or operation.	7 days	\$500		
Allow an intoxicated person to loiter on the premises.	7 days	\$500		
Sale to an intoxicated person.	25 days	\$2,000	<u>5 days</u>	<u>\$1,000</u>
Allow consumption by an intoxicated person.	25 days	\$2,000	<u>5 days</u>	<u>\$1,000</u>
After hours sales or consumption of alcoholic beverages.	10 days	\$1,000		
No designated manager on premises.	7 days	\$500		
Invalid check to wholesaler or board.	7 days	\$250		
Failure to keep records.	7 days	\$500		
Failure to maintain mixed beverage food ratio required by statute (not applicable if ratio falls below 30%).	10 days	\$1,000		
Inadequate illumination.	7 days	\$500		
ABC license not posted.	7 days	\$500		
Not timely submitting report required by statute or regulation.	7 days	\$500		
Designated manager not posted.	7 days	\$500		
Person less than 18 serving alcoholic beverages; less than 21 acting as bartender.	7 days	\$500		

Regulations

Sale of alcoholic beverages in unauthorized place or manner.	10 days	\$1,000		
Consumption of alcoholic beverages in unauthorized area.	7 days	\$500		
Removal of alcoholic beverages from authorized area.	7 days	\$500		
Failure to obliterate mixed beverage stamps.	7 days	\$500		
Employee on duty consuming alcoholic beverages.	7 days	\$500		
Conducting illegal happy hour.	7 days	\$500		
Illegally advertising happy hour.	7 days	\$500		
Unauthorized advertising.	7 days	\$500		
Failure to remit state beer/wine tax (if deficiency has been corrected).	10 days	\$1,000		
Wholesaler sale of wine/beer in unauthorized manner.	10 days	\$1,000		
Wholesaler sale of wine/beer to unauthorized person.	10 days	\$1,000		

B. For purposes of this section, the Virginia Department of Alcoholic Beverage Control will certify alcohol seller/server training courses that provide instruction on all the topics listed on the Seller/Server Training Evaluation form. The following steps should be completed to submit a training program for approval:

1. Complete the Alcohol Seller/Server Training Data Sheet and review the Seller/Server Training Evaluation form to make sure the program will meet the listed criteria; and

2. Submit the Alcohol Seller/Server Training Data Sheet and a copy of the proposed training program materials for review. Materials submitted should include copies of any lesson plans and instructional materials used in the training program.

Requests for certification of training courses should be sent to:

Virginia Department of Alcoholic Beverage Control
Education Section
P. O. Box 27491
Richmond, VA 23261

Email correspondences: education@abc.virginia.gov

Persons in charge of any certified alcohol server training course shall maintain complete records of all training classes conducted, including the date and location of each class, and the identity of all those successfully completing the course.

NOTICE: The following forms used in administering the above regulation were filed by the agency. Amended or new forms are listed and are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name to access a form. The forms are also available through the agency contact or at the Office of Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, VA 23219.

FORMS (3VAC5-70)

Order and Permit for Transportation of Alcohol, #703-69 (eff. 11/87).

Order and Permit for Transportation of Alcoholic Beverages, #703-73.

Mixed Beverage Annual Review-Instructions for Completion, #805-44 (rev. 11/06).

Application for Off Premises Keg Permit, #805-45 (eff. 1/93).

Application for Grain Alcohol Permit, #805-75.

Special Event License Application Addendum-Notice to Special Event Licenses Applicants, Form SE-1 (rev. 08/02).

Statement of Income & Expenses for Special Event Licenses (with instructions), Form SE-2 (rev. 08/02).

[[Alcohol Seller/Server Training Data \(eff. 7/09\)](#).

[Seller/Server Training Evaluation \(eff. 7/09\)](#).

[Alcohol Seller/Server Training Data Form and Evaluation Form \(eff. 7/09\). \]](#)

VA.R. Doc. No. R09-1678; Filed February 2, 2011, 11:29 a.m.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

DEPARTMENT OF FORESTRY

Reproposed Regulation

Title of Regulation: 4VAC10-30. Virginia State Forests Regulations (amending 4VAC10-30-170).

Statutory Authority: § 10.1-1101 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: March 16, 2011.

Agency Contact: Ronald S. Jenkins, Assistant State Forester, Department of Forestry, 900 Natural Resources Drive, Suite 800, Charlottesville, VA 22903, telephone (434) 977-6555, FAX (434) 293-2768, or email ron.jenkins@dof.virginia.gov.

Basis: Section 10.1-1101 of the Code of Virginia provides the Department of Forestry, with the approval of the State Forester, the authority to promulgate regulations necessary or incidental to the performance of duties or execution of powers conferred under Chapter 11 (§ 10.1-1100 et seq.) of Title 10.1 of the Code of Virginia.

Purpose: The right to bear arms is protected by the second amendment to the Constitution of the United States. Citizens are requesting the department to remove the prohibition against carrying handguns within state forests because they believe this action is necessary to protect their health, safety, and welfare against violent people and wild animals.

The Virginia Citizens Defense League petitioned the Department of Forestry (DOF) for a ruling to amend 4VAC10-30-170 and eliminate the prohibition against both open carried handguns and concealed handguns. DOF completed its response to the petition and began the process of amending its regulation with the intent of removing the prohibition against lawful concealed firearms and continuing the prohibition on open carried firearms. DOF completed the Notice of Intended Regulatory Action (NOIRA) and first public comment stages. DOF received 1,926 comments during the NOIRA stage and 2,409 comments at the initial proposed stage (26:12 VA.R. 1864-1865 February 15, 2010) supporting the amendment. Based on the volume of comments from the first public comment stage (February 15, 2010, through April 16, 2010) supporting the lawful carrying of both open and concealed firearms on state forests and a review of Virginia statutes, DOF is proposing a second public

comment stage and a new proposed regulation to allow the lawful carrying of open and concealed firearms on state forests.

Substance: The agency will change its regulation, which currently prohibits the carrying of firearms onto state forests, except for lawful hunting, to allow persons to carry lawful open carried and concealed firearms onto state forests.

Issues: Citizens may carry concealed handguns with a valid permit in Virginia. The state forest amendment will ensure that law abiding citizens will not violate a regulation that carries a Class 4 misdemeanor penalty.

The Virginia Citizens Defense League requested DOF to amend 4VAC10-30-170 to lift the prohibition against carrying lawfully open carried and concealed firearms on the state forests. During the first public comment phase from February 15, 2010, through April 16, 2010, DOF received a large number of comments in support of both lawful carrying of open and concealed firearms on state forests. DOF will initiate actions for a second public comment period of 30 days to reflect a regulatory amendment that will allow the lawful carrying of both open and concealed firearms. This amendment allows persons to carry lawful open carried and concealed firearms onto state forests at any time.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Department of Forestry proposes to allow the holders of concealed weapons permits to carry their concealed handguns in state forests and to also allow open carry of weapons that are lawfully allowed to be carried openly outside of state forests.

Result of Analysis. The benefits likely exceed the costs for this proposed change.

Estimated Economic Impact. Current state forestry regulations prohibit any individual from bringing any explosives or firearms into state forests. The department proposes to amend this prohibition so that it does not apply to lawfully possessed firearms and ammunition. This change will allow both concealed carrying of firearms, by those who possess a concealed carry permit, and open carry for anyone in lawful possession of a firearm.

This change will allow individuals to have the protection of a weapon in state forests which will likely provide a benefit for them as well as any other unarmed citizens that might receive ancillary protection from crime or animal attack. It is very unlikely that any individual would suffer costs from increased crimes on account of this change because concealed carry holders appear to commit far fewer crimes than individuals that don't hold concealed carry permits.¹ There appear to be no studies that attempt to measure any negative impact of

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open carry on unarmed individuals but anecdotal evidence suggests that such impact would be minimal to nonexistent.

Businesses and Entities Affected. This proposed regulatory change will affect all individuals who visit, or travel in, state forests.

Localities Particularly Affected. No locality will be particularly affected by this proposed regulatory action.

Projected Impact on Employment. This regulatory action will likely have no impact on employment in the Commonwealth.

Effects on the Use and Value of Private Property. This regulatory action will likely have no effect on the use or value of private property in the Commonwealth.

Small Businesses: Costs and Other Effects. Small businesses in the Commonwealth are unlikely to incur any costs on account of this regulatory action.

Small Businesses: Alternative Method that Minimizes Adverse Impact. Small businesses in the Commonwealth are unlikely to incur any costs on account of this regulatory action.

Real Estate Development Costs. This regulatory action will likely have no effect on real estate development costs in the Commonwealth.

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

¹ David Kopel of Stanford University's Hoover Institute writes, in an overview of research on concealed carry permit holders and crime, that in

Florida permit holders are about 300 times less likely to perpetrate a gun crime than Floridians without permits.

Agency's Response to Economic Impact Analysis: The Department of Forestry concurs with the findings of the Department of Planning and Budget Economic Impact Analysis dated December 15, 2010. The Department of Forestry proposes to allow the holders of concealed weapons permits to carry their concealed handguns in state forests and to also allow open carry of weapons that are lawfully allowed to be carried openly outside of state forests. The change does not add new responsibilities to state or local officials responsible for enforcing weapons laws. The change in regulations will conform to all applicable firearms laws.

Summary:

The revised proposed amendment allows the lawful carry of open and concealed firearms in Virginia's state forests. The difference between the initial proposed amendment and this amendment is the lifting of the prohibition against the lawful open carry of firearms. The amendment is intended to ensure that the regulation is in synchronization with the laws.

The current regulation prohibits individuals from carrying any firearms onto state forest properties unless exempted because of lawful hunting seasons. The revised proposed amendment allows persons to carry lawful open and concealed firearms onto state forest properties under the ownership and management of the Department of Forestry.

4VAC10-30-170. Explosives, ~~fires~~ firearms, etc.

No person shall bring into or have in any forest any explosive or explosive substance [~~, except commercial sporting firearms ammunition; explosives, explosive substances and firearms of all types are prohibited in any portion of a forest assigned to the Department of Forestry, for administration as a recreational area]~~. This regulation shall not apply to the [lawful] carrying of [concealed handguns within state forests by holders of a valid concealed handgun permit issued pursuant to § 18.2-308 of the Code of Virginia firearms and firearms ammunition].

VA.R. Doc. No. R09-06; Filed January 24, 2011, 12:50 p.m.

MARINE RESOURCES COMMISSION

Final Regulation

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

Title of Regulation: 4VAC20-252. Pertaining to the Taking of Striped Bass (amending 4VAC20-252-55, 4VAC20-252-150).

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

Effective Date: February 1, 2011.

Agency Contact: Jane Warren, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or email betty.warren@mrc.virginia.gov.

Summary:

The amendments establish the 2011 commercial and recreational striped bass quotas as 1,430,361 pounds.

4VAC20-252-55. Recreational harvest quota.

The total allowable level of all recreational harvest of striped bass for all open seasons and for all legal gear shall be ~~1,538,022~~ 1,430,361 pounds of whole fish. At such time as the total recreational harvest of striped bass is projected to reach ~~1,538,022~~ 1,430,361 pounds, and announced as such, it shall be unlawful for any person to land or possess striped bass caught for recreational purposes.

4VAC20-252-150. Individual commercial harvest quota.

A. The commercial harvest quota for the Chesapeake area shall be determined annually by the Marine Resources Commission. The total allowable level of all commercial harvest of striped bass from the Chesapeake Bay and its tributaries and the Potomac River tributaries of Virginia for all open seasons and for all legal gear shall be ~~1,538,022~~ 1,430,361 pounds of whole fish. At such time as the total commercial harvest of striped bass from the Chesapeake area is projected to reach ~~1,538,022~~ 1,430,361 pounds, and announced as such, it shall be unlawful for any person to land or possess striped bass caught for commercial purposes from the Chesapeake area.

B. The commercial harvest quota for the coastal area of Virginia shall be determined annually by the Marine Resources Commission. The total allowable level of all commercial harvest of striped bass from the coastal area for all open seasons and for all legal gear shall be 184,853 pounds of whole fish. At such time as the total commercial harvest of striped bass from the coastal area is projected to reach 184,853 pounds, and announced as such, it shall be unlawful for any person to land or possess striped bass caught for commercial purposes from the coastal area.

C. For the purposes of assigning an individual's tags for commercial harvests in the Chesapeake area as described in 4VAC20-252-160, the individual commercial harvest quota of striped bass in pounds shall be converted to an estimate in numbers of fish per individual harvest quota based on the average weight of striped bass harvested by the permitted individual during the previous fishing year. The number of striped bass tags issued to each individual will equal the estimated number of fish to be landed by that individual

harvest quota, plus a number of striped bass tags equal to 10% of the total allotment determined for each individual.

D. For the purposes of assigning an individual's tags for commercial harvests in the coastal area of Virginia as described in 4VAC20-252-160, the individual commercial harvest quota of striped bass in pounds shall be converted to a quota in numbers of fish per individual commercial harvest quota, based on the estimate of the average weight of striped bass harvested by the permitted individual during the previous fishing year. The number of striped bass tags issued to each individual will equal the estimated number of fish to be landed by that individual harvest quota, plus a number of striped bass tags equal to 10% of the total allotment determined for each individual.

VA.R. Doc. No. R11-2721; Filed January 28, 2011, 8:45 a.m.

Final Regulation

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

Title of Regulation: **4VAC20-620. Pertaining to Summer Flounder (amending 4VAC20-620-40; repealing 4VAC20-620-45).**

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

Effective Date: February 1, 2011.

Agency Contact: Jane Warren, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or email betty.warren@mrc.virginia.gov.

Summary:

The amendments establish that from the first Monday in March through the day preceding the last Monday in November or until it has been projected and announced that 85% of the allowable landings have been taken it shall be unlawful for any person harvesting Summer Flounder outside of Virginia waters to do any of the following: (i) possess aboard any vessel in Virginia waters any amount of Summer Flounder in excess of 20,000 pounds; (ii) land Summer Flounder in Virginia for commercial purposes more than twice during each consecutive 15-day period, with the first 15-day period beginning on the first Monday in March; and (iii) land in Virginia more than 10,000 pounds of Summer Flounder during each consecutive 15-day period, with the first 15-day period beginning on the first Monday in March. The amendments also repeal 4VAC20-620-45 regarding catch report forms.

Regulations

4VAC20-620-40. Commercial vessel possession and landing limitations.

A. It shall be unlawful for any person harvesting Summer Flounder outside of Virginia's waters to do any of the following, except as described in subsections B, C, and D of this section:

1. Possess aboard any vessel in Virginia waters any amount of Summer Flounder in excess of 10% by weight of Atlantic croaker or the combined landings, on board a vessel, of black sea bass, scup, squid, scallops and Atlantic mackerel.
2. Possess aboard any vessel in Virginia waters any amount of Summer Flounder in excess of 1,500 pounds landed in combination with Atlantic croaker.
3. Fail to sell the vessel's entire harvest of all species at the point of landing.

B. From the ~~last Monday in February~~ first Monday in March through the day preceding the last Monday in November, or until it has been projected and announced that 85% of the allowable landings have been taken, it shall be unlawful for any person harvesting Summer Flounder outside of Virginia waters to do any of the following:

1. Possess aboard any vessel in Virginia waters any amount of Summer Flounder in excess of ~~15,000~~ 20,000 pounds.
2. Land Summer Flounder in Virginia for commercial purposes more than twice during each consecutive ~~12-day~~ 15-day period, with the first ~~12-day~~ 15-day period beginning on the ~~last Monday in February~~ first Monday in March.
3. Land in Virginia more than ~~7,500~~ 10,000 pounds of Summer Flounder during each consecutive ~~12-day~~ 15-day period, with the first ~~12-day~~ 15-day period beginning on the ~~last Monday in February~~ first Monday in March.
4. Land in Virginia any amount of Summer Flounder more than once in any consecutive five-day period.

C. From the last Monday in November through December 31 of each year, or until it has been projected and announced that 85% of the allowable landings have been taken, it shall be unlawful for any person harvesting Summer Flounder outside of Virginia waters to do any of the following:

1. Possess aboard any vessel in Virginia waters any amount of Summer Flounder in excess of 15,000 pounds.
2. Land Summer Flounder in Virginia for commercial purposes more than twice during each consecutive 12-day period, with the first 12-day period beginning on the last Monday in November.
3. Land in Virginia more than a total of 7,500 pounds of Summer Flounder during each consecutive 12-day period,

with the first 12-day period beginning on the last Monday in November.

4. Land in Virginia any amount of Summer Flounder more than once in any consecutive five-day period.

D. From January 1 through December 31 of each year, any boat or vessel issued a valid federal Summer Flounder moratorium permit and owned and operated by a legal Virginia Commercial Hook-and-Line Licensee that possesses a Restricted Summer Flounder Endorsement shall be restricted to a possession and landing limit of 200 pounds of Summer Flounder, except as described in 4VAC20-620-30 F.

E. Upon request by a marine police officer, the seafood buyer or processor shall offload and accurately determine the total weight of all Summer Flounder aboard any vessel landing Summer Flounder in Virginia.

F. Any possession limit described in this section shall be determined by the weight in pounds of Summer Flounder as customarily packed, boxed and weighed by the seafood buyer or processor. The weight of any Summer Flounder in pounds found in excess of any possession limit described in this section shall be prima facie evidence of violation of this chapter. Persons in possession of Summer Flounder aboard any vessel in excess of the possession limit shall be in violation of this chapter unless that vessel has requested and been granted safe harbor. Any buyer or processor offloading or accepting any quantity of Summer Flounder from any vessel in excess of the possession limit shall be in violation of this chapter, except as described by subsection I of this section. A buyer or processor may accept or buy Summer Flounder from a vessel that has secured safe harbor, provided that vessel has satisfied the requirements described in subsection I of this section.

G. If a person violates the possession limits described in this section, the entire amount of Summer Flounder in that person's possession shall be confiscated. Any confiscated Summer Flounder shall be considered as a removal from the appropriate commercial harvest or landings quota. Upon confiscation, the marine police officer shall inventory the confiscated Summer Flounder and, at a minimum, secure two bids for purchase of the confiscated Summer Flounder from approved and licensed seafood buyers. The confiscated fish will be sold to the highest bidder and all funds derived from such sale shall be deposited for the Commonwealth pending court resolution of the charge of violating the possession limits established by this chapter. All of the collected funds will be returned to the accused upon a finding of innocence or forfeited to the Commonwealth upon a finding of guilty.

H. It shall be unlawful for a licensed seafood buyer or federally permitted seafood buyer to fail to contact the Marine Resources Commission Operation Station prior to a vessel offloading Summer Flounder harvested outside of Virginia. The buyer shall provide to the Marine Resources Commission

the name of the vessel, its captain, an estimate of the amount in pounds of Summer Flounder on board that vessel, and the anticipated or approximate offloading time. Once offloading of any vessel is complete and the weight of the landed Summer Flounder has been determined, the buyer shall contact the Marine Resources Commission Operations Station and report the vessel name and corresponding weight of Summer Flounder landed. It shall be unlawful for any person to offload from a boat or vessel for commercial purposes any Summer Flounder during the period of 6 p.m. to 7 a.m.

I. Any boat or vessel that has entered Virginia waters for safe harbor shall only offload Summer Flounder when the state that licenses that vessel requests to transfer quota to Virginia, in the amount that corresponds to that vessel's possession limit, and the commissioner agrees to accept that transfer of quota.

J. After any commercial harvest or landing quota as described in 4VAC20-620-30 has been attained and announced as such, any boat or vessel possessing Summer Flounder on board may enter Virginia waters for safe harbor but shall contact the Marine Resources Commission Operation Center in advance of such entry into Virginia waters.

K. It shall be unlawful for any person harvesting Summer Flounder outside of Virginia waters to possess aboard any vessel, in Virginia, any amount of Summer Flounder, once it has been projected and announced that 100% of the quota described in 4VAC20-620-30 A has been taken.

4VAC20-620-45. Catch reports. (Repealed.)

~~The owner of any vessel licensed to land Summer Flounder harvested outside of Virginia's waters shall report all Summer Flounder bycatch and discards on forms approved by the commission for each trip landed in Virginia. The completed forms shall be forwarded to the commission within five days of landing. Failure to accurately complete such reports or provide them to the commission within the specified time frame shall be a violation of this chapter.~~

VA.R. Doc. No. R11-2723; Filed January 28, 2011, 9:01 a.m.

Final Regulation

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

Title of Regulation: 4VAC20-720. Pertaining to Restrictions on Oyster Harvest (amending 4VAC20-720-80).

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

Effective Date: January 28, 2011.

Agency Contact: Jane Warren, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or email betty.warren@mrc.virginia.gov.

Summary:

The amendment decreases the daily limit of clean cull oysters that may be harvested from the Rappahannock River Rotation Area 4, as described in subdivision 4 of 4VAC20-720-40.

4VAC20-720-80. Quotas and harvest limits.

A. The lawful daily limit of clean cull oysters harvested from the areas as described in subdivisions 3, 4, and 6 through 10 of 4VAC20-720-40 shall be determined by the number of registered commercial fishermen licensees on board the vessel multiplied by 10 bushels. It shall be unlawful to possess on board any vessel or to land more than the daily limit of clean cull oysters.

B. The lawful daily limit of clean cull oysters harvested from the area described in subdivision 4 of 4VAC20-720-40 shall be determined by the number of registered commercial fishermen licensees on board the vessel multiplied by six bushels. It shall be unlawful to possess on board any vessel or land more than the daily limit of clean cull oysters.

~~B. C.~~ C. In the area as described in subdivision 5 of 4VAC20-720-40, where harvesting is allowed by dredge, there shall be a harvest limit of 10 bushels per registered commercial fisherman licensee on board the vessel. It shall be unlawful for any registered commercial fisherman licensee to possess more than 10 bushels per day. No blue crab bycatch is allowed. It shall be unlawful to possess on board any vessel more than 250 hard clams.

~~C. D.~~ D. Harvesters who export the oysters to an out-of-state market or do not sell the oysters to a licensed and Department of Health certified Virginia buyer but sell the oysters directly to the public for human consumption shall report oysters harvested on a daily basis and pay oyster taxes weekly.

VA.R. Doc. No. R11-2727; Filed January 27, 2011, 2:17 p.m.

Emergency Regulation

Title of Regulation: 4VAC20-720. Pertaining to Restrictions on Oyster Harvest (amending 4VAC20-720-10, 4VAC20-720-40, 4VAC20-720-50, 4VAC20-720-80).

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

Effective Date: February 1, 2011, through March 1, 2011.

Agency Contact: Jane Warren, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or email betty.warren@mrc.virginia.gov.

Regulations

Preamble:

This emergency chapter sets times of closure and other restrictions on the harvest of oysters from all oyster grounds in the Chesapeake Bay and its tributaries, including the tributaries of the Potomac River and on the Seaside of Eastern Shore. This emergency chapter is promulgated pursuant to authority contained in §§ 28.2-201, 28.2-210, 28.2-518, and 28.2-507 of the Code of Virginia. This emergency chapter amends and readopts, as amended, previous 4VAC20-720, which was adopted September 28, 2010, and effective October 1, 2010. The effective date of this emergency chapter, as amended, is February 1, 2011. The termination date of the emergency chapter is March 1, 2011.

Summary:

The amendments (i) open the James River and Thomas Rock hand scrape areas and the Deep Rock patent tong area from February 1 through February 28, 2011; and (ii) lower the limit of clean cull oysters harvested from subdivisions 6 and 9 of 4VAC20-720-40 to six bushels.

4VAC20-720-10. Purpose.

The purpose of this emergency chapter is to protect and conserve Virginia's oyster resource, and promote the preservation of oyster broodstock, which has been depleted by disease, harvesting, and natural disasters.

4VAC20-720-40. Open season and areas.

The lawful seasons and areas for the harvest of oysters from the public oyster grounds and unassigned grounds are as follows:

1. James River Seed Area, including the Deep Water Shoal State Replenishment Seed Area: October 1, 2010, through April 30, 2011.
2. Seaside of Eastern Shore: for clean cull oysters only, November 1, 2010, through February 28, 2011.
3. Rappahannock River Area 9; the Upper Chesapeake Bay (Blackberry Hangs Hand Scrape Area); Mobjack Bay Hand Scrape Area; and the Great Wicomico River Hand Scrape Area: October 1, 2010, through December 31, 2010.
4. Rappahannock River Rotation Area 4: October 1, 2010, through November 30, 2010, and February 1, 2011, through February 28, 2011.
5. Tangier - Pocomoke Sounds Rotation Area 2: December 1, 2010, through February 28, 2011.
6. The James River Hand Scrape Area and the Thomas Rock Hand Scrape Area (James River): October 1, 2010, through December 31, 2010, and February 1, 2011, through February 28, 2011.

7. The York River Hand Scrape Area: October 1, 2010, through December 31, 2010.

8. The Rappahannock River Multigear Areas:

- a. The Rappahannock River Areas 6, 7, and 8: (for hand scrape only) October 1, 2010, through December 31, 2010.
- b. The Rappahannock River Areas 6 and 7: (for patent tong only) January 1, 2011, through February 28, 2011.

9. Milford Haven and Deep Rock Patent Tong Area (Lower Chesapeake Bay): October 1, 2010, through December 31, 2010. Deep Rock Patent Tong Area: February 1, 2011, through February 28, 2011.

10. Coan, Little Wicomico, Nomini, and Yeocomico Rivers: October 1, 2010, through December 31, 2010.

4VAC20-720-50. Closed harvest season and areas.

It shall be unlawful for any person to harvest oysters from the following areas during the specified periods:

1. All public oyster grounds and unassigned grounds in the Chesapeake Bay and its tributaries, including the tributaries of the Potomac River, except those areas listed in 4VAC20-720-40, are closed: October 1, 2010, through September 30, 2011.
2. James River Seed Area, including the Deep Water Shoal State Replenishment Seed Area: May 1, 2011, through September 30, 2011.
3. All public oyster grounds and unassigned grounds on the Seaside of Eastern Shore: for clean cull oysters, October 1, 2010, through October 31, 2010, and March 1, 2011, through September 30, 2011, and for seed oysters, all year.
4. Rappahannock River Area 9; the Upper Chesapeake Bay (Blackberry Hangs Hand Scrape Area); Mobjack Bay Hand Scrape Areas; and the Great Wicomico River Hand Scrape Area: January 1, 2011, through September 30, 2011.
5. The Rappahannock River Rotation Area 4: December 1, 2010, through January 31, 2011, and March 1, 2011, through September 30, 2011.
6. Tangier - Pocomoke Sounds Rotation Area 2: October 1, 2010, through November 30, 2010, and March 1, 2011, through September 30, 2011.
7. The James River Hand Scrape Area and the Thomas Rock Hand Scrape Area (James River): January 1, 2011, through January 31, 2011, and March 1, 2011, through September 30, 2011.
8. The York River Hand Scrape Area: January 1, 2011, through September 30, 2011.
9. Rappahannock River Multigear Areas:

a. The Rappahannock River Areas 6, 7, and 8: (for hand scrape only) January 1, 2011, through September 30, 2011.

b. The Rappahannock River Areas 6 and 7: (for patent tong only) October 1, 2010, through December 31, 2010, and March 1, 2011, through September 30, 2011.

10. Milford Haven ~~and Deep Rock Patent Tong Area~~: January 1, 2011, through September 30, 2011. Deep Rock Patent Tong Area: January 1, 2011, through January 31, 2011, and March 1, 2011, through September 30, 2011.

11. Coan, Little Wicomico, Nomini, and Yeocomico Rivers: January 1, 2011, through September 30, 2011.

4VAC20-720-80. Quotas and harvest limits.

A. The lawful daily limit of clean cull oysters harvested from the areas as described in subdivisions 3 ~~and 6 through 7, 8, and 10~~ of 4VAC20-720-40 shall be determined by the number of registered commercial fishermen licensees on board the vessel multiplied by 10 bushels. It shall be unlawful to possess on board any vessel or to land more than the daily limit of clean cull oysters.

B. The lawful daily limit of clean cull oysters harvested from the area described in subdivision 6 of 4VAC 20-720-40 shall be determined by the number of registered commercial fishermen licensees on board the vessel multiplied by six bushels. It shall be unlawful to possess on board any vessel or to land more than the daily limit of clean cull oysters.

C. The lawful daily limit of clean cull oysters harvested from the area described in subdivision 9 of 4VAC20-720-40 shall be determined by the number of registered commercial fishermen licensees on board the vessel multiplied by six bushels. It shall be unlawful to possess on board any vessel or to land more than the daily limit of clean cull oysters.

~~B. D.~~ In the area described in subdivision 5 of 4VAC20-720-40, where harvesting is allowed by dredge, there shall be a harvest limit of 10 bushels per registered commercial fisherman licensee on board the vessel. It shall be unlawful for any registered commercial fisherman licensee to possess more than 10 bushels per day. No blue crab bycatch is allowed. It shall be unlawful to possess on board any vessel more than 250 hard clams.

~~C. E.~~ Harvesters who export the oysters to an out-of-state market or do not sell the oysters to a licensed and Department of Health certified Virginia buyer but sell the oysters directly to the public for human consumption shall report oysters harvested on a daily basis and pay oyster taxes weekly.

VA.R. Doc. No. R11-2728; Filed January 28, 2011, 11:10 a.m.

Emergency Regulation

Title of Regulation: 4VAC20-950. **Pertaining to Black Sea Bass (amending 4VAC20-950-47, 4VAC20-950-48).**

Statutory Authority: §§ 28.2-201, 28.2-204.1, and 28.2-210 of the Code of Virginia.

Effective Dates: January 26, 2011, through February 24, 2011.

Agency Contact: Jane Warren, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or email betty.warren@mrc.virginia.gov.

Preamble:

This emergency action establishes minimum size limits, gear restrictions, and quotas for the harvest of black sea bass by amending 4VAC20-950 that was promulgated June 22, 2010, and made effective July 1, 2010. The effective date of these amendments is January 26, 2011.

Summary:

This amendment establishes the 2011 commercial black sea bass directed fishery quota as 302,216 pounds, and the 2011 commercial black sea bass bycatch fishery quota as 40,000 pounds. The amendment also establishes the criteria for individual fishery quota for 2011.

4VAC20-950-47. Commercial harvest quotas.

A. The ~~2010~~ 2011 commercial black sea bass directed fishery quota is ~~311,722~~ 302,216 pounds. When it has been announced that the directed fishery quota has been projected as reached and the directed fishery has been closed, it shall be unlawful for any directed commercial black sea bass fishery permittee to possess aboard any vessel or land in Virginia any black sea bass.

B. The ~~2010~~ 2011 commercial black sea bass bycatch fishery quota is 40,000 pounds from January 1 through April 30. From May 1 through December 31, ~~2010~~ 2011, the commercial black sea bass bycatch fishery quota is the lesser of 10,000 pounds or the remaining amount of black sea bass bycatch fishery quota as of May 1, ~~2010~~ 2011. When it has been announced that the bycatch fishery quota has been projected as reached and the bycatch fishery has been closed, it shall be unlawful for any bycatch commercial black sea bass fishery permittee to possess aboard any vessel or land in Virginia any black sea bass. In the event the bycatch fishery quota is exceeded, the amount the quota overage shall be deducted from the following year's bycatch fishing quota.

4VAC20-950-48. Individual fishery quotas; bycatch limit; at sea harvesters; exceptions.

A. Each person possessing a directed fishery permit shall be assigned an individual fishery quota, in pounds, for each

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calendar year. Except as provided in subsection F of this section, a person's individual fishery quota shall be equal to that person's percentage of the total landings of black sea bass in Virginia from July 1, 1997, through December 31, 2001, multiplied by the directed commercial fishery black sea bass quota for the calendar year. Any directed fishery permittee shall be limited to landings in the amount of his individual fishery quota, in pounds, in any calendar year and it shall be unlawful for any permittee to exceed his individual fishery quota. In addition to the penalties prescribed by law, any overages of an individual's fishery quota shall be deducted from that permittee's individual fishery quota for the following year.

B. In the determination of a person's percentage of total landings, the commission shall use the greater amount of landings from either the National Marine Fisheries Service Dealer Weigh-out Reports or National Marine Fisheries Service Vessel Trip Reports that have been reported and filed as of November 26, 2002. If a person's percentage of the total landings of black sea bass is determined by using the Vessel Trip Reports as the greater amount, then the person shall provide documentation to the Marine Resources Commission to verify the Vessel Trip Reports as accurate. This documentation may include dealer receipts of sales or other pertinent documentation, and such documentation shall be submitted to the commission by December 1, 2004. In the event the commission is not able to verify the full amount of the person's Vessel Trip Reports for the qualifying period, the commission shall use the greater amount of landings, from either the Dealer Weigh-Out Reports or the verified portion of the Vessel Trip Reports to establish that person's share of the quota.

C. It shall be unlawful for any person permitted for the bycatch fishery to possess aboard a vessel, or to land in Virginia, in any one day, more than 200 pounds of black sea bass, except that any person permitted in the bycatch fishery may possess aboard a vessel, or land in Virginia, more than 200 pounds of black sea bass, in any one day, provided the total weight of black sea bass on board the vessel does not exceed 10%, by weight, of the total weight of summer flounder, scup, Loligo squid and Atlantic mackerel on board the vessel. When it is projected and announced that 75% of the bycatch fishery quota has been taken, it shall be unlawful for any person permitted for the bycatch fishery to possess aboard a vessel, or to land in Virginia, more than 100 pounds of black sea bass.

D. It shall be unlawful for any person to transfer black sea bass from one vessel to another while at sea.

E. Any hardship exception quota granted by the commission prior to October 27, 2009, shall be converted to a percentage of the directed fishery quota based on the year in which that hardship exception quota was originally granted. The hardship exception quota shall not be transferred for a period

of five years from the date the commission granted that hardship exception quota.

F. An individual fishery quota, as described in subsection A of this section, shall be equal to an individual's current percentage share of the directed fishery quota, as described in 4VAC20-950-47 A. As of May 1, ~~2010~~ 2011, should the remaining amount of black sea bass bycatch fishery quota exceed 10,000 pounds, that excess quota shall be allocated to commercial black sea bass directed fishery permit holders who have landed at least 500 pounds of black sea bass in at least two of three years, starting in ~~2006~~ 2008 and ending in ~~2008~~ 2010. The basis for that allocation shall be the same as used to determine an individual directed fishery quota as described in subsection A of this section.

VA.R. Doc. No. R11-2724; Filed January 27, 2011, 10:25 a.m.

Final Regulation

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

Title of Regulation: 4VAC20-1060. **Pertaining to Enlargement of Established Restricted Area -- Dominion Power/Nuclear Power Station (amending 4VAC20-1060-10, 4VAC20-1060-20).**

Statutory Authority: §§ 28.2-103 and 28.2-106.2 of the Code of Virginia.

Effective Date: February 1, 2011.

Agency Contact: Jane Warren, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or email betty.warren@mrc.virginia.gov.

Summary

The amendments redefine restricted areas at the Dominion Power/Surry Nuclear Power Station and repeal the Appendix – Hog Island Quad Map.

4VAC20-1060-10. Purpose.

The purpose of this chapter is to enhance the physical security of the facility and is part of a comprehensive plan to protect the public, environment, and economic interests from sabotage and other subversive acts, accidents, or incidents of a similar nature. (~~See Hog Island Quad Map outlining the location of the restricted area.~~)

The adoption of this chapter simply affords the Virginia Marine Police the authority to enforce Virginia law that prohibits entrance into the restricted areas.

4VAC20-1060-20. Definitions.

A. Pursuant to § 28.2-106.2 of the Code of Virginia, the following restricted area is established adjacent to the James River, Surry Nuclear Power Plant:

~~The Area 1. The waters within an area beginning at Mean High Water on the shore at~~ latitude 37°08'59.4"N, longitude 76°40'15.5"W; thence to the following points creating a 500 yard arc: latitude 37°08'58.8"N, longitude 76°40'06"W; latitude 37°09'03.1"N, longitude 76°39'59.4"W; latitude 37°09'06.9"N, longitude 76°39'54.1"W; latitude 37°09'12.8"N, longitude 76°39'48"W; latitude 37°09'18.6"N, longitude 76°39'48"W; latitude 37°09'25.1"N, longitude 76°39'48.3"W; latitude 37°09'32.3"N, longitude 76°39'50.1"W; latitude 37°09'37.2"N, longitude 76°39'53.1"W; latitude 37°09'40"N, longitude 76°39'56.6"W; ~~latitude 37°09'37.2"N, longitude 76°39'53.1"W;~~ latitude 37°09'43.4"N, longitude 76°40'03.4"W; thence to a point on shore at ~~Mean High Water in position;~~ latitude 37°09'42.7"N, longitude 76°40'27.1"W; ~~and the~~

Area 2. The entire discharge canal from the jetty jetties at the mouth of the discharge canal to the circulating water discharge pipes at the head of the discharge canal and including the entire width of the canal. The geographic coordinates for this are 37°10'18.3"N, 76°42'22.5"W to 37°10'00.8"N, 76°41'51.3"W and include the entire width of the canal. The discharge canal is located immediately northwest of the power station along both sides of Hog Island Road.

B. No vessel or persons shall enter the restricted area without the permission of the Virginia Marine Police. Law-enforcement vessels, United States military vessels, and vessels of the Dominion Power/Surry Nuclear Power Plant are exempt from the provisions of this chapter.

APPENDIX. Hog Island Quad Map (Repealed.)

VA.R. Doc. No. R11-2722; Filed January 28, 2011, 8:42 a.m.

Final Regulation

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

Title of Regulation: **4VAC20-1230. Pertaining to Restrictions on Shellfish (amending 4VAC20-1230-10).**

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

Effective Date: January 30, 2011.

Agency Contact: Jane Warren, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607,

telephone (757) 247-2248, FAX (757) 247-2002, or email betty.warren@mrc.virginia.gov.

Summary

This amendment clarifies that identification of the original harvest area of any shellfish through the use of tags pertains to any time during the year.

4VAC20-1230-10. Purpose.

The purpose of this chapter is to establish a method of identifying the original Virginia harvest area of any shellfish at any time of the year. In addition, harvest times, and handling procedures for shellfish harvested during the months of May through September in order to protect the health of the public are described herein.

VA.R. Doc. No. R11-2720; Filed January 27, 2011, 2:19 p.m.

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

STATE BOARD OF CORRECTIONS

Final Regulation

Title of Regulation: **6VAC15-28. Regulations for Public/Private Joint Venture Work Programs Operated in a State Correctional Facility (amending 6VAC15-28-10, 6VAC15-28-30, 6VAC15-28-40).**

Statutory Authority: §§ 53.1-5 and 53.1-45.1 of the Code of Virginia.

Effective Date: March 16, 2011.

Agency Contact: Janice Dow, Policy and Initiatives Unit Manager, Department of Corrections, 6900 Atmore Drive, Richmond, VA 23261, telephone (804) 674-3303 ext: 1128, FAX (804) 674-3017, or email janice.dow@vadoc.virginia.gov.

Summary:

This regulation governs the form and review process for proposed agreements between the Director of the Department of Corrections (DOC) and a public or private entity to operate a work program in a state correctional facility. These regulations have been in place in their current form since 1995. Since that time there have been several changes to the Code of Virginia related to "work programs and agreements with other entities." The amendments affect internal operational practices for the review of proposed agreements between the DOC and public or private entities. The changes delete the requirement for an appointed committee to approve any contractual documents implementing an agreement prior to forwarding it to the Office of the Attorney General to

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ensure compliance with state statutes and to the Governor. There is no change to the criteria listed in 6VAC15-28-40; all current criteria shall continue to be met before the director approves a proposed agreement.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

Part I General Provisions

6VAC15-28-10. Definitions.

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

"Agreement" means a legal arrangement between the Director of the Department of Corrections and a public or private entity to operate a work program in a state correctional facility for prisoners confined in it.

"Board" means the Board of Corrections.

~~"Committee" means the group appointed by the governor which reviews any proposed agreement between the Director of the Department of Corrections and a public or private entity to operate a work program in a state correctional facility for prisoners confined in it. The committee consists of representatives from an employee association or organization, the business community, a chamber of commerce, an industry association, the Office of the Secretary of Commerce and Trade, and the Office of the Secretary of Public Safety.~~

"Department" means the Department of Corrections.

"Director" means the Director of the Department of Corrections.

"Prevailing wage" means a rate which is not less than that paid for work of a similar nature in the locality in which the work is to be performed.

Part II Review Process

6VAC15-28-30. Review process.

A. Any proposed agreement between the department and the public or private entity shall consist of a Proposed Joint Venture Application Form which shall be completed by the public or private entity. The completed application form shall be submitted directly to the department, which shall then forward the application to the appropriate organizational unit for initial research and evaluation of the proposed agreement. This initial research and evaluation shall be completed in a timely manner, not to exceed 30 calendar days from the receipt of the completed application from the public or private entity.

B. The department shall submit the proposed agreement with a submission package to the board. The submission package shall include, at a minimum:

1. A prospectus of the public or private entity.
2. A description of the size and scope of the proposed operation.
3. An assessment of the project's financial viability.
4. A recommendation for entering or not entering into the proposed agreement.
5. Draft formal agreement papers, if the department recommends entering into the agreement.

C. The board shall review the proposed agreement and submission package and submit the package to the ~~committee~~ director with a recommendation for entering or not entering into the agreement.

D. The ~~committee~~ director shall evaluate the proposed agreement according to the criteria listed under 6VAC15-28-40.

E. Upon approval by the ~~committee~~ director, any contractual documents implementing the agreement shall be forwarded to the Office of the Attorney General to ensure compliance with state statutes.

F. ~~Upon the assurance of the~~ The Office of the Attorney General will assure that the agreement is in compliance with state statutes, ~~the~~ The governor shall review the agreement.

G. Upon the governor's authorization, the director and the public or private entity may sign the agreement.

Part III Criteria

6VAC15-28-40. Criteria.

A. The ~~committee~~ director shall review the provisions of any proposed agreement according to the following criteria:

1. The proposed agreement shall provide adequate job skills to inmate participants. Any proposed agreement which requires relatively unskilled labor may be acceptable providing the work project establishes good work habits.
2. The public or private entity shall be environmentally sound, with appropriate certification, as required by applicable state and federal regulations.
3. The public or private entity shall provide prevailing or minimum wage, whichever is applicable.
4. The public or private entity shall provide Equal Employment Opportunity for all inmates involved in the proposed agreement.
5. The proposed agreement shall demonstrate financial viability.

a. If the department acts as a subcontractor in the proposed agreement, the proposed agreement shall be evaluated by its capability both to meet the required goods or services as well as to provide an acceptable rate of return to the department.

b. If the department acts as a supplier of labor in the proposed agreement, the proposed agreement shall be evaluated upon its capability to provide a gross margin both to cover the expenses of the department as well as to generate a sufficient return on investment to the department.

6. The proposed agreement shall not displace civilian workers.

7. Any rent paid to the department for space occupied by the participating public or private entity shall be at a reasonable rate.

8. The product produced by the proposed agreement may be sold on the open market.

9. The proposed agreement shall meet any provisions listed in §§ 53.1-41 through 53.1-62 of the Code of Virginia pertaining to "Employment and Training of Prisoners."

B. All criteria listed in 6VAC15-28-40 A shall be met before the ~~committee~~ director approves a proposed agreement.

FORMS (6VAC15-28) (Repealed.)

~~Proposed Joint Venture Application Form.~~

VA.R. Doc. No. R09-1544; Filed January 25, 2011, 1:11 p.m.

Proposed Regulation

Title of Regulation: **6VAC15-40. Minimum Standards for Jails and Lockups (amending 6VAC15-40-10, 6VAC15-40-30, 6VAC15-40-40, 6VAC15-40-60, 6VAC15-40-90 through 6VAC15-40-130, 6VAC15-40-150 through 6VAC15-40-250, 6VAC15-40-280, 6VAC15-40-290, 6VAC15-40-300, 6VAC15-40-320, 6VAC15-40-330, 6VAC15-40-340, 6VAC15-40-360 through 6VAC15-40-420, 6VAC15-40-440, 6VAC15-40-450, 6VAC15-40-480, 6VAC15-40-510, 6VAC15-40-520, 6VAC15-40-550, 6VAC15-40-560, 6VAC15-40-600 through 6VAC15-40-670, 6VAC15-40-690, 6VAC15-40-720, 6VAC15-40-730, 6VAC15-40-740, 6VAC15-40-760, 6VAC15-40-770, 6VAC15-40-790, 6VAC15-40-810 through 6VAC15-40-840, 6VAC15-40-870, 6VAC15-40-880, 6VAC15-40-910 through 6VAC15-40-980, 6VAC15-40-1000 through 6VAC15-40-1050, 6VAC15-40-1080, 6VAC15-40-1090, 6VAC15-40-1100, 6VAC15-40-1150, 6VAC15-40-1160, 6VAC15-40-1180, 6VAC15-40-1193, 6VAC15-40-1195, 6VAC15-40-1210, 6VAC15-40-1220, 6VAC15-40-1240 through 6VAC15-40-1280, 6VAC15-40-1300, 6VAC15-40-1310, 6VAC15-40-1330 through 6VAC15-40-1360; adding 6VAC15-40-5, 6VAC15-40-405, 6VAC15-40-545, 6VAC15-40-831, 6VAC15-40-945, 6VAC15-40-1045,**

6VAC15-40-1111, 6VAC15-40-1315, 6VAC15-40-1380; repealing 6VAC15-40-460, 6VAC15-40-1320).

Statutory Authority: §§ 53.1-5, 53.1-68, and 53.1-131 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: April 15, 2011.

Agency Contact: William Wilson, Compliance and Accreditation Unit, Department of Corrections, 6900 Atmore Drive, Richmond, VA 23225, telephone (804) 674-3499, FAX (804) 674-3587, or email william.t.wilson@vadoc.virginia.gov.

Basis: Section 53.1-5 authorizes the Board of Corrections to adopt regulations necessary to carry out the provisions of Title 53.1 of the Code of Virginia and other Virginia laws administered by the Director of the Department of Corrections or the department. Section 53.1-68 of the Code of Virginia authorizes the Board of Corrections to establish regulations to govern the administration and operation of local correctional facilities. Section 53.1-131 of the Code of Virginia authorizes the Board of Corrections to establish regulations to govern work release, educational, and other rehabilitative programs. Section 53.1-133.01 of the Code of Virginia authorizes the Board of Corrections to develop a model plan and develop regulations for jail prisoner medical treatment programs. Section 53.1-131.3 of the Code of Virginia authorizes the Board of Corrections to develop a model plan and develop regulations for payment of costs associated with inmate keep.

Purpose: This regulatory action will apply to all local and regional jails and lockups within the Commonwealth. Amendments to existing regulations are intended to enhance and add to the current operational and supervision standards for jails and lockups for which compliance and Board of Corrections certification is required. The standards consist of minimum rules to (i) ensure local correctional facility adherence to Board of Corrections' life, health, and safety standards; (ii) ensure appropriate jail staffing levels; (iii) provide sufficient local jail work release program bed space for the graduated release of state offenders back into society; and (iv) ensure appropriate evaluation of court referrals for participation in community facility programs.

The model plans for jail prisoner medical treatment programs and for the payment of costs associated with inmate keep are specifically mandated by the Code of Virginia.

Substance: 6VAC15-40-5, Compliance Documentation: The elements listed in the compliance documentation shall be interpreted as part of the standards.

6VAC15-40-10, Definitions: Inserts or amends definitions to address the amendments and additions of specific information within the regulation, including

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Automated External Defibrillator or "AED," civilian personnel, compliance documentation, criminal history record information, disposition as referenced in various sections, emergency plan, indigent inmate, material safety data sheet (MSDS), medical co-payment, model plans, recognized certifying agency, and regional jail as defined in § 53.1-82 of the Code of Virginia.

6VAC15-40-110, Serious incident reports: Expands the types of incidents for which serious incident reports are filed, to include erroneous releases, hostage situations, and recapture of escapees.

6VAC15-40-130, Written grievance procedure: Adds to existing standards that inmates shall be given a grievance form after exhausting all prerequisites of the grievance procedure.

6VAC15-40-150, Inmate exercise: Adds the one requirement that facilities with specified exercise areas shall provide inmate exercise a minimum of one hour per week, and facilities without specified exercise areas shall provide equipment or an area within the dayroom for inmates to exercise large muscle groups on a daily basis. Shortage of staff shall not hinder inmate access to physical exercise.

6VAC15-40-170, Written procedures for accountability of inmate participants: Specifies requirements for verifying an inmate's location within the community by adding the requirement that a minimum of one staff-initiated telephone contact per week and a minimum of one random field visit per month should be conducted and documented.

6VAC15-40-200, Furlough: § 53.1-37 of the Code of Virginia is deleted because inmates are no longer furloughed directly from Department of Corrections' (DOC) facilities.

6VAC15-40-250, Participation in religious services or counseling: Adds a sentence that the constitutional right to pursue any lawful and legitimate religious practice shall be guaranteed to all inmates consistent with maintaining the order and security of the facility.

6VAC15-40-290, Provisions of reading materials: Deletes the requirement that periodicals must not be more than one year old.

6VAC15-40-320, Licensed physician: Adds that facilities contracting with private medical facilities or vendors shall maintain a current copy of the agreement, unless employed by the facility.

6VAC15-40-340, Licensing, certification and qualification of health care personnel: Adds that each facility shall have a minimum of one licensed or qualified health care provider who is accessible to inmates a minimum of one time per week.

6VAC15-40-360, Twenty-four hour emergency medical and mental health care: Adds mental health to this standard.

6VAC15-40-370, Receiving and medical screening of inmates: Adds the requirement that all inmates shall receive a TB skin test within seven days of admission to the facility.

6VAC15-40-410, Inmate medical records: Adds that inmate medical records shall be kept separate from other facility records.

6VAC15-40-420, Transfer of summaries of medical record: Adds the requirement that a specific DOC medical summary form transfer with the inmate and that additional pertinent medical information shall accompany the form.

6VAC15-40-440, Medical care provided by personnel other than physician: Adds the requirement that protocols or orders shall be reviewed and signed by the supervising physician every 12 months.

6VAC15-40-450, Suicide prevention and intervention plan: Adds the requirement that the plan, after initial review and documentation by a medical or mental health authority, be reviewed and documented every three years thereafter.

6VAC15-40-460, Applicability of medical treatment program standards: Repeals this standard that only applies to facilities that have established a medical treatment program.

6VAC15-40-480, Set fees required: Adds that the fees shall not exceed those fees established by the Board of Corrections in the Model Plan for Jail Prisoner Medical Treatment Programs. (Model Plan is incorporated by reference).

6VAC15-40-545, Standards for inmate food service workers: Requires written policy, procedure, and practice to ensure a visual medical examination of each inmate assigned to food service, which shall occur no more than 30 days prior to assignment and quarterly thereafter. Each inmate shall be given a TB skin test prior to food service assignment and such tests shall be documented. If an inmate tests positive for TB, the inmate shall not be granted assignment to food service.

6VAC15-40-550, Food service program: Adds two additional requirements, (i) RDA evaluation of facility menus shall be completed by an independent registered dietician or certified nutritionist every three years, and (ii) additional evaluations shall be completed when a substantive change in the menu or food service provider occurs.

6VAC15-40-560, Meals prepared, delivered and served under direct supervision of staff: Adds that meals are prepared, delivered, and served under the direct supervision of staff.

6VAC15-40-620, Postage allowance: Clarifies the definition of an indigent inmate as one having less than the equivalent of the cost of five first class stamps in his account for 15 days.

6VAC15-40-630, Outgoing and incoming mail: Amends the requirement that mail is collected and sent daily except Saturdays, Sundays, and holidays, and changes it to collected and sent during normal United States Postal Service days of operation.

6VAC15-40-650, Notice of seizure of mail contraband: Deletes the requirement that notice be provided to the sender and that the sender shall be allowed to appeal to the facility administrator.

6VAC15-40-690, Approved items visitors may bring into facility: Adds the requirement that the list be posted.

6VAC15-40-720, Inmates confined to jail: Adds to the list that written policy, procedure, and practice shall address that mattresses shall be provided to inmates.

6VAC15-40-730, Telephone calls during the booking process: Adds that reasonable accommodations shall be made for non-English speaking inmates, as well as hearing impaired and visually impaired inmates.

6VAC15-40-770, Provision of hygiene items: Adds the requirement that sanitary napkins shall be provided upon reasonable request to each female inmate assigned to the general population.

6VAC15-40-790, Inventory of cash and personal property: Adds prohibition against computerized officer identification in lieu of an actual signature.

6VAC15-40-831, Fee for inmate keep: Adds that fees shall be up to, but not to exceed, the fee stated in the Board of Corrections Model Plan for Payment of Costs Associated with Inmate Keep, and provides a list of minimum procedures that must be addressed in written policy, procedure, and practice.

6VAC15-40-920, Contraband: Adds that the policy shall be available to inmates via the inmate handbook or orientation.

6VAC15-40-930, Key and door control: Adds that perimeter security door keys shall not be issued to staff unless authorized as per the approved emergency plans.

6VAC15-40-945, Tools: Adds this section to require that written policy, procedure, and practice shall govern the control and use of tools.

6VAC15-40-950, Flammable, toxic, and caustic materials: Adds that inmate access to flammable, toxic, and caustic materials shall be limited and closely supervised.

6VAC15-40-1020, Record of activities in disciplinary detention and administrative segregation: Adds that documented activities shall include admissions, visits, showers, exercise periods, meals, unusual behavior, mail, and release.

6VAC15-40-1030, Assessment of inmates in disciplinary detention and administrative segregation: Adds that if an inmate refuses to be evaluated, the refusal shall be documented.

6VAC15-40-1040, Staff training: Deletes the requirements for inmate housing area inspections from this section and transfers it to newly created 6VAC15-40-1045.

6VAC15-40-1045, Supervision of inmates: Repeats the requirements for inmate housing area inspections that were removed from 6VAC15-40-1040.

6VAC15-40-1080, Emergency plans and fire drills: Adds an additional requirement that each facility shall conduct and document quarterly fire drills.

6VAC15-40-1111, Self contained breathing apparatus: Adds a requirement that if the facility is equipped with one or more self-contained breathing apparatus, security staff shall be trained and quarterly drills shall be conducted and documented.

6VAC15-40-1150, Vermin and pest control: Requires servicing by licensed pest control business or personnel certified by the Virginia Department of Agriculture and Consumer Services.

6VAC15-40-1270, Telephone calls during the admissions process: Adds a requirement that reasonable accommodations shall be made for non-English speaking detainees as well as hearing impaired and visually impaired detainees.

6VAC15-40-1280, Juvenile detention: Adds a requirement that juveniles shall have continuous, direct supervision.

6VAC15-40-1350, Serious incident report: Expands the types of incidents for which serious incident reports are filed, to include erroneous releases, hostage situations, and recapture of escapees. Changes the initial reporting time from end of the next work day to within 24 hours.

Issues: The primary advantage will be to improve current operational and supervision standards, including life, health, and safety, for local and regional jails and lockups. These minimum rules for compliance allow each jurisdiction to know exactly what is expected and to abide by the standards

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set forth by the Board of Corrections. The compliance documentation, used as an evaluation tool during annual unannounced inspections for jail compliance with the board's life, health, and safety standards, provides objective benchmarks for evaluation. Having safe and secure jails and lockups enhances the safety of communities where these facilities are located.

There are no disadvantages to the public or the Commonwealth.

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

Summary of the Proposed Amendments to Regulation. The Board of Corrections proposes 1) to require a tuberculosis skin test for all inmates within seven days of admission to the facility, 2) to require that at least one Automated External Defibrillator must be available in each facility and all security staff must receive training in the operation of the unit, and 3) to clarify numerous current standards.

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

Estimated Economic Impact. The Board of Corrections proposes 1) to require a tuberculosis skin test for all inmates within seven days of admission to the facility, 2) to require that at least one Automated External Defibrillator must be available in each facility and all security staff must receive training in the operation of the unit, and 3) to clarify numerous current standards.

According to Department of Corrections, tuberculosis skin test costs between \$1.37 and \$3.50 per test.¹ The cost is paid by local governments. The number of commitments in fiscal year 2009 was approximately 399,000. However, most of the commitments do not stay at the facility long enough to be administered the test. Thus, it is difficult to precisely estimate the total cost of this change on the localities. On the benefits side, this proposed change helps identifying the infected individuals and isolating them so that other inmates are not infected.

The proposed changes also require facilities to have at least one Automated External Defibrillator available and to train their security personnel. Department of Corrections estimates that the cost of this equipment is approximately \$600. Also, the training is expected to be completed within 30 minutes or less. It is highly likely that most facilities will incorporate this training into their CPR training curriculum. According to the department, at least half of the facilities already have this equipment available. The main benefit of this change is to be able to quickly intervene and improve the chances of survival when someone is having a heart problem.

The rest of the proposed changes clarify existing standards. Thus, no significant economic impact is expected from those changes other than improving the clarity of the regulations.

Businesses and Entities Affected. Approximately 84 correctional facilities may be affected. The number of individuals housed at these facilities was 28,782 on October 31, 2009.

Localities Particularly Affected. The proposed regulations apply throughout the commonwealth.

Projected Impact on Employment. The proposed regulations are expected to increase demand for labor to administer skin test and train security personnel for Automated External Defibrillator.

Effects on the Use and Value of Private Property. The proposed changes are not expected to have a significant effect on the use and value of private property.

Small Businesses: Costs and Other Effects. The proposed changes do not have direct costs or other affects on small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed changes do not have an adverse impact on small businesses.

Real Estate Development Costs. The proposed changes do not affect real estate development costs.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 107 (09). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

¹ One locality reported that it pays \$38 per test to its health department.

Agency's Response to Economic Impact Analysis: The Department of Corrections concurs with the analysis prepared by the Department of Planning and Budget regarding regulations for 6VAC15-40, Minimum Standards for Jails and Lockups.

Summary:

The proposed amendments (i) clarify current standards to include terminology and procedures, extensive modification of chapter definitions, and incorporation by reference of two model plans (payment of costs associated with prisoner keep and jail prisoner medical treatment programs); and (ii) add sections to address compliance documentation, Automated External Defibrillator devices, standards for inmate food service workers, fees for inmate keep, tools, supervisions of inmates, and self-contained breathing apparatus.

Part I
General Provisions

6VAC15-40-5. Compliance documentation.

The elements listed in the compliance documentation shall be interpreted as part of the standard. If facility policy exceeds the requirement of the standard, the facility will be held to the content of such policy.

6VAC15-40-10. Definitions.

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

"Administrative segregation" means a form of separation from the general population when the continued presence of the inmate in the general population would pose a serious threat to life, property, self, staff or other inmates, or to the security or orderly running of the ~~institution~~ facility. Inmates pending investigation for trial on a criminal act or pending transfer can also be included.

~~"Annually~~ Annual" means an action performed each calendar year.

"Appeal" means the procedure for review of an action by a higher authority.

"Audit" means the determination of facility compliance with standards through an examination of records and operations by a team of qualified professionals.

"Automated External Defibrillator" or "AED" means a device that automatically analyzes the heart rhythm and permits a shock to be delivered to restore a normal heart rhythm if a problem is detected.

"Board" means the Board of Corrections.

"Certification" means an official approval by the Board of Corrections that allows a facility to operate.

"Chief executive officer" means the elected or appointed individual who by law or position, has the overall responsibility for the facility's administration and operation.

"Civilian personnel" means non-sworn facility employees who have been provided with on-the-job training in facility security procedures and emergency plans and communications, and are assigned to posts that do not require direct inmate contact and supervision.

"Classification" means the process for determining inmate housing, custody and program assignments.

"Communication system" means a mechanical audio transmission such as telephone, intercom, walkie talkie or T.V. monitor.

"Compliance and Accreditation Unit" means the unit within the Department of Corrections responsible for conducting triennial certification audits and yearly unannounced life, health, safety inspections of local and regional jails and lockups.

"Compliance documentation" means the required documentation in conjunction with the requirements of this chapter used to determine compliance during triennial certification audits and yearly unannounced life, health, safety inspections.

"Contraband" means any item ~~possessed by inmates~~ found in the possession of an inmate or found within the jail or lockup that is illegal by law or not specifically approved for inmate possession by the facility administrator of the facility.

"Correctional status information" means records and data concerning a convicted person's custodial status, including probation, confinement, work release, study release, escape or termination of custody through expiration of sentence, parole, pardon, or court decision.

"Criminal history record information" means records and data collected by criminal justice agencies on adult individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, information or other formal charges and any disposition arising there from. The term shall not include juvenile record information, which is controlled by Chapter 11 (§ 16.1-226 et seq.) of Title 16.1 of the Code of Virginia, criminal justice investigative information or correctional status information.

"Culinary items" means utensils used in a kitchen to prepare and serve food, including knives.

"Current" means unexpired.

"Daily log" means a written or electronic record for the recording of daily activities or unusual incidents.

~~"Department" means the Department of Corrections.~~

"Detainee" means any person confined but not serving a sentence.

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"Director" means the Director of the Department of Corrections.

"Disciplinary detention" means the separation of an inmate from the general population for misconduct and/or violations of regulations.

"Disposition" as referenced in 6VAC15-40-410 and 6VAC15-40-420 means the removal of an inmate from a medical treatment facility or the physician's discharge plan.

"Disposition" as referenced in 6VAC15-40-710 means how an inmate's clothing and personal possessions are inventoried, and where an inmate's clothing and personal possessions are stored until the inmate is released or transferred.

"Disposition" as referenced in 6VAC15-40-910 means the end result of items found during searches of the facility (returned to property, disposed of, etc.).

"Duty post" means a fixed or mobile work location in which the safety and security of the facility and inmates is carried out.

"Educational release" means an approved absence from the facility for the purpose of participating in an educational program.

"Emergency plan" means the written procedures for staff responsibility in the event of fire, hazardous material release, loss of utilities, natural disaster, hostage situations, riots, disturbances, escapes, bomb threats, and mass arrest.

"Erroneous release" means the inadvertent release of an inmate or detainee from the physical plant of the facility.

"Facility" means the actual physical setting in which a program or agency functions.

~~"Fire prevention practices and emergency plans" means the activities and written procedures utilized and rehearsed to ensure the safety of staff, inmates and public.~~

"Fire prevention practices" means maintaining smoke detection equipment, servicing fire extinguishers, keeping living areas free of clutter, and storing combustible materials in the proper manner.

"Fire safety inspection" means an inspection conducted by the ~~Office of State Fire Marshal~~ State Fire Marshal's Office or local ~~fire department~~ approved fire marshal.

"Formal count" means a personal observation and counting of each inmate.

"Furlough" means an approved leave of absence from the facility granted to an inmate.

"Good time" means earned credits that will reduce an inmate's time served.

"Grievance procedure" means the method by which inmates may formally address complaints to the facility administration.

"Health care personnel" means individuals whose primary duties are to provide health services to inmates.

~~"Health inspection" means an inspection conducted by the local or state Department of Health.~~

"Impartial officer or committee" means individual(s) who ~~are unbiased and~~ are not directly involved in the particular incident or situation being reviewed.

"Indigent inmate" means an inmate having less than the equivalent of the cost of five first class stamps in his account for 15 days.

"Inmate" means any person classified and confined inside the secure perimeter of the facility.

"Inmate handbook" means a manual, pamphlet or handout that contains information describing facility rules, inmate activities, and conduct.

"Inmate records" means written or electronic information concerning ~~the individual's~~ an inmate's personal, criminal and medical history, behavior, and activities while in custody.

"Inmate worker" means an inmate classified and assigned to perform various duties and tasks inside and outside the facility under supervision of staff.

"Juvenile" means a person less than 18 years of age who is not adjudicated as an adult.

"Legal mail" means mail addressed to or received from an attorney or court.

~~"Local offender" means an individual who has a conviction but who is not a state offender in accordance with § 53.1-20 of the Code of Virginia.~~

"Lockup" means a temporary detention facility where detainees are held for not more than 12 hours.

"Material Safety Data Sheet" or "MSDS" means a document containing information on potential health effects from exposure to chemicals or other potentially dangerous substances, and on safe procedures when handling chemical products.

"Medical authority" means physician or nurse.

"Medical co-payment" means the amount (dictated by facility policy; to be a portion of the costs) an inmate pays for medical services.

"Medical screening" means an observation and interview process within the booking procedure designed to obtain pertinent information regarding an individual's medical or mental health condition.

"Model Plan for Jail Prisoner Medical Treatment Programs" means the model plan for medical treatment fees developed by the Board of Corrections to serve as a guide for the establishment of a medical treatment program per § 53.1-133.01 of the Code of Virginia.

"Orientation" means information for newly admitted inmates pertaining to facility rules and regulations, access to medical services, medical services fees and payment procedures, and programs available.

"Permanent record" means a written or electronic record of a facility's activities that cannot be altered or destroyed subject to state law.

"Pharmaceuticals" means prescription and nonprescription drugs.

"Policy" means a definitive statement of position on an issue concerning the organization's effective operation.

"Policy and procedures manual" means a written or electronic record containing all policies and procedures needed for the operation of the facility in accordance with the law and the minimum standards for local jails and lockups.

"Post order" means a list of specific job functions and responsibilities required of each duty post or position.

"Procedure" means a detailed, step-by-step description of the activities necessary to fulfill the policy. A procedure describes how, when, where, and by whom the organization will implement and fulfill the policy.

"Program" means the plan or system through which a correctional agency works to meet its goals; often the program requires a distinct physical setting.

"Protective custody" means a form of separation from the general population for inmates requesting or requiring protection from other inmates.

"Quarterly" means an action that occurs once every three months within a calendar year.

"Recognized certifying agency" means an agency, such as the American Red Cross, the American Heart Association, or a local hospital or fire department, that is approved and recognized as being qualified to instruct first aid and CPR courses.

"Recreational activities" means any out-of-cell activity ranging from scheduled outside or inside recreation to informal tabletop games.

"Regional jail" (as defined in § 53.1-82 of the Code of Virginia) means three or more counties or cities, or any combination thereof, that are authorized to contract for services for the detention and confinement of categories of offenders in single or regional jail facilities operated by the contracting jurisdictions. In addition (i) any three or more counties, cities, or towns, or any combination thereof,

operating a jail facility pursuant to an agreement for cooperative jailing established on or before January 31, 1993; (ii) any existing regional jail facility established by only two cities, counties, or towns on or before June 30, 1982; and (iii) any regional jail facility established by only two contiguous counties whose boundaries are not contiguous by land with the boundaries of any other county in the Commonwealth, may participate under the provisions of this section. The board shall promulgate regulations specifying the categories of offenders that may be served pursuant to the contracts provided for herein.

"Rehabilitation release" means an approved absence from the facility for the purposes of participating in a rehabilitation program.

"Security staff" means those officers who have completed on-the-job training and whose primary responsibilities are the safety and security of the facility and inmates.

"Sharps" means any medical or dental instrument (lancet, needle, syringe, scalpel, etc.) stored and used within the facility.

"State offender" means an individual sentenced to a term of incarceration in accordance with § 53.1-20 of the Code of Virginia. For the purpose of 6VAC15-40-230 and 6VAC15-40-240 relative to work release, educational release or ~~rehabilitative~~ rehabilitation release, a state offender shall be defined in terms of the intake schedule pursuant to § 53.1-20 of the Code of Virginia.

"Trained" means completion of on-the-job training including, at a minimum, the following topics: key control, count procedures, emergency plans, first aid and CPR, universal precautions, suicide prevention, use of force, emergency communication, and security operations. A supervisor or field training officer current in Basic Jail Training shall verify in writing the individual has received on-the-job training and is competent in said training. The scope and breadth of the training shall be at the discretion of the sheriff or facility administrator.

"Twelve months" means no later than the last day of the same month each year.

"Universal precautions" means a set of procedural directives and guidelines detailing placing barriers between staff and all blood and ~~body~~ bodily fluids. These directives include ~~provision of provisions~~ for protective barrier devices, standardized labeling of biohazards, mandatory training of employees in universal precautions, management of exposure incidents, and the availability ~~to employees~~ of immunization for employees against Hepatitis B.

"Virginia Department of Health inspection" or "VDH inspection" means the required 12-month inspection conducted by the VDH.

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"Volunteer" means an individual who provides services to the ~~detention~~ facility without compensation.

~~"Work day" means Monday through Friday.~~

"Work release" means full-time employment or participation in suitable vocational training programs.

6VAC15-40-30. Requirement for written statement.

The facility shall have a written statement and policy discussing its philosophy, goals and objectives. The written statement shall be reviewed every 12 months by administrative staff.

6VAC15-40-40. Policy and procedures manual.

Written policy and procedures shall be maintained and ~~shall~~ be available 24 hours a day to all staff. The facility's policies and procedures shall be reviewed every 12 months by ~~the administration~~ administrative staff and updated to keep current with changes.

6VAC15-40-60. Annual report.

A written annual report of the availability of services and programs to inmates ~~in a facility~~ shall be reviewed by the facility administrator and provided to the sentencing courts and ~~may be provided~~ to relevant community agencies.

6VAC15-40-90. Content of personal inmate records.

Personal records shall be maintained on all inmates committed or assigned to the facility. Inmate records shall be kept confidential, securely maintained, and in good order to facilitate timely access by staff. ~~These~~ Inmate records shall contain, but not be limited to:

1. Inmate data form;
2. Commitment form or court order, or both;
3. Records developed as a result of classification;
4. All disciplinary actions, or unusual incidents;
5. Work record and program involvement; and
6. Copies of inmates' property expenditure records and receipts; and
7. Victim notification ~~when required,~~ if applicable.

6VAC15-40-100. Daily logs.

The facility shall maintain a daily log(s) that records the following information:

1. Inmate count and location, to be verified with a minimum of one formal count per shift, observing flesh and movement;
2. Intake and release of inmates;
3. Entries and exits of physicians, attorneys, ministers, and other nonfacility personnel; and

4. Any unusual incidents ~~such as those~~ that result in physical harm to, or threaten the safety of, any person; or the security of the facility.

6VAC15-40-110. Serious incident ~~report~~ reports.

A report setting forth in detail the pertinent facts of deaths, discharging of firearms, erroneous releases, escapes, fires requiring evacuation of inmates, hostage situations, and ~~discharging firearms~~ recapture of escapees shall be reported to the ~~local facilities unit~~ Local Facilities Supervisor of the Compliance and Accreditation Unit, Department of Corrections (DOC), or designee. The initial report ~~should~~ shall be made within 24 hours ~~with~~ and a full report submitted at the end of the investigation.

6VAC15-40-120. Classification.

A. Written policy, procedure, and practice shall ensure the following:

1. Classification of inmates as to level of housing assignment and participation in correctional programs;
2. Separate living quarters for males, females, and juveniles;
3. Inmates are not segregated by race, color, creed or national origin;
4. Security permitting, equal access to all programs and activities, through separate scheduling, or other utilization of combined programs under supervision; and
5. Any exception to the above ~~to be~~ is documented ~~in writing.~~

B. If the facility is using objective classification, then the provisions of this subsection shall be followed:

1. Classification is conducted upon intake and prior to final housing assignment;:
2. Classification determines the custody level and housing assignment;:
3. Classification is conducted through ~~prisoner~~ inmate interviews and the use of data collection instruments or forms, which are maintained on file;:
4. Classification instruments enable objective evaluation and/or scoring of:
 - a. Current offenses.
 - b. Prior convictions.
 - c. History of assaultive behavior.
 - d. Escape history.
 - e. Prior institutional adjustment.
 - f. Court status and pending charges.
 - g. Mental health or medical treatment history or needs.

h. Identified stability factors.

5. The classification system includes administrative review of decisions and periodic ~~reclassifications~~ reclassification and override procedures that are documented and maintained on file.

6. The classification system addresses both the potential security risks posed and treatment needs of the inmate.

7. ~~Male, female and juvenile inmates are housed separately~~ Separate living quarters for males, females, and juveniles.

8. Inmates are not segregated by race, color, creed, or national origin.

6VAC15-40-130. Written grievance procedure.

A written grievance procedure shall be developed and made available to all inmates with the following ~~elements~~:

1. ~~Grievance shall be responded to within nine work days of receipt; Inmates shall be given a grievance form after exhausting all prerequisites of the grievance procedure. Prerequisites shall be documented.~~

2. ~~Written responses, including the reason for the decision, shall be made to all grievances; Grievances shall be responded to within nine work days of receipt.~~

3. ~~A review shall be made by someone not directly involved in the grievance; Written responses, including the reason for the decision, shall be made to all grievances.~~

4. ~~All inmates shall have access to the procedures with guaranty against reprisal; and A review shall be made by a staff member not directly involved in the grievance.~~

5. ~~All inmates shall be afforded the opportunity to appeal the decision. All inmates shall have access to the grievance procedure with guaranty against reprisal.~~

6. ~~All inmates shall be afforded the opportunity to appeal the decision.~~

6VAC15-40-150. Inmate exercise.

Written policy, procedure, and practice shall provide that all inmates have access to ~~regular~~ physical exercise. Facilities with specified exercise areas shall provide inmate exercise a minimum of one hour per week. Facilities without specified exercise areas shall provide equipment or an area within the dayroom for inmates to exercise large muscle groups on a daily basis. Shortage of staff shall not hinder inmate access to physical exercise. Any exception shall be documented ~~in writing~~.

6VAC15-40-160. Written procedures for release program eligibility criteria.

Written procedures outlining the eligibility criteria for participation in a work release, educational release, electronic monitoring, or rehabilitation release program shall be

developed by each facility with a work release, educational release, electronic monitoring, or rehabilitation release program. ~~Offenders~~ Inmates shall meet the established eligibility requirements prior to being released to participate in the program.

6VAC15-40-170. Written procedures for accountability of inmate participants.

Written procedures shall ensure the accountability of inmate participants and provide for supervision in the community. Such procedures shall include, at a minimum:

1. Provisions for a daily inmate count;
2. Methods for determining and identifying inmates who are authorized to leave the facility;
3. Provisions for a controlled sign-out and sign-in process; and
4. ~~Methods of verifying the inmate's location within the community, both by telephone and random field visits~~ Provisions that require that a minimum of one staff-initiated telephone contact per calendar week and a minimum of one random field visit per month shall be conducted and documented to verify the inmate's location within the community.

6VAC15-40-180. Conditions for offender inmate participation in a work release program.

~~Offender~~ Inmate participation in a work release program shall conform to the following specific conditions unless ordered otherwise by an appropriate court:

1. Participation by the inmate shall be on a voluntary basis.
2. The following conditions shall be met where the employer has a federal contract:
 - a. Representatives of local union central bodies or similar labor union organizations shall have been consulted;
 - b. Employment shall not result in the displacement of employed workers, or be applied in skills, crafts or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services; and
 - c. Rates of pay and other conditions of employment shall not be less than those paid or provided for work of a similar nature in the locality in which the work is being performed.

6VAC15-40-190. Conditions for offender inmate participation in educational release or ~~rehabilitative~~ rehabilitation release ~~program~~ programs.

~~Offender~~ Inmate participation in an educational release or ~~rehabilitative~~ rehabilitation release program shall conform to the following specific conditions unless ordered otherwise by an appropriate court:

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1. Participation by the inmate may be voluntary or court ordered;
2. Meetings or classes shall be on a regularly scheduled basis; and
3. Other conditions shall not be more restrictive on the ~~offender inmate~~ than those required by other participants.

6VAC15-40-200. Furlough.

~~Participants~~ Inmate participants in the a work release, educational release, or ~~rehabilitative~~ rehabilitation release ~~programs~~ program may be considered for furlough, as prescribed by the facility policy, not to exceed three days in length at any one time. Written procedures shall govern the granting of furloughs in accordance with the provisions of ~~§§ 53.1-37 and § 53.1-132~~ of the Code of Virginia.

6VAC15-40-210. Earnings.

Written procedures shall be developed to ensure the accountability of all earnings received, disbursed, to whom and reason on behalf of the inmate participant. Procedures shall be in accordance with § 53.1-131 of the Code of Virginia.

6VAC15-40-220. Removing inmate participants from program.

Written procedures shall establish the criteria and process for removing ~~a participant~~ inmate participants from the program.

1. Procedures shall include provisions for an impartial hearing for the ~~participant~~ inmate participants.
2. Procedures shall include provisions for ~~the appeal of~~ appealing the removal.
3. Documentation shall reflect that this information was explained to all inmate participants ~~when they were assigned upon assignment~~ to the program.

6VAC15-40-230. Written agreement with director.

Each facility having a work release, educational release, or rehabilitation release program that includes state offenders as defined in § 53.1-20 of the Code of Virginia shall have a written agreement with the director, or his designee.

6VAC15-40-240. Offender participation in compliance with appropriate criteria and approval.

State offenders assigned to a work release, educational release, or rehabilitation release program shall meet the ~~Department of Corrections work release~~ appropriate criteria and set forth by the Department of Corrections (DOC), be approved by the ~~department's~~ DOC Central Classification ~~Board~~ Services and the ~~department's~~ management review process pursuant to a written agreement as provided for in accordance with § 53.1-131 of the Code of Virginia.

6VAC15-40-250. Participation in religious services or counseling.

Written policy, procedure, and practice shall allow inmates to participate voluntarily in available religious services or counseling of their choice during scheduled hours within the facility. The constitutional right to pursue any lawful and legitimate religious practice shall be guaranteed to all inmates consistent with maintaining the order and security of the facility.

6VAC15-40-280. Availability and administration of educational services.

Written policy, procedure, and practice shall govern the availability and administration of educational services for inmates, including a written agreement with the local school authority for the provision of special education. The facility administrator shall coordinate ~~and cooperate~~ with local authorities for the provision of ~~local~~ community services and resources utilized for this purpose, where ~~they are~~ available.

6VAC15-40-290. Provisions of reading materials.

The facility shall provide reading materials that include current periodicals ~~(not more than one year old).~~

6VAC15-40-300. Permission of reading materials.

Reading materials, including newspapers, magazines and books, shall be permitted in the ~~joint~~ facility unless the material poses a threat to security or is not in compliance with other ~~joint~~ facility restrictions or guidelines.

6VAC15-40-320. Licensed physician.

A licensed physician shall supervise the facility's medical and health care services. Facilities that contract with private medical facilities or vendors shall maintain a current copy of the agreement, unless employed by the facility.

6VAC15-40-330. Restrictions on physician.

No restrictions shall be imposed on the physician by the facility in the practice of medicine; ~~however.~~ However, administrative and security regulations applicable to facility personnel shall apply to medical personnel as well.

6VAC15-40-340. Licensing and Health care provider and licensing, certification, and qualification of health care personnel.

Each facility shall have a minimum of one licensed or qualified health care provider who is accessible to inmates a minimum of one time per week. Health care personnel shall meet appropriate and current licensing ~~or,~~ certification, or qualification requirements.

6VAC15-40-360. Twenty-four-hour emergency medical and mental health care.

Written policy, procedure, and practice shall provide 24-hour emergency medical and mental health care availability.

6VAC15-40-370. Receiving and medical screening of inmates.

Written policy, procedure, and practice shall provide that receiving and medical screening be performed on all inmates upon admission to the facility. The medical screening shall:

1. Specify screening for current illnesses, health problems and conditions, and past history of communicable diseases;
2. Specify screening for current symptoms regarding the inmate's mental health, dental problems, allergies, present medications, special dietary requirements, and symptoms of venereal disease;
3. Include inquiry into past and present drug and alcohol abuse, mental health status, depression, suicidal tendencies, and skin condition; ~~and~~
4. For female inmates, include inquiry into possible pregnancy or gynecological problems; ~~and~~
5. All inmates shall receive a tuberculosis (TB) skin test within seven days of admission to the facility.

6VAC15-40-380. Inmate access to medical services.

Written policy, procedure, and practice shall be developed whereby inmates ~~can~~ shall be informed, at the time of admission to the facility, of the procedures for gaining access to medical services.

6VAC15-40-390. Training and competency of staff.

All ~~certified~~ security staff shall be trained and competent in rendering basic first aid and CPR by a recognized certifying agency. All training shall be documented.

6VAC15-40-393. Universal precautions.

All ~~regularly assigned facility~~ staff who have contact with inmates shall be trained, competent, and knowledgeable in the use of universal precautions. All training shall be documented and completed every 12 months.

6VAC15-40-395. Management of sharps.

Written policy, procedure, and practice shall govern the control, storage, and use of sharps including at a minimum needles, scalpels, ~~lancets~~ lancets, and dental tools.

6VAC15-40-400. Management of pharmaceuticals.

Written ~~standard operating~~ procedures for the management of pharmaceuticals shall be established and approved by the facility's physician or pharmacist medical authority or pharmacist, if applicable. Written policy, procedure, and practice shall provide for the proper management of pharmaceuticals, including receipt, storage, dispensing, and distribution of drugs. ~~Such~~ These procedures shall be reviewed every 12 months by the medical authority or pharmacist. Such reviews shall be documented.

6VAC15-40-405. Automated External Defibrillator (AED).

There shall be a minimum of one AED unit available in the facility. All security staff shall receive training in the operation of the unit.

6VAC15-40-410. Inmate medical ~~record~~ records.

The medical record for each inmate shall be kept separate from other facility records and shall include the following:

1. The completed screening form; and
2. All findings, diagnoses, treatment, dispositions, prescriptions, and administration of medication.

6VAC15-40-420. Transfer of summaries of medical record.

~~Summaries of the medical record file shall be forwarded to the facility to which the inmate is transferred. Medical record summaries shall be transferred to the same facility to which the inmate is being transferred. Required information shall include: vital signs, current medications, current medical/dental problems, mental health screening, mental health problems, TB skin test date and results, special inmate needs/accommodations, pending medical appointments, medical dispositions, overall comments, health care provider/personnel signature and date, and any additional pertinent medical information such as lab work, x-rays, etc.~~

6VAC15-40-440. Medical care provided by personnel other than physician.

Medical care ~~performed~~ provided by personnel other than a physician shall be pursuant to a written protocol or order. Protocols or orders shall be reviewed and signed by the supervising physician every 12 months.

6VAC15-40-450. Suicide prevention and intervention plan.

There shall be a written suicide prevention and intervention plan. These procedures shall be reviewed and documented by an appropriate medical or mental health authority prior to implementation and every three years thereafter. ~~These~~ procedures shall be reviewed every 12 months by all staff having contact with inmates. These Such reviews shall be documented.

6VAC15-40-460. ~~Applicability of medical treatment program standards. (Repealed.)~~

~~The standards in this part apply only to those facilities that have established a medical treatment program in which prisoners pay a portion of the costs per § 53.1-133.01 of the Code of Virginia.~~

6VAC15-40-480. Set fees required.

Inmate payment for medical services shall be ~~in accordance with set fees based upon only a portion of the costs of these~~

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~~services up to, but shall not exceed, those fees established by the Board of Corrections in the Model Plan for Jail Prisoner Medical Treatment Programs per § 53.1-133.01 of the Code of Virginia.~~

6VAC15-40-510. Ability to pay.

Written policy, procedure, and practice shall ~~provide~~ ensure that no inmate will be denied access to medically necessary services based upon ability to pay.

6VAC15-40-520. Acknowledgment in writing.

Medical ~~service~~ services fee debits to inmate accounts shall be acknowledged by the inmate in writing. The acknowledgement shall be signed by a witness if the inmate refuses to sign.

6VAC15-40-545. Standards for inmate food service workers.

Written policy, procedure, and practice shall ensure that a visual medical examination of each inmate assigned to food service occurs no more than 30 days prior to assignment and quarterly thereafter. Each inmate shall be given a TB skin test prior to food service assignment. Such tests shall be documented. If an inmate tests positive for TB, that inmate shall not be granted assignment to food service.

6VAC15-40-550. Food service program.

Written policy, procedure, and practice shall ensure a food service program that meets the following:

1. The menu meets the dietary allowances as stated in the Recommended Dietary Allowances (RDA), National Academy of Sciences;
2. There is at least a one-week advance menu preparation; ~~and~~
3. Modifications in menus are based on inmates' medical or reasonable religious requirements. Medical or dental diets shall be prescribed by the facility's medical authority;
4. RDA evaluation of facility menus shall be completed by an independent registered dietitian or certified nutritionist every three years; and
5. Additional evaluations shall be completed when a substantive change in the menu or food service provider occurs.

6VAC15-40-560. Meals prepared, delivered, and served under direct supervision of staff.

Written policy, procedure, and practice shall ensure meals are prepared, delivered, and served under the direct supervision of staff.

6VAC15-40-600. Correspondence privileges.

Written policy, procedure, and practice shall ensure that all inmates, regardless of their jail status, shall be afforded the

same correspondence privileges; ~~correspondence.~~ Correspondence privileges shall not be withdrawn as punishment.

6VAC15-40-610. Volume and content of inmate mail.

Written policy, procedure, and practice shall ensure that there is no limit on the volume of ~~letter~~ mail an inmate may send or receive, or on the length, language, content, or source of such ~~letter~~ mail, except where there is clear and convincing evidence to justify such limitations.

6VAC15-40-620. Postage allowance.

Written policy, procedure, and practice shall make available, ~~when requested by an indigent inmate (as defined by local jail policy),~~ a postage allowance of at least five first-class rate (one ounce) letters per week, including legal mail, to indigent inmates. An indigent inmate shall be defined as an inmate having less than the cost of five first class stamps in his account for 15 days.

6VAC15-40-630. Outgoing and incoming letters mail.

Written policy, procedure, and practice shall ensure that outgoing ~~letters shall be~~ mail is collected and sent daily except Saturdays, Sundays, and holidays during normal United States Postal Service (USPS) days of operation. Incoming letters mail to inmates shall be delivered no later than 24 hours after arrival at the facility (contingent upon normal USPS days of operation), or shall be forwarded or returned to sender.

6VAC15-40-640. ~~Incoming general~~ General and legal correspondence.

~~In accordance with United States Postal Regulations, all incoming general correspondence will be opened, searched and may be read by authorized staff where there is a reasonable suspicion that a particular item of correspondence threatens the safety and security of the facility, the safety of any person, or is being used for furtherance of illegal activities. All incoming legal correspondence shall be opened and searched in the presence of the inmate. All general correspondence may be opened, examined, and censored by authorized personnel as per the USPS Administrative Support Manual, Section 274.96. All legal correspondence shall be opened and searched in the presence of the inmate.~~

6VAC15-40-650. Notice of ~~seizures~~ seizure of mail contraband.

Written policy, procedure, and practice shall ~~assure that~~ ensure notice of the ~~seizures~~ seizure of ~~mailed mail~~ mail contraband be is given to the inmate ~~and the sender together with the written reason for the seizure in writing. The sender shall be allowed the opportunity to appeal the seizure to the facility administrator or a designee empowered to reverse seizure.~~ Unless it is needed for a criminal investigation or prosecution, property that can legally be possessed outside

the facility shall be stored, returned to sender, if known, or destroyed.

6VAC15-40-660. Access ~~and expense of~~ to telephone facilities.

Written policy, procedure, and practice shall ensure inmates have reasonable access to telephone facilities, except where safety and security considerations are documented.

6VAC15-40-670. Delivery of emergency messages to inmates.

Written policy, procedure, and practice shall ensure that emergency messages to inmates are delivered promptly and ~~reordered~~ documented.

6VAC15-40-690. Approved items ~~that~~ visitors may bring into facility.

The facility shall have a posted list of approved items that visitors may bring into the facility. Items brought into the facility by visitors for inmates shall be subject to inspections and approval.

6VAC15-40-720. Inmates confined to jail.

Written policy, procedure, and practice for those inmates to be confined in the jail shall address the following:

1. Shower/search;
2. ~~Issue~~ Issuance of clean clothing/hygiene items/linen;
3. Classification and housing assignment; ~~and~~
4. Orientation; and
5. Provision of mattresses.

6VAC15-40-730. Telephone calls during the booking process.

Written policy, procedure, and practice shall specify that newly admitted inmates who are physically capable are permitted to complete at least two local or long-distance telephone calls during the booking process. Reasonable accommodations shall be made for non-English speaking inmates, as well as hearing impaired and visually impaired inmates.

6VAC15-40-740. Requirements for clothing, linens, and towels.

Written policy, procedure, and practice shall provide that a record is kept to show that clean ~~linen~~ linens and towels ~~be~~ are supplied once a week, a clean change of clothing ~~be is~~ is provided twice a ~~per~~ per week, and inmates shall be held accountable for their use.

6VAC15-40-760. Bathing.

There shall be sufficient hot and cold water for bathing. Each inmate shall be ~~required~~ allowed to bathe twice a week.

6VAC15-40-770. Provision of hygiene ~~articles~~ items.

The facility shall provide soap, a toothbrush, and toothpaste or toothpowder to each inmate upon admission to the general population. Feminine hygiene items (as defined by facility policy) shall be provided upon reasonable request to each female inmate assigned to the general population. Notwithstanding security considerations, shaving equipment, including a mirror, and haircuts shall be made available, and the hygiene needs of all inmates shall be met.

6VAC15-40-790. Inventory of cash and personal property.

A written itemized inventory of cash and personal property of each inmate shall be made at the time of initial booking. A copy signed by both staff and inmate shall be furnished to the inmate. Computerized officer identification shall not substitute for a signature.

6VAC15-40-810. Return of inmate property and funds.

~~Inmate's~~ Inmate property and funds shall be returned ~~to him~~ upon his release or transfer and receipted for by the inmate in writing, ~~when practical.~~

6VAC15-40-820. Conduct.

Written policy, procedure, and practice shall govern inmate discipline ~~to~~ and shall include:

1. Rules of conduct, including sanctions for rule violations;
2. Procedures and provisions for pre-hearing disciplinary detention; and
3. Procedures for processing violators that may include plea agreements that may waive the inmates' right to appeal.

6VAC15-40-830. Inmate handbook.

Upon initial housing assignment ~~to a housing status and~~ following intake and reception processing, each inmate shall be informed of, receive, and sign for:

1. A copy of the inmate rules of conduct, including sanctions; and
2. The policy and procedures governing inmate discipline.

6VAC15-40-831. Fee for inmate keep.

If the facility has elected to establish a program to charge a fee for inmate keep, such fee shall be up to, but shall not exceed, the fee stated in the Board of Corrections Model Plan for Payment of Costs Associated with Inmate Keep per § 53.1-131.3 of the Code of Virginia. Written policy, procedure, and practice shall include, at a minimum, the following:

1. Provisions requiring the facility to notify the inmate of such fee in writing upon admission/orientation;
2. Payment and refund procedures;

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3. Accounting procedures;

4. Provisions designating which, if any, inmates are exempt;

5. If the release date and the date of arrival are within 24 hours, provisions to charge the inmate only the equivalent of one day's fee; and

6. Whenever an inmate has been charged the fee, provisions specifying that the deduction shall be reflected on the inmate's account.

6VAC15-40-833. Discipline.

~~The minimum procedural requirements whenever~~ Whenever an inmate may be deprived of good time, or placed on disciplinary segregation the minimum procedural requirements shall include:

1. The accused inmate shall be given written notice of the charge and the factual basis for it at least 24 hours prior to hearing of the charge;

2. The charge shall be heard in the inmate's presence by an impartial officer or committee unless that right is waived in writing by the inmate or through the inmate's behavior. The accused inmate may be excluded during the testimony of any inmate whose testimony must be given in confidence. The reasons for the inmate's absence or exclusion shall be documented;

3. The accused inmate shall be given an opportunity to have the assistance of a staff member or fellow inmate in defending the charge;

4. The inmate shall be given a written statement by the fact finders as to the evidence relied upon and the reasons for the disciplinary action; and

5. The inmate shall be permitted to appeal any finding of guilt to the facility administrator or designee.

6VAC15-40-835. Sanctions.

~~The minimum procedural requirements whenever~~ Whenever an inmate is punished, such as ~~reprimand~~ reprimands or loss of privileges, the minimum procedural requirements shall include:

1. The accused inmate shall have an opportunity to explain or deny the charge; and

2. The inmate shall have the opportunity to appeal any finding of guilt to the facility administrator or designee.

6VAC15-40-840. Post to control security of jail.

The facility shall maintain a designated post, staffed 24 hours a day, that controls activities and flow of people in and out of the secure area of the jail. Main facility control posts may be staffed by civilian personnel who have been provided on-the-job training in facility security procedures ~~and,~~

emergency plans, ~~which~~ and communications. Such training shall be documented in writing with the same frequency as required by standards for all facility employees. Civilian personnel assigned to control posts shall not be assigned to other posts requiring direct ~~prisoner~~ inmate contact and supervision.

6VAC15-40-870. Security and storage of security devices.

Written policy, procedure, and practice shall govern the security, storage, and use of firearms, ammunition, chemical agents, and related security devices that are stored in and assigned to the facility to ensure that:

1. The facility shall provide secure storage for firearms, ammunition, chemical agents, and related security ~~equipment~~ devices accessible to authorized personnel only and located outside the security perimeter or the inmate housing and activity areas;

2. Personnel who carry firearms and ammunition are assigned positions that are inaccessible to inmates (with the exception of emergencies); and

3. Personnel who discharge firearms or use chemical agents other than for training purposes, submit written reports to the facility administrator or ~~designated subordinate~~ designee no later than the conclusion of the shift during which same are discharged or used.

6VAC15-40-880. Officer entry.

Written policy and procedures shall specify the conditions under which an officer can enter a security cell or cell block during an emergency situation.

6VAC15-40-910. Searches of facility and inmates.

Written policy, procedure, and practice provide for searches of facilities and inmates to control contraband and provide for the disposition of contraband. A schedule of searches shall be developed to ensure all housing areas of the facility have been searched on a random, but at least quarterly, basis. These procedures are not made available to inmates.

6VAC15-40-920. ~~Policy for searches of contraband~~ Contraband.

The facility shall ~~post the~~ have a policy regarding searches ~~for the control of contraband or otherwise make it.~~ The policy shall be available to staff and inmates via the inmate handbook or orientation.

6VAC15-40-930. Key and door control.

Written policy, procedure, and practice shall govern key and door control. Perimeter security door keys shall not be issued to staff unless authorized as per the approved emergency plans.

6VAC15-40-940. ~~Tools and culinary~~ Culinary items.

Written policy, procedure, and practice shall govern the control and use of ~~tools and~~ culinary items.

6VAC15-40-945. Tools.

Written policy, procedure, and practice shall govern the control and use of tools.

6VAC15-40-950. Flammable, toxic, and caustic materials.

Written policy, procedure, and practice shall specify the control and storage of cleaning equipment and use of all flammables, toxic, and caustic materials. Inmate access shall be limited and closely supervised.

6VAC15-40-960. Functions of duty post.

~~Written post orders or position descriptions shall clearly describe the functions of each duty post in the facility and include copies in the policy and procedures manual. Each duty post or position shall maintain a clear description of the functions of that duty post or position. A copy of the post orders shall be readily available.~~

6VAC15-40-970. Restriction of physical force.

Written policy, procedure, and practice shall restrict the use of physical force to instances of justifiable self-defense, protection of others, protection of property, orderly operation of the facility and prevention of escapes. In no event is physical force justifiable as punishment. A written report shall be prepared following all such incidents described above and shall be submitted to the facility administrator, or designee, for review and justification.

6VAC15-40-980. Restraint equipment.

Written policy, procedure and practice shall govern the use of restraint equipment. A written protocol pertaining to the monitoring of inmates in restraint equipment shall be established and approved by the medical authority.

6VAC15-40-1000. Physical living conditions for disciplinary detention and administrative segregation.

Written policy, procedure, and practice shall ensure that, inmate behavior permitting, the disciplinary detention and administrative segregation units provide physical living conditions that approximate those offered in the general inmate population.

6VAC15-40-1010. Mental health inmates.

Written policy, procedure, and practice shall specify the handling of mental health inmates ~~to include an,~~ including a current agreement to utilize mental health services from either a private contractor or the community services board.

6VAC15-40-1020. Record of activities in disciplinary detention and administrative segregation units.

Written policy, procedure, and practice shall ensure that a record is kept of scheduled activities in disciplinary detention and administrative segregation units. Documented activities shall include the following: admissions, visits, showers, exercise periods, meals, unusual behavior, mail, and release.

6VAC15-40-1030. Assessment of inmate inmates in disciplinary detention or administrative segregation or disciplinary detention.

Written policy, procedure, and practice shall require that a documented assessment by medical personnel that shall include a personal interview and medical evaluation of vital signs, is conducted when an inmate remains in ~~administrative segregation or~~ disciplinary detention ~~beyond or administrative segregation for~~ 15 days and every 15 days thereafter. If an inmate refuses to be evaluated, such refusal shall be documented.

6VAC15-40-1040. Supervision of inmates Staff training.

The facility shall provide for 24-hour supervision of all inmates by trained personnel. ~~All inmate housing areas shall be inspected a minimum of twice per hour at random intervals between inspections. All inspections and unusual incidents shall be documented. No obstructions shall be placed in the bars or windows that would prevent the ability of jail staff to view inmates or the entire housing area.~~

6VAC15-40-1045. Supervision of inmates.

All inmate housing areas shall be inspected a minimum of twice per hour at random intervals between inspections. All inspections and unusual incidents shall be documented. No obstructions shall be placed in the bars or windows that would prevent the ability of staff to view inmates or the entire housing area.

6VAC15-40-1050. Institution Supervisory inspection.

Supervisory staff shall ~~inspect~~ conduct a general, daily inspection of the ~~institution daily~~ facility. Such inspections shall be documented. Unusual findings shall be ~~indicated in writing~~ documented and submitted to the senior supervisor or designee on duty for review.

6VAC15-40-1080. Emergency situations plans and fire drills.

There shall be fire prevention practices and written emergency plans that outline duties of staff, procedures and evacuation routes. Emergency plans shall include responses in the event of fire, ~~chemical hazardous material~~ release, loss of utilities, natural disaster, ~~taking of hostages~~ hostage situations, riots, disturbances, ~~escape~~ escapes, bomb threats, and mass arrest. Emergency plans shall be reviewed every 12 months by all staff. These reviews shall be documented. Each facility shall conduct and document quarterly fire drills.

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6VAC15-40-1090. Release of inmate inmates.

Written policy, procedure, and practice shall require that, prior to ~~an inmate's release~~ the release of an inmate, positive identification is made of the releasee, authority for release is verified, and a check for holds in other jurisdictions is completed.

Part VI Jail Physical Plant

6VAC15-40-1100. Fire safety inspection.

The facility shall have a state or local fire safety inspections conducted every 12 months. Localities that do not enforce the Virginia Statewide Fire Prevention Code (~~VSFPC~~) shall have the inspections performed by the ~~Office of the State Fire Marshal~~ State Fire Marshal's Office. Written reports of the fire safety inspection shall be on file with the facility administrator.

6VAC15-40-1111. Self-contained breathing apparatus.

If the facility is equipped with one or more self-contained breathing apparatus, security staff shall be trained and quarterly drills shall be conducted and documented in the use of this equipment.

6VAC15-40-1150. Vermin and pest control.

The facility shall control vermin and pests and shall be serviced at least quarterly by ~~professional pest control personnel or personnel certified by the Virginia Pesticide Control Board~~ a licensed pest control business or personnel certified by the Virginia Department of Agriculture and Consumer Services.

6VAC15-40-1160. Appropriate lighting and heating.

A. All housing and activity areas shall provide for appropriate lighting and heating.

B. Appropriate lighting shall be at least 20 footcandles at desk level and in personal grooming area.

C. Heat shall be evenly distributed in all rooms so that a temperature no less than 65°F is maintained. Air conditioning or mechanical ventilation systems, such as electric fans, shall be provided when the temperature exceeds 85°F.

6VAC15-40-1180. Special purpose area.

The facility shall have a special purpose area to provide for the temporary detention and care of persons under the influence of alcohol or narcotics ~~or for persons~~, who are uncontrollably violent or self-destructive ~~and~~ or those requiring medical supervision.

6VAC15-40-1193. Separation of juveniles.

Juveniles shall be so housed as to be separated by a wall or other barrier that would result in preventing visual contact

and normal verbal communication with adult ~~prisoners~~ inmates.

6VAC15-40-1195. Contact with juveniles.

The facility shall have one or more ~~persons~~ employees on duty at all times responsible for auditory and visual contact with each juvenile at least every 30 minutes. Contact shall be at least every 15 minutes when juveniles exhibit self-destructive or violent behavior.

Part VIII Lockups

6VAC15-40-1210. Responsibility.

The chief of police, ~~town sergeant~~, or ~~in case of a county's operating a lockup~~, the sheriff shall be responsible for ~~seeing that~~ ensuring the lockup is operated in full conformity with this chapter.

6VAC15-40-1220. Coverage.

When the lockup is occupied, at least one employee shall be ~~on duty at the lockup~~ present at all times.

6VAC15-40-1240. Inspection requirements.

Weekly inspections shall be ~~made and recorded~~ conducted and documented of bars, locks, and all security devices. ~~Weekly inspections shall be documented.~~

6VAC15-40-1250. Commitment and release.

A written record shall be maintained ~~to include name, date, and time of commitment and release of all detainees confined in the lockup of all detainees confined in the lock-up.~~ The written record shall include name, date, and times of commitment and release.

6VAC15-40-1260. Property and funds.

Written policy, procedure, and practice shall govern the inventory and control of detainee property and funds. The detainee shall sign for all property and funds taken upon admission and returned ~~to him~~ upon his release. If the detainee refuses to sign, this shall be witnessed and documented.

6VAC15-40-1270. Telephone calls during the admissions process.

Written policy, procedure, and practice shall specify that newly admitted ~~inmates~~ detainees who are physically capable are permitted ~~the opportunity~~ to complete at least two local or long distance telephone calls during the admissions process. Reasonable accommodations shall be made for non-English speaking detainees as well as hearing and visually impaired detainees.

6VAC15-40-1280. Juvenile detention.

A lockup shall detain juveniles in strict compliance with § 16.1-249 of the Code of Virginia, and shall include continuous, direct supervision.

6VAC15-40-1300. Protection of inmates detainees.

~~There shall be written~~ Written policy ~~for~~ shall ensure the protection of ~~inmates detainees~~ appearing to be vulnerable to physical or sexual attack.

6VAC15-40-1310. Emergency medical and mental health care.

Written policy and procedures shall provide ~~for~~ 24-hour emergency medical and mental health care availability.

6VAC15-40-1315. Supervision of detainees.

All detainee housing areas shall be inspected a minimum of twice per hour at random intervals between inspections. All inspections and unusual incidents shall be documented. No obstructions shall be placed in the bars or windows that would prevent the ability of staff to view detainees or the entire housing area.

6VAC15-40-1320. Log of medical activities. (Repealed.)

~~A permanent log shall be maintained on all medical findings, diagnoses, treatment, dispositions, prescriptions and administration of medications, as disclosable by the Code of Virginia.~~

6VAC15-40-1330. Visiting Attorney visits.

Written policy and procedures shall ensure that: attorneys are permitted to have confidential visits with detainees.

- ~~1. There are visiting opportunities limited only by facility schedules, security, space and personnel constraints;~~
- ~~2. Visitors register upon entry into the facility;~~
- ~~3. Circumstances and methods under which visitors may be searched are delineated;~~
- ~~4. Attorneys are permitted to have confidential visits with their clients; and~~
- ~~5. Any exception to the above is documented in writing.~~

6VAC15-40-1340. Inmate Detainee control.

Written ~~polieies~~ policy and procedures shall ensure that punishment ~~shall is~~ not be utilized as a means of control or discipline in lockups. ~~Fear gas, chemical mace, or similar devices~~ Chemical agents shall not be used as punishment and may only be used to control detainees ~~where~~ when there is an imminent threat of physical injury or property damage.

6VAC15-40-1350. Incident Serious incident report.

A report setting forth in detail the pertinent facts of deaths, discharging of firearms, erroneous releases, escapes, fires

requiring evacuation of detainees, hostage situations, and discharging firearms ~~recapture of escapees~~ shall be reported to the local facilities ~~with~~ supervisor of the Compliance and Accreditation Unit, Department of Corrections, or designee. The initial report ~~should~~ shall be made ~~by the end of the next work day with~~ within 24 hours and a full report submitted at the end of the investigation.

6VAC15-40-1360. Inmate Detainee cleanliness.

A detainee shall have access to a wash basin and toilet facility.

6VAC15-40-1380. Fire safety inspection.

The facility shall have a state or local fire safety inspection conducted every 12 months. Localities that do not enforce the Virginia Statewide Fire Prevention Code shall have the inspection performed by the State Fire Marshal's Office. Written reports of the fire safety inspection shall be on file with the facility administrator.

DOCUMENTS INCORPORATED BY REFERENCE (6VAC15-40)

[USPS Administrative Support Manual, Section 274.96 - Mail Addressed to Prisoners, ASM 13, July 1999 \(Updated with Postal Bulletins through November 2009\), United States Postal Service.](#)

[Model Plan for Jail Prisoner Medical Treatment Programs, Virginia Department of Corrections.](#)

[Model Plan for Payment of Costs Associated with Prisoner Keep, Virginia Department of Corrections.](#)

VA.R. Doc. No. R09-1738; Filed January 25, 2011, 1:11 p.m.

STATE BOARD OF JUVENILE JUSTICE

Final Regulation

Title of Regulation: 6VAC35-150. Standards for Nonresidential Services Available to Juvenile and Domestic Relations District Courts (amending 6VAC35-150-10, 6VAC35-150-30 through 6VAC35-150-60, 6VAC35-150-80 through 6VAC35-150-110, 6VAC35-150-130, 6VAC35-150-140, 6VAC35-150-200 through 6VAC35-150-320, 6VAC35-150-335, 6VAC35-150-340, 6VAC35-150-350, 6VAC35-150-380, 6VAC35-150-390, 6VAC35-150-400 through 6VAC35-150-430, 6VAC35-150-435, 6VAC35-150-450, 6VAC35-150-460, 6VAC35-150-470 through 6VAC35-150-510, 6VAC35-150-530, 6VAC35-150-540, 6VAC35-150-550, 6VAC35-150-620, 6VAC35-150-640, 6VAC35-150-670, 6VAC35-150-690; adding 6VAC35-150-62, 6VAC35-150-64, 6VAC35-150-66, 6VAC35-150-336, 6VAC35-150-355, 6VAC35-150-365, 6VAC35-150-415, 6VAC35-150-575, 6VAC35-150-615; repealing 6VAC35-150-20, 6VAC35-150-35, 6VAC35-150-55, 6VAC35-150-70, 6VAC35-150-150, 6VAC35-150-160, 6VAC35-150-165, 6VAC35-150-175, 6VAC35-150-180,

Regulations

6VAC35-150-190, 6VAC35-150-330, 6VAC35-150-370,
6VAC35-150-427, 6VAC35-150-440, 6VAC35-150-560,
6VAC35-150-570, 6VAC35-150-590, 6VAC35-150-600,
6VAC35-150-610, 6VAC35-150-650, 6VAC35-150-660,
6VAC35-150-680, 6VAC35-150-700, 6VAC35-150-710,
6VAC35-150-720, 6VAC35-150-730, 6VAC35-150-740).

Statutory Authority: §§ 16.1-233, 16.1-309.9, and 66-10 of the Code of Virginia.

Effective Date: July 1, 2011.

Agency Contact: Janet Van Cuyk, Regulatory Coordinator, Department of Juvenile Justice, 700 East Franklin Street, 4th Floor, Richmond, VA 23219, telephone (804) 371-4097, FAX (804) 371-0773, or email janet.vancuyk@djj.virginia.gov.

Summary:

The amendments update regulatory provisions, last reviewed in 2002, in light of best practices and with the goal of providing a user-friendly regulatory scheme for which the requirements for compliance are clearly delineated. The changes (i) update the definitions section and terms used for clarity and consistency with other regulations promulgated by the board; (ii) remove unnecessary verbiage; (iii) amend the background check section in light of recent statutory changes; (iv) clarify requirements for volunteers and interns; (v) streamline requirements for all reports to the court; (vi) clarify when procedures should be required for handling nondepartment funds; (vii) incorporate appropriate cross references to statutes, regulations, and guidance documents amended, enacted, or promulgated since the last review; (viii) formalize the process for obtaining a waiver of regulatory provisions; and (ix) amend the duties of court service unit staff in light of legislative changes since 2002.

Since publication of the proposed regulation, the regulation was changed to (i) amend definitions to track language in statutes and other regulations and delete unnecessary definitions; (ii) add the definition of "written" to include electronic writings; (iii) delete conflicting language in 6VAC35-150-335; (iv) reinsert language in regarding reviews of supervision plans to avoid the unintended consequence of possible reduction in reviews; (v) require written notice of a juvenile's release from supervision; (vi) amend 6VAC35-150-450 to track federal code language; (vii) add a retraining requirement for use of restraints in certain programs; and (viii) correct technical and grammatical issues.

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

CHAPTER 150
[STANDARDS REGULATION] FOR
NONRESIDENTIAL SERVICES AVAILABLE TO
~~JUVENILE AND DOMESTIC RELATIONS DISTRICT~~
COURTS

Part I
General Provisions

6VAC35-150-10. Definitions.

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

"Adult" means a person 18 years of age or older who is not a delinquent child as defined in § 16.1-228 of the Code of Virginia.

"Agency" means any governmental entity of the Commonwealth or any unit of local government including counties, cities, towns, and regional governments and the departments thereof, and including any entity, whether public or private, with which any of the foregoing has entered into a contractual relationship for the provision of services as described in this chapter.

"Alternative day services" or "structured day treatment" means nonresidential programs that provide services, which may include counseling, supervision, recreation, prevocational services, and education, to juveniles at a central facility.

"Approved procedures" means (i) [~~standard~~] procedures issued by the Department of Juvenile Justice, which apply to all state-operated court service units and which may be voluntarily observed by locally operated court service units; or (ii) variants modifications to the [~~standard~~] procedures approved by the [~~deputy~~] director [~~of community programs~~] or his designee for individual state-operated court service units; or (iii) procedures for locally operated court service units approved in accordance with local policies and reviewed by the director or his designee procedures.

"Behavior management" means the planned and systematic use of various techniques selected according to group and individual differences of juveniles and designed to teach awareness of situationally appropriate behavior, strengthen desirable behavior, and reduce or eliminate undesirable behavior those principles and methods employed to help a juvenile achieve positive behavior and to address and correct a juvenile's inappropriate behavior in a constructive and safe manner, in accordance with written procedures governing program expectations, treatment goals, juvenile and staff safety and security, and the juvenile's individual service plan [.]

"Board" means the Board of Juvenile Justice.

"Case record" or "record" means written or electronic information regarding ~~one person, an individual and the person's individual's family, if applicable,~~ that is maintained in accordance with approved procedures.

~~"Counseling" means the planned use of interpersonal relationships to promote behavioral change or social adjustment.~~

~~"Counselor" means an individual who provides counseling.~~

"Court service unit," "CSU," or "unit" means a state or locally operated court service unit established pursuant to §§ 16.1-233 and 16.1-235 of the Code of Virginia.

"Department" means the Department of Juvenile Justice.

"Direct care" means the time during which a resident, who is committed to the department pursuant to §§ 16.1-272, 16.1-285.1, or subdivision A 14 or A 17 of § 16.1-278.8 of the Code of Virginia, is under the supervision of staff in a juvenile correctional center or other juvenile residential facility operated by or under contract with the department.

"Diversion" means the provision of counseling, informal supervision, programs and, or services, or a combination thereof, which is consistent with the protection of the public safety, ~~to youth who can be cared for or treated through alternatives to the juvenile justice system~~ and the welfare of the juvenile as provided for in ~~§ 16.1-227~~ §§ 16.1-227 and 16.1-260 of the Code of Virginia.

"Electronic monitoring" means the use of electronic devices, including, but not limited to, voice recognition and global positioning systems, to verify a ~~person's juvenile's or adult's~~ compliance with certain judicial orders or conditions of release from incarceration, ~~or as an alternative to detention, or as a short-term sanction for noncompliance with rules of probation or parole.~~

"Human research" means any ~~medical or psychological~~ [systematic] investigation designed to develop or contribute to general knowledge by using human subjects who may be exposed to possible physical or psychological injury as a consequence of participation as subjects and which departs from the application of established and accepted methods appropriate to meet the subjects' needs [using human subjects] as defined by § 32.1-162.16 of the Code of Virginia and 6VAC35-170. [Human research shall not include research prohibited by state and federal statutes or regulations or research exempt from federal regulations or mandated by any applicable statutes or regulations.]

"Individual service plan" means a written plan ~~of action~~ developed, updated as needed, and modified at intervals, to meet the needs of ~~each~~ a juvenile or an adult. It specifies measurable short-term and long-term goals, the ~~methods~~ objectives, strategies, and times time frames for reaching the goals, and the individuals responsible for carrying out the plan.

"Individual supervision plan" means a written plan developed, updated as needed, and modified at intervals to meet the needs of a juvenile or adult. It specifies measurable short-term and long-term goals, the objectives, strategies, and time frames for reaching the goals, and the individuals responsible for carrying out the plan. Individual supervision plans are applicable during probation and parole and for treatment of a juvenile or an adult and the services for the juvenile's family for the time during which a juvenile is committed to the department.

"Intake" means the process for screening complaints and requests alleged to be within the jurisdiction of the juvenile and domestic relations district court pursuant to § 16.1-260 of the Code of Virginia.

"Intake officer" means the probation officer who is authorized to perform the intake function as provided in § 16.1-260 of the Code of Virginia.

~~"Intensive supervision" means frequent contacts, strict monitoring of behavior, and counseling provided to predispositional or postdispositional youth who are at high risk of committing new offenses.~~

"Juvenile," "youth" or "child" means ~~a person less than 18 years of age~~ an individual less than 18 years of age, a delinquent child, a child in need of supervision, or a child in need of services as defined in § 16.1-228 of the Code of Virginia. For the purpose of this regulation, "juvenile" includes an individual, regardless of age, who is or has been before the court, who was under the age of 18 at the time of the offense or act, who is under supervision or receiving services from a court service unit or a program under contract with or monitored by the unit, or who is committed to the department.

~~"Local plan" means a document or set of documents prepared by one or more localities pursuant to § 16.1-309.3 D of the Code of Virginia, describing a range of community-based sanctions and services addressing individual juvenile offenders' needs and local juvenile crime trends.~~

"Mechanical restraint" means equipment used to physically restrain or control a person's behavior, such as handcuffs, shackles or straightjackets the use of a mechanical device that involuntarily restricts the freedom of movement or voluntary functioning of a limb or portion of a person's body as a means to control physical activity when the individual being restricted does not have the ability to remove the device.

~~["Nonresidential services" means community based services that are not part of a residential program, including those provided by a residential program to nonresidents.]~~

"Outreach detention" means intensive supervision, which includes frequent contacts, strict monitoring of behavior, and case management, if applicable, of youth who ~~might~~

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otherwise be a juvenile as an alternative to placement in secure detention or shelter care.

"Parole" means supervision of ~~an individual~~ a juvenile released from commitment to the department as provided for by ~~§ 16.1-293~~ §§ 16.1-285, 16.1-285.1, and 16.1-285.2 of the Code of Virginia.

"Physical restraint" means the application of [~~approved behavior intervention~~] techniques by trained program staff ~~to control the actions of juveniles by means of physical contact that involves a physical intervention [or a "hands-on" hold] to prevent the individual from moving [his that individual's] body [when that individual's behavior places him or others at imminent risk]~~.

"Probation" means a court-ordered ~~disposition placing an individual [placement disposition] of a juvenile or an adult [under the supervision of a probation officer as provided by §§ 16.1-278.5 B 2, 16.1-278.8 A 5, 16.1-278.8 A 7, and 16.1-278.8 A 7 a]~~.

[~~"Program" or "service" means the planned application of staff and resources to achieve the stated mission for working with juveniles and, if applicable, their families identified in Article 12.1 (§ 16.1-309.2 et seq.) of Chapter 11 of Title 16.1 of the Code of Virginia.]~~

"Provider" means ~~an agency, organization or association that runs a program or service~~ a person, corporation, partnership, association, organization, or public agency that is legally responsible for compliance with regulatory and statutory requirements relating to the provision of services or the functioning of a program.

"Shall" means an obligation to act is imposed.

~~"Substance abuse assessment and testing" means a qualified professional's assessment and evaluation of the nature of, and the factors that contribute to, individual or family problems associated with substance abuse, and recommendations for treatment and related services.~~

"Supervision" means visiting or making other contact with, or providing treatment, rehabilitation, or services to a juvenile as required by the court ~~or, by an intake officer, or for [probation or] parole purposes.~~

~~"Supervision plan" means a written plan of action, updated as needed, to provide supervision and treatment for a specific individual. It specifies needs, goals, methods, time frames, and who is responsible for each step. A single supervision plan may include, as appropriate, specific plans for supervision during probation and parole, and for treatment of a youth and services for the youth's family during commitment.~~

~~"Surveillance officer" means a person, other than a probation or parole officer, who makes contact with a juvenile under supervision to verify the juvenile's presence at~~

~~work, school, home, etc. A surveillance officer may be an employee of a court service unit or other service provider, or a properly trained and supervised volunteer.~~

"Tamper" means any ~~accidental or~~ purposeful alteration to electronic monitoring equipment that interferes with or weakens the monitoring system.

"Time-out" means a systematic behavior management technique [program component] designed to reduce or eliminate inappropriate [or problematic] behavior by [~~temporarily removing a juvenile from contact with people or other reinforcing stimuli~~ having staff require a juvenile to move to a specific location that is away from the source of reinforcement for a specific period of time or until the problem behavior has subsided].

"Unit" or "CSU" means court service unit.

"Variance" means a board action that relieves a program from having to meet or develop a plan of action for the requirements of a section or subsection of this chapter.

"Volunteer" or "intern" means any individual or group who of their own free will and without any financial gain provides [~~goods or~~] services ~~to the program~~ without [competitive] compensation.

["Written" means the required information is communicated in writing. Such writing may be available in either hard copy or in electronic form.]

6VAC35-150-20. ~~Previously adopted regulations superseded. (Repealed.)~~

~~These Standards for Nonresidential Services Available to Juvenile and Domestic Relations District Courts supersede:~~

- ~~1. 6VAC35-80-10 et seq., Holdover Standards, issued by the Board of Youth and Family Services, September 9, 1992;~~
- ~~2. 6VAC35-110-10 et seq., Minimum Standards for Court Services in Juvenile and Domestic Relations District Courts, issued by the Board of Corrections January 12, 1983, and adopted by the Board of Youth and Family Services July 12, 1990; and~~
- ~~3. 6VAC35-130-10 et seq., Standards for Outreach Detention, adopted by the State Board of Corrections on June 9, 1981, revised on March 3, 1983, and adopted by the State Board of Youth and Family Services in 1990.~~

6VAC35-150-30. Applicability.

A. Parts I (6VAC35-150-10 et seq.) and II (6VAC35-150-55 et seq.) of this chapter apply to all ~~court service units~~ CSUs for juvenile and domestic relations district courts.

B. Parts I (6VAC35-150-10 et seq.) and III (6VAC35-150-425 et seq.) of this chapter apply to nonresidential programs [and services] (i) for which the CSU contracts or (ii) ~~to~~

which the CSU refers juveniles who are before the court or before an intake officer, including programs and services are included in a local "Virginia Juvenile Community Crime Control Act" plan. 6VAC35-150-600, 6VAC35-150-610 and Articles 3 (6VAC35-150-620 et seq.) and 4 (6VAC35-150-700 et seq.) of

C. Part III of this chapter also ~~apply~~ applies to those applicable programs and services that are operated by the court service unit or contracted with a CSU.

6VAC35-150-35. Establishment of policy. (Repealed.)

~~The standards embodied in this regulation pursuant to § 16.1-233 C of the Code of Virginia also establish, individually and collectively, "programmatic and fiscal policies" that the board is directed to develop pursuant to § 66-10 of the Code of Virginia. Nothing in this regulation shall be construed to limit the board's authority to establish additional or separate programmatic and fiscal policies for court service units or other nonresidential programs in accordance with § 66-10 of the Code of Virginia.~~

6VAC35-150-40. Outcome based and performance based standards authorized Variances.

~~The board may, in its discretion on a case by case basis and for a specified time, exempt individual units or programs from specific standards set out in this chapter and authorize the unit or program to implement on an experimental basis one or more substitute standards that measure performance or outcomes. A variance may be requested by a program administrator or service provider when conditions exist where the program or service provider is not able to comply with a section or subsection of this chapter. Any such request must meet the criteria and comply with the procedural requirements provided in [6VAC35-20-92 the Regulations Governing the Monitoring, Approval, and Certification of Juvenile Justice Programs, 6VAC35-20, and in accordance with approved procedures].~~

6VAC35-150-50. Licensure by other agencies.

A current license or certificate issued by the Commonwealth shall be accepted as evidence of a program's compliance with one or more specific standards of this chapter when the requirements for licensure or certification are substantially the same as, or exceed, the requirements set out in ~~the standards~~ this chapter.

Part II

Operating Standards for Court Service Units

Article I

Administration

6VAC35-150-55. Probation officers' caseload. (Repealed.)

~~The caseload for probation officers in the unit shall be determined in accordance with approved procedures, taking into account the relative weight of cases based on the~~

~~frequency and intensity of contacts indicated by an assessment of the juvenile's risk of reoffending, case complexity, and other factors.~~

Part II

Operating Standards for Court Service Units

Article I

Administration

6VAC35-150-60. Organizational structure.

There shall be a written description and organizational chart of the unit showing current lines of authority, responsibility, and accountability, including the unit director's reporting responsibility.

6VAC35-150-62. Suitable quarters.

A. ~~The CSU director annually shall review the unit's needs for suitable quarters, [utilities utilities], and furnishings and shall request from the appropriate governing body the resources to meet these needs.~~

B. ~~Intake, probation, and parole officers shall have access to private office space.~~

6VAC35-150-64. Prohibited financial transactions.

~~The unit shall not collect or disburse support payments, fines, restitution, court fees, or court costs.~~

6VAC35-150-66. Procedures for handling funds.

~~The unit director shall establish written procedures for handling any ongoing unit employee fund established and maintained by the employees that is derived from employee contributions, the operation of vending machines, special fundraising projects, or other employee canteen services, that utilizes the name of the unit or the department, or that the unit approves the obtaining of or obtains a tax identification number for such funds. Any such funds are not state funds and shall not be commingled in any way with state funds. The department's tax identification number shall not be used for such funds.~~

6VAC35-150-70. Court service unit director and staff. (Repealed.)

A. ~~For every employee and volunteer in the unit there shall be a current position description indicating the minimum qualifications required and the incumbent's duties and responsibilities.~~

B. ~~Unless otherwise provided by local or state policy, a performance plan and a performance evaluation shall be completed annually for each employee in accordance with approved procedures.~~

C. ~~The Court Service Unit Director shall provide financial, managerial and programmatic reports as required by department and local policy.~~

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6VAC35-150-80. Background checks.

All new unit employees and auxiliary personnel, including volunteers, shall undergo a preemployment check of references; criminal history checks with the automated Virginia Criminal Information Network (VCIN), the National Criminal Information Center (NCIC), and the Department of Motor Vehicles (DMV); and fingerprint checks by the State Police and the FBI; those who have direct contact with youth shall also undergo a child protective services registry check.

A. Except as provided in subsection C of this section, all persons who (i) accept a position of employment, (ii) volunteer on a regular basis [or are interns] and will be alone with a juvenile in the performance of their duties, or (iii) provide contractual services directly to a juvenile on a regular basis and will be alone with a juvenile in the performance of their duties in a CSU, or as required by 6VAC35-150-430 C, shall undergo the following background checks to ascertain whether there are criminal acts or other circumstances that would be detrimental to the safety of juveniles:

1. A reference check;

[2. A criminal history record check;]

[~~2- 3.~~] A fingerprint check with (i) the Virginia State Police (VSP) and (ii) the Federal Bureau of Investigation (FBI);

[~~3- 4.~~] A central registry check with Child Protective Services (CPS); and

[~~4- 5.~~] A driving record check, if applicable to the individual's job duties.

B. To minimize vacancy time when the [~~FBI~~] fingerprint [~~check has~~ checks required by subdivision 3 of this subsection have] been requested, unit staff may be hired pending the results of the [~~FBI~~] fingerprint checks, provided:

1. All of the other applicable components of subsection A of this section have been completed;

2. The applicant is given written notice that continued employment is contingent on the [~~FBI~~] fingerprint check results [, as required by subdivision A 3 of this section] ; and

3. Staff hired under this exception shall not be allowed to be alone with juveniles and may work with juveniles only when under the direct supervision of staff whose background checks have been completed until such time as all background checks are completed.

C. The unit, program, or service provider shall have procedures for supervising nonstaff persons [, who are not subject to the provisions of subsection A of this section,] who have contact with [~~residents~~ juveniles] .

D. Subsection A of this section shall apply to programs to which the CSU refers juveniles who are before the court or before an intake officer, including, but not limited to, programs included in a local Virginia Juvenile Community Crime Control Act plan. When an agency or program refers juveniles to other service providers, excluding community service programs and licensed professionals or programs licensed or regulated by other state agencies, the referring agency shall require the service provider to document that all persons who provide services or supervision through substantial one-on-one contact with juveniles have undergone a background check as required in subsection A of this section.

6VAC35-150-90. Training.

A. All employees [, and] volunteers [, and interns] shall receive documented orientation and ~~annual~~ training appropriate to their duties and to address any needs identified by the individual and the supervisor.

B. All ~~full-time~~ employees who provide direct services to juveniles and their families shall receive 40 hours of juvenile justice related training annually on-going training and development appropriate to their duties and to address any needs identified by the individual and the supervisor, if applicable.

C. All clerical staff shall receive at least 20 hours of training ~~annually to upgrade skills.~~

6VAC35-150-100. Personnel policies and operating procedures.

All staff shall have access to ~~policies~~ and approved procedures governing:

1. Recruitment and selection;
2. Grievance and appeal;
3. Confidential individual employee personnel records;
4. Discipline;
5. Equal employment opportunity;
6. Leave and benefits;
7. Resignations and terminations;
8. Orientation;
9. Promotion;
10. Probationary period; and
11. Competitive salary.

6VAC35-150-110. Volunteers [and interns].

A. For every volunteer [and intern], the unit shall maintain a current description of duties and responsibilities and a list of the minimum required qualifications;

~~B.~~ B. Volunteers [and interns] shall comply with all applicable regulations, policies, and approved procedures;

~~B.~~ C. One or more designated persons shall coordinate volunteer services [and internships]; and

~~C.~~ D. Volunteers [and interns] shall be registered with the department [for liability insurance purposes].

6VAC35-150-130. Research.

~~A. Youth Juveniles~~ shall not be used as subjects of human research, ~~except when approved procedures permit human research as provided in 6VAC35-170 and~~ in accord with Chapter 5.1 (§ 32.1-162.16 et seq.) of Title 32.1 of the Code of Virginia.

B. The testing of medicines or drugs for experimentation or research is prohibited.

6VAC35-150-140. Records management.

A. Case records shall be indexed and kept up to date and ~~uniform~~ uniformly in content and arrangement in accordance with approved procedures.

B. ~~Juvenile case~~ Case records shall be kept in a secure location accessible only to authorized staff.

C. All case records shall be maintained and disposed of in accordance with The Library of Virginia regulations and record retention schedules; and with approved procedures.

D. Any disclosure or release of information shall be in accordance with the Code of Virginia and applicable federal statutes and regulations (i.e., 42 CFR Part 2, Confidentiality of Alcohol and Drug Abuse Patient Records) and approved procedures.

~~E. The case records of youth placed in any postdispositional residential care shall contain:~~

- ~~1. Social history;~~
- ~~2. Order or agreement concerning the placement;~~
- ~~3. Dates of acceptance and placement;~~
- ~~4. Reason for placement;~~
- ~~5. Financial and tuition arrangements, if appropriate; and~~
- ~~6. Supervision and visitation agreements.~~

6VAC35-150-150. Reports for the court. (Repealed.)

~~All reports prepared for the court shall be prepared and reviewed in accordance with approved procedures and, except for transfer reports and addenda to previously submitted reports, shall contain the following identifying information:~~

- ~~1. Full name of subject;~~
- ~~2. Social Security Number;~~
- ~~3. Address;~~

~~4. Race;~~

~~5. Date of birth (must be verified);~~

~~6. Sex;~~

~~7. Parents or guardians (for juveniles only);~~

~~8. Author; and~~

~~9. Date of report.~~

6VAC35-150-160. Social history. (Repealed.)

~~A. A social history shall be prepared for each juvenile placed on probation supervision with the court service unit or committed to the department within timelines established by approved procedures.~~

~~B. A current social history shall be prepared upon written request from other units when accompanied by a court order. An existing social history that is not more than 12 months old may be used provided an addendum is prepared updating all changed information.~~

~~C. Social history reports shall be in written form and include at least the following information:~~

- ~~1. Identifying information as listed in 6VAC35-150-150.~~
- ~~2. Court history—specific description of past, present and pending petitions and dispositions.~~
- ~~3. Police or prosecutor's version of the instant offense, when available, for all juveniles who are committed to the department.~~
- ~~4. Victim impact information, when ordered by the court.~~
- ~~5. An accurate and up to date offense history.~~
- ~~6. Previous contacts with the unit, including diversion and informal resolution at intake, and known contacts with other agencies or treatment services in the community.~~
- ~~7. Subject: physical description; behavioral description; medical, educational, psychological information (as applicable); educational and other known handicaps or disabilities (if applicable); peer relationships, including gang affiliation; response to authority; employment status; and whether the subject has a driver's license.~~
- ~~8. Family: parents/custodians/guardians—ages, marital status, court record, employment status, economic status, level of education, health, interpersonal relationships. Siblings—ages, court record, level of education.~~
- ~~9. Home and neighborhood: Physical description of home and neighborhood, family's and officer's view of neighborhood impact on subject, and length of residence.~~
- ~~10. Assessment of the subject's strengths and weaknesses and, if applicable, the subject's family.~~

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~~11. Recommendations may be included if permitted by the court.~~

~~D. Adults' social history reports, if ordered by the court, may be in a modified format as provided for in procedures approved by the court service unit director after consultation with the judge or judges of the court.~~

6VAC35-150-165. Custody investigations. (Repealed.)

~~If the unit performs custody investigations upon order of the court, such investigations shall be completed in conformance with "Guidelines for Custody Investigations" (1995) jointly promulgated by the State Board of Juvenile Justice and the State Board of Social Services.~~

Article 2 Budget and Finance

6VAC35-150-175. Suitable quarters. (Repealed.)

~~A. The CSU director annually shall review the unit's needs for suitable quarters, utilities and furnishings and request from the appropriate governing body the resources to meet these needs.~~

~~B. Intake, probation and parole officers shall have access to private office space so equipped that conversations may not be overheard from outside the office.~~

6VAC35-150-180. Prohibited financial transactions. (Repealed.)

~~The unit shall not collect or disburse support payments, fines, or restitution.~~

6VAC35-150-190. Procedures for handling funds. (Repealed.)

~~The court service unit director shall establish written policies, procedures and practice for handling funds within the unit. All court service units shall adhere to all Commonwealth of Virginia purchasing and fiscal requirements when expending state funds.~~

Article 3 2 Security and Safety

6VAC35-150-200. [Security and emergency safety Safety and security] procedures.

In accordance with approved procedures, the unit shall implement:

~~1. Safety and security precautions for the office environment, to include at least fire, bomb threat, hostage and medical emergency situations; and~~

~~2. Safety and security precautions for staff making field visits to juveniles and their families.~~

1. Safety and security [precautions practices] for the office environment to include at least fire, bomb threat,

natural disasters, and hostage and medical emergency situations;

2. Safety and security [precautions practices] for staff making field visits to juveniles and their families; and

3. Training on appropriate crisis prevention and intervention techniques for the office and the field that staff may use to [manage respond to] behavior that poses a risk to the safety of themselves or others.

6VAC35-150-210. Physical force.

A. Physical force shall be used only ~~to protect self or others~~ as a last resort and shall never be used as punishment [or with the intent to inflict injury]. Staff shall use only the minimum force deemed reasonable and necessary to eliminate the imminent risk to the safety of themselves or others.

B. Each use of physical force shall be reported in writing to the CSU director, who shall ensure that all reportable incidents are further reported in accordance with the department's ~~policies~~ procedures for reporting serious incidents.

6VAC35-150-220. Searches of youth.

Searches of ~~individuals~~ an individual's person and immediate area may be conducted only in accordance with approved procedures ~~and only by,~~ with all applicable state and federal statutes and regulations, and with the Virginia and United States constitutions. Only staff who have received training approved by the department shall conduct searches.

6VAC35-150-230. Weapons.

A. A probation officer may obtain authorization to carry a weapon as provided by § 16.1-237 of the Code of Virginia only in accordance with approved procedures that require at least: (i) firearms safety training, (ii) a psychological or mental health assessment, and (iii) approval by the court service unit CSU director, and (iv) approval by the unit director's supervisor.

B. All ~~court service unit~~ CSU staff authorized to carry weapons shall have received training ~~approved by the department regarding~~ and retraining, in accordance with approved procedures, which shall include the limited circumstances when weapons may be carried and used as required by law and liability insurance coverage.

6VAC35-150-240. Arrest of youth juvenile by staff.

Probation officers shall exercise their arrest powers ~~only~~ in accordance with approved procedures.

6VAC35-150-250. Absconders.

Unit staff shall cooperate with department personnel and state and local law-enforcement authorities to help locate and recover juveniles who ~~fail to report for~~ violate the conditions of their probation or parole supervision and upon whom a

detention order has been issued or who escape or run away from a juvenile correctional center, detention home, or other juvenile placement.

6VAC35-150-260. Transportation of detained juveniles.

[~~A.~~] Detained juveniles shall be transported in accord with "Guidelines for Transporting Juveniles in Detention" (~~June 13, 1991~~) (September 2004) issued by the board in accord with § 16.1-254 of the Code of Virginia.

~~B. When the CSU is responsible for the transportation of youth to special placements, staff shall make transportation arrangements appropriate to the security risk posed by the juvenile.~~

C. [~~B. Routine transportation of juveniles in postdispositional detention shall be the responsibility of the parents or guardians or the program providing service to the juvenile.~~]

Article 4 3
Intake

6VAC35-150-270. Intake duties.

A. When making an intake determination as provided for by ~~the § 16.1-260 of the~~ Code of Virginia, whether in person or by telephone or interactive video conferencing, the intake officer shall, in accordance with approved procedures:

1. Explain the steps and options in the intake process to each person present, ~~including their constitutional and statutory rights~~ as provided for in approved procedures;
2. Make all required data entries into the department's ~~Juvenile Tracking System~~ electronic data collection system in accordance with § 16.1-224 of the Code of Virginia and approved procedures;
3. Consult with available parents, guardians, legal custodian, or other person standing in loco parentis to determine the appropriate placement [~~, unless a court has ordered detention~~]; and
4. Notify the juvenile's parents, guardians, legal custodian, or other person standing in loco parentis in cases involving the juvenile's detention.

B. When making a detention decision pursuant to § 16.1-248.1 of the Code of Virginia and when making recommendations to the court at a detention hearing pursuant to § 16.1-250 of the Code of Virginia, ~~court service unit~~ CSU personnel shall make use of the uniform risk assessment instrument and related procedure mandated by Chapter 648 of the 2002 Acts of Assembly.

C. When the chief judge in a jurisdiction requests the provision of a replacement intake officer pursuant to § 16.1-235.1 of the Code of Virginia, the CSU shall enter into a written agreement with the requesting court that shall address, at a minimum, the scope of the intake duties, the location

where intake cases will be processed, and the protocol for arranging any required face-to-face contact between the intake officer and juvenile.

6VAC35-150-280. Medical and psychiatric emergencies at intake.

If during the intake interview, the intake officer suspects that the ~~youth~~ juvenile requires emergency medical or psychiatric care, the intake officer shall:

1. Immediately contact the ~~youth's~~ juvenile's parents or legal guardians to advise them of the emergency and any responsibilities they may have; and
2. Before placing a ~~youth~~ juvenile in a more restrictive setting, the intake officer shall arrange for the ~~youth~~ juvenile to receive the needed emergency care.

6VAC35-150-290. Intake communication with detention.

When CSU staff facilitate the placement of a juvenile in detention process, they shall: ~~1. Query the Juvenile Tracking System to ascertain all pertinent information on the juvenile who is being detained, and complete the Juvenile Alert Screen on the Juvenile Tracking System; and 2. Give~~ give detention staff, by telephone ~~or~~, in writing, or by ~~entry into the Juvenile Tracking System~~ electronic means, no later than the time the juvenile arrives at the detention facility, the reason for detention and the ~~instant~~ offenses, ~~and for which the juvenile is being detained including any ancillary offenses.~~ CSU staff shall also give detention staff the following information when available and applicable: medical information; parents' or guardians' names, addresses and phone numbers; prior record as regards sexual offenses, violence against persons; or arson; suicide attempts ~~or self-injurious behaviors;~~ and gang membership and affiliation; and any other information as required by approved procedure.

Article ~~5~~ 4
Out-of-Home Placements

6VAC35-150-300. Predispositionally placed youth juvenile.

A. In accordance with approved procedures, a representative of the ~~court service unit~~ CSU shall make contact, either face-to-face or via videoconferencing, with each ~~youth~~ juvenile placed in predispositional detention, jail, or shelter care pursuant to § 16.1-248.1 of the Code of Virginia, within five days of the placement [~~and. A representative of the CSU~~] shall make contact with the ~~youth~~ juvenile at least once every 10 days thereafter; [~~Such contact shall be~~] either face-to-face or by telephone or videoconferencing [~~and. All such contacts~~] shall include direct communication between the CSU staff and the juvenile.

B. The case of each predispositionally placed ~~youth~~ juvenile shall be reviewed at least every 10 days in accordance with approved procedures to determine whether there has been a

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material change sufficient to warrant recommending a change in placement.

C. When the unit ~~has placed or is the placing agency and is~~ supervising a ~~youth~~ juvenile in a residential facility, designated staff of the ~~court service unit~~ CSU shall be available to the facility's staff 24 hours a day in case of emergency.

6VAC35-150-310. Postdispositional detention.

A. When a court orders a juvenile to be detained postdispositionally for more than 30 days pursuant to subsection B of § 16.1-284.1 of the Code of Virginia, the ~~court service unit~~ CSU [~~staff~~] shall develop a written plan with the facility to enable such ~~youth~~ juvenile to take part in one or more community treatment programs appropriate for ~~their~~ that juvenile's rehabilitation, which may be provided at the facility or while the juvenile is on temporary release status, as determined by ~~their~~ that juvenile's risk to public safety and other relevant factors. The ~~court service unit~~ CSU shall provide a copy of the juvenile's social history to the postdispositional detention program upon request.

B. The case record of a juvenile placed in a postdispositional detention program pursuant to subsection B of § [~~16.1-284.4~~ 16.1-284.1] of the Code of Virginia shall contain:

1. Social history;
2. Court order;
3. Reason for placement; and
4. Current supervision plan, if applicable.

6VAC35-150-320. Notice of youth's juvenile's transfer.

When ~~court service unit~~ CSU staff have knowledge that a ~~youth~~ juvenile has been moved from one residential facility or program to another residential facility and do not have knowledge that the juvenile's parents or legal guardians have been advised of the transfer, ~~they~~ CSU staff shall notify the ~~youth's~~ juvenile's parents or legal guardians within 24 hours and shall document the notification in the ~~youth's~~ juvenile's case record.

~~6VAC35-150-330.—Removal of youth from home. (Repealed.)~~

~~When considering whether to remove a youth from his home for any reason other than to detain the youth, the youth's parents or guardians, if available, shall be included in making that decision.~~

Article 6 §

Probation, Parole, and Other Supervision

6VAC35-150-335. Informal supervision Diversion.

A. When unit personnel are supervising a juvenile in the absence of a court order, an intake officer proceeds with diversion in accordance with subsection B of § 16.1-260 of

the Code of Virginia, such supervision shall not exceed 90 ~~120~~ days. ~~Court service unit personnel shall not supervise any person absent a court order except as provided for in approved procedures. For a juvenile alleged to be a truant pursuant to a complaint filed in accordance with § 22.1-258 of the Code of Virginia, such supervision shall be limited to 90 days.~~

B. When a new complaint is filed against a juvenile who is currently under supervision in accordance with subsection A of this section, and the juvenile qualifies for diversion in accordance with subsection B of § 16.1-260 of the Code of Virginia, then the intake officer may proceed with diversion for an additional 120 days from the date of the subsequent complaint.

[~~C. When a case is diverted by referring a juvenile for services to another public or private agency, informal supervision shall not continue beyond the delivery of such services unless approved by the director or designee.~~

~~D. C.]~~ In no case shall a petition be filed by the CSU based on acts or offenses in the original complaint after 120 days from the date of the initial referral on the original complaint.

6VAC35-150-336. Social histories.

A. A social history shall be prepared in accordance with approved procedures (i) when ordered by the court, (ii) for each juvenile placed on probation supervision with the unit, (iii) for each juvenile committed to the department, [~~or~~] (iv) [for each juvenile placed in a postdispositional detention program for more than 30 days pursuant to § 16.1-284.1 of the Code of Virginia, or (v)] upon written request from another unit when accompanied by a court order. Social history reports shall include the following information:

1. Identifying and demographic information on the juvenile;
2. Current offense and prior court involvement;
3. Social, medical, psychological, and educational information about the juvenile;
4. Information about the family; and
5. Dispositional recommendations, if permitted by the court.

B. An existing social history that is less than 12 months old may be used provided an addendum is prepared updating all changed information. A new social history shall be prepared as required in subsection A of this section or when ordered by the court if the existing social history is more than 12 months old.

C. Social history reports on adults may be modified as provided for in procedures approved by the CSU director after consultation with the judge or judges of the court.

6VAC35-150-340. Beginning supervision.

Within the timeframes established by approved procedures for beginning supervision, a probation or parole officer shall:

1. See the subject juvenile face-to-face;
2. Give the subject juvenile the written rules of supervision, including any special conditions, and explain these to the subject juvenile and, when appropriate, to the subject's juvenile's parents or guardians; and
3. Document these actions in the case record.

6VAC35-150-350. Supervision plans for juveniles.

A. To provide for the public safety and address the needs of subjects a juvenile and their families that juvenile's family, subjects a juvenile shall be supervised according to a written individual supervision plan, developed in accordance with approved procedures and timeframes, that describes the range and nature of field and office contact with the subject juvenile, with the parents or guardians of a the juvenile subject, and with other agencies or providers providing treatment or services.

~~B. When the youth resides in or is expected to return to the family home, the probation officer shall, in accordance with approved procedures, develop and implement a family involvement plan.~~

~~C. When the youth is in direct state care, the probation officer shall, in accordance with approved procedures and 6VAC35-150-420, send a report on the family's progress toward planned goals to the facility at which the juvenile is housed.~~

~~D. At least 60 days prior to a juvenile's anticipated release from commitment, a written parole supervision plan shall be prepared in accordance with approved procedures.~~

~~E. A supervision plan for parole shall be prepared for all judicial review hearings for serious juvenile offenders as required by law and in accordance with approved procedures.~~

~~F. If the court has not ordered specific conditions of supervision, a supervision plan for an adult probation subject shall be prepared within 30 days after disposition, after consulting with the adult and, if appropriate, his family.~~

G. At least once every 90 days, in B. In accordance with approved procedures, each written individual supervision plan [or family involvement plan] shall be ~~(i)~~ reviewed [(i)] with the subject individual or juvenile [and] the juvenile's family, and ~~(ii)~~ reviewed by [(ii) by] a supervisor from both a treatment and a case management perspective to confirm the appropriateness of the plan.

6VAC35-150-355. Supervision of juvenile on electronic monitoring.

When a unit places a juvenile in an electronic monitoring program, use of the program shall be governed by approved procedures that shall provide for criteria for placement in the program, parental involvement, required contacts, consequences for tampering [with] and violating program requirements, and time limits.

6VAC35-150-365. Supervision of adult on probation.

For an adult convicted of a criminal act for which the juvenile court retained jurisdiction pursuant to § 16.1-241 of the Code of Virginia and the juvenile court [~~did~~ does] not order specific conditions of supervision, a supervision plan for the adult probationer shall be prepared within 30 days of the disposition. The adult and that adult's family, if appropriate, must be consulted in development of the supervision plan.

6VAC35-150-370. Placements in the community. (Repealed.)

~~When the unit (i) is supervising and (ii) has placed a subject in a community facility or program, unit staff shall advise the facility or program of the subject's service needs and shall maintain contact with the subject and the facility or program staff in accordance with the supervision plan.~~

6VAC35-150-380. Violation of probation or parole.

When a subject probationer or parolee violates the conditions of the individual's probation or parole, unit personnel shall take action in accordance with approved procedures.

6VAC35-150-390. Transfer of case supervision to another unit.

A. When a subject's the legal residence of an individual under the supervision of a CSU is not within the jurisdiction of the original court service unit CSU, the supervision cases of the case may be transferred to another unit providing similar services in Virginia in accordance with § 16.1-295 of the Code of Virginia and approved procedures.

B. [~~The director of the department may make provision for the transfer of a juvenile placed on probation in this Commonwealth~~ When transferring or receiving supervision of a juvenile on probation or parole] to [or from] another state [~~to be placed on probation under the terms~~ CSU staff shall do so in accordance with the Interstate Compact Relating to Juveniles,] Article 14 (§ 16.1-323 et seq.) of Chapter 11 of Title 16.1 of the Code of Virginia.

6VAC35-150-400. Notice of release from supervision.

Notice of release from supervision shall be given [in writing] to subjects the individual under the supervision of a CSU and to the parents or guardians of juvenile subjects and

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juveniles. Such notification shall be appropriately documented in the case record in accordance with approved procedures.

Article 7 6

Juvenile in Direct Care

6VAC35-150-410. Commitment information.

~~A. When a youth is transferred into direct state care, the following items either accompany or precede the youth to the reception and diagnostic center: the order of commitment, copies of clinical reports, predisposition studies, record of immunizations when available, and any other juvenile is committed to the department, the juvenile may not be transported to the Reception and Diagnostic Center (RDC) until (i) the items and information required by the Code of Virginia, department policy, or and approved procedures have been received by RDC and (ii) the case is accepted by RDC.~~

B. If a juvenile is ~~transferred~~ transported to the department directly from the court, in addition to ensuring the immediate delivery of the items required in subsection A of this section, unit staff shall immediately notify ~~the reception and diagnostic center~~ RDC by telephone of the youth's juvenile's impending arrival.

6VAC35-150-415. Supervision of juvenile in direct care.

~~[A. When a juvenile is~~ For a juvenile] placed in direct care, the probation or parole officer shall, in accordance with approved procedures, do the following:

1. Develop and implement a family involvement plan.

[2. Develop a parole supervision plan.

a. For a juvenile indeterminately committed to the department pursuant to §§ 16.1-272 and 16.1-278.8 A 14 of the Code of Virginia, CSU staff shall complete a parole supervision plan in accordance with approved procedure.

b. For a juvenile determinately committed to the department pursuant to §§ 16.1-272, 16.1-278.8 A 17, or 16.1-285.1 of the Code of Virginia, a parole supervision plan shall be prepared for all serious offender judicial review hearings as required by law and in accordance with approved procedures.]

~~[2- 3.]~~ Send a report on the family's progress toward planned goals [of the family involvement plan] to the facility at which the juvenile is housed.

~~[B. Upon written notice of a juvenile's release from an indeterminate commitment, a written parole supervision plan shall be completed within 30 days of the date of notification. A juvenile who has been indeterminately committed shall not be accepted for parole supervision without a completed parole supervision plan, except as approved by the director of his designee.~~

~~C. A supervision plan for parole shall be prepared for all judicial review hearings for serious juvenile offenders as required by law and in accordance with approved procedures.]~~

6VAC35-150-420. Contacts during youth's juvenile's commitment.

During the period of a youth's juvenile's commitment, a designated staff person shall make contact with the committed youth juvenile, the youth's juvenile's parents, guardians, or other custodians, and the treatment staff at the youth's juvenile's direct care placement as required by approved procedures. The procedures shall specify when ~~such~~ contact must be ~~in person~~ face-to-face contact and when ~~contacts~~ contacts may be made by video-conferencing or by telephone.

Part III

Standards for Programs [and Services]

Article 1

General Requirements of Programs and Services

6VAC35-150-425. Applicability [of Part III].

~~A. The following standards apply~~ This part applies to programs and services (i) for which the department or CSU contracts or (ii) to which the CSU refers juveniles who are before the court or before an intake officer, including but not limited to programs and services included in a local which provides programs and services through a local Virginia Juvenile Community Crime Control Act plan pursuant to § 16.1-309.3 of the Code of Virginia.

[B. Alternative day treatment and structured day programs are subject to the provisions in Article 1 and Article 2 of this part.] The standards provisions for alternative day treatment and structured day programs, ~~electronic monitoring, surveillance officers, and substance abuse and testing services in Article 2 (6VAC35-150-615 et seq.) of this part~~ also apply to those programs and services that are operated by ~~the court~~ service unit a CSU.

~~[B- C.]~~ Each program or service provider shall be responsible for adopting written procedures necessary to implement and for compliance with all applicable requirements of 6VAC35-150-430 through [6VAC35-140-740 6VAC35-150-740].

6VAC35-150-427. Written policies and procedures required. (Repealed.)

~~Each program shall be responsible for adopting written policies and procedures necessary to implement all applicable requirements of 6VAC35-150-430 through 6VAC35-140-740.~~

6VAC35-150-430. ~~Written statements required Program [and service provider] requirements.~~

A. Each ~~nonresidential~~ program ~~or service [and service provider]~~ shall have a written statement of its:

1. Purpose;
2. Population served;
3. Criteria for admission;
4. Criteria for measuring a juvenile's progress;
- ~~2.~~ 5. Supervision and or treatment objectives, including criteria for admission and for measuring a juvenile's progress;
6. Intake and acceptance procedures, including whether a social history or diagnostic testing is required;
- ~~3.~~ 7. General rules of juvenile conduct and the behavior management system with specific expectations for behavior and appropriate incentives and sanctions, which shall be made available to juveniles and parents upon acceptance into the program;
4. 8. Criteria and procedures for terminating services, including terminations prior to the juvenile's successful completion of the program;
- ~~5.~~ 9. Methods and criteria for evaluating program [or service] effectiveness;
- ~~6.~~ 10. Drug-free workplace policy; and
7. Policy 11. Procedures regarding contacts with the news media.

B. The department administration shall be notified in writing of any plan to change any of the elements listed in subsection A of this section.

C. Each program [or service provider] shall conduct background checks in accordance with 6VAC35-150-80, or ensure that such background checks are conducted, on all individuals who provide services to juveniles under the contract as required by subsection A of 6VAC35-150-80;

D. Those programs [and service providers] providing crisis intervention services, including, but not limited to, outreach detention, mental health counseling or treatment, and home-based counseling services, shall provide for responding 24 hours a day to a juvenile's crisis and shall provide notification to all juveniles in writing on how to access these services at any time.

6VAC35-150-435. Contracted services.

A. ~~When a program contracts for services with public or private providers, it shall follow written procedures that govern the recruitment, screening and selection of providers.~~

~~B. Contracts with public or private sector service providers shall identify the case coordinator.~~

~~C. Designated program staff shall monitor the delivery of services under the terms of the contract.~~

~~D. Contracts with public or private service providers shall require the provider to:~~

- ~~1. Develop a plan for the scope of services to the individuals served;~~
- ~~2. Document receipt of the referral, services provided, and termination of services;~~
- ~~3. Make available to the purchasing agency all information specified in the contract;~~
- ~~4. Conduct the records checks required by 6VAC35-150-440 on all staff who provide services to individuals under the contract;~~
- ~~5. Participate in program evaluation as required by the Department of Juvenile Justice; and~~
- ~~6. Provide appropriate evidence of fiscal accountability and responsibility.~~

~~E. The standard of services provided by contractual and subcontractual vendors shall not be less than those required by this chapter.~~

6VAC35-150-440. ~~Employee and volunteer background check. (Repealed.)~~

~~A. An agency or program that provides direct services or supervision to juveniles shall conduct the following background checks on all employees and volunteers who provide such direct service or supervision to ascertain whether there are criminal acts or other circumstances that would be detrimental to the safety of juveniles in the program:~~

- ~~1. A reference check;~~
- ~~2. A fingerprint check with the Virginia State Police and FBI if the State Police determine that the requesting agency is a qualified entity, or a criminal history request or a noncriminal justice interface with the Virginia State Police if the State Police determine that the requesting agency is not a qualified entity to receive fingerprint based criminal information;~~
- ~~3. A central registry check with Child Protective Services; and~~
- ~~4. A driving record check if applicable to the individual's job duties.~~

~~The requirements of this subsection do not apply to programs that merely supervise juveniles in community service, nor to persons licensed by the Commonwealth of~~

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Virginia who are providing professional services to juveniles within the scope of such license.

~~B. When an agency or program refers juveniles to other service providers, excluding community service programs and licensed professionals in private practice, the referring agency shall require the service provider to document that all persons who provide services or supervision through substantial one-on-one contact with juveniles have undergone a background check as required in subsection A of this section.~~

~~C. An agency that refers juveniles to a licensed professional in private practice shall check with the appropriate licensing authority's Internet web page or by other appropriate means to ascertain whether there are notations of criminal acts or other circumstances that would be detrimental to the safety of juveniles.~~

6VAC35-150-450. Limitation of contact with juveniles.

When there are indications that an individual who is providing programs or services ~~has a physical, mental or emotional condition that might [may jeopardize the health or safety of the juveniles poses a direct threat to the health and safety of a juvenile, others at the program, or the public]~~, the program administrator [_] or department personnel ~~may shall~~ immediately require that the individual be removed from contact with juveniles until the situation is ~~abated or~~ resolved.

6VAC35-150-460. Personnel qualifications [for program and service providers].

A. ~~Staff and volunteers~~ Program staff [and service providers] shall be qualified and trained for the positions and ~~duties have a job description stating qualifications and duties for the position~~ to which they are assigned.

B. Staff and volunteers who provide professional services shall be appropriately licensed or certified or be supervised by an appropriately licensed or certified person as required by ~~law applicable statutes and regulations~~.

6VAC35-150-470. Medical emergencies.

The program or service provider shall have written ~~policy, procedure and practice~~ procedures to deal with medical emergencies that ~~might may~~ occur while a juvenile is in attendance at the program.

6VAC35-150-480. Financial record requirements [for program and service providers].

All programs and ~~services~~ service providers shall:

1. Manage their finances in accordance with [~~acceptable generally accepted~~] accounting [~~procedures principles~~];
2. Certify that all funds were handled in accord with the applicable Virginia Juvenile Community Crime Control Act plan, contract, or other agreement; and

3. Be subject to independent audit or examination by department personnel at the department's discretion.

6VAC35-150-490. Juveniles' rights.

A. Juveniles shall not be excluded from a program nor be denied access to services on the basis of race, ethnicity, national origin, color, ~~ereed~~ religion, gender sex, physical handicap disability, or sexual orientation.

B. Juveniles shall not be subjected to:

1. Deprivation of drinking water or food necessary to meet daily nutritional needs except as ordered by a licensed physician for a legitimate medical purpose and documented in the juvenile's record;
2. Any action ~~which that~~ is humiliating, degrading, or abusive;
3. Corporal punishment;
4. Unsanitary conditions;
5. Deprivation of access to toilet facilities; or
6. Confinement in a room with the door so secured that the juvenile cannot open it.

6VAC35-150-500. Juvenile participation in research.

~~A. Medical or pharmaceutical testing for experimentation or research is prohibited.~~

~~B. The program or service provider shall have either (i) a written policy prohibiting juveniles' participation in research or (ii) written policy, procedure and practice ensuring that juveniles' participation as subjects in human research shall be consistent with Chapter 5.1 (§ 32.1-162.16 et seq.) of Title 32.1 of the Code of Virginia, with § 16.1-305 of the Code of Virginia regarding confidentiality of juvenile records, with department policy regarding juveniles' participation in research, and with such regulations as may be promulgated by the state board regarding human research written procedures complying with the applicable research provisions in 6VAC35-150-130.~~

6VAC35-150-510. Case management requirements [for program and service providers].

A. For each juvenile, a separate case record shall be kept up to date and in a uniform manner.

B. The juvenile case record shall always contain:

1. ~~Identifying~~ Current identifying and demographic information on the juvenile;
2. Court order, placement agreement, or service agreement;
3. Rules imposed by the judge or the probation or parole officer, if applicable; and
4. ~~Date~~ Dates of acceptance and release.

C. Programs [and services] that provide counseling, treatment, or supervision shall:

1. Develop an individual service plan for each juvenile that shall specify the number and nature of contacts between the juvenile and staff;
2. Provide the individual service plan information to the supervising probation or parole officer, when applicable;
3. Document all contacts with the juvenile, the juvenile's family, and others involved with the case; and
4. Provide written progress reports to the referring agency at agreed upon intervals.

6VAC35-150-530. Incident documentation and reporting [for program and service providers].

When an event or incident occurs ~~which~~ that is required by department procedures to be reported, the program [or service] shall document and report the event or incident as required by and in accordance with department procedures.

6VAC35-150-540. Child abuse and neglect.

~~Any case of suspected child abuse or neglect shall be reported~~ When there is a reason to suspect that a child is an abused or neglected child, the program or service provider shall report the matter immediately to the local department of public welfare or social services as required by § ~~63.1-248.3~~ Article 2 (§ 63.2-1508 et seq.) of Title 63.2 of the Code of Virginia and shall be documented in the juvenile's record.

Article 2

Specific Requirements for Particular Programs and Services

6VAC35-150-550. Physical setting.

A. Each program that provides ~~direct~~ services to juveniles or their families within or at the program's office or place of operation shall comply with all applicable building, fire, sanitation, zoning and other federal, state, and local standards and shall have premises liability insurance.

B. The inside and outside of all buildings shall be kept clean, in good repair, and free of rubbish.

6VAC35-150-560. Individual service or contact plan. (Repealed.)

~~Programs that provide counseling, treatment or supervision shall:~~

- ~~1. Develop an individual service plan for each juvenile which shall specify the number and nature of contacts between the juvenile and staff;~~
- ~~2. Provide the service plan information to the supervising probation or parole officer, when applicable, to be included in and monitored as part of the supervision plan;~~
- ~~3. Document all contacts with the juvenile, the juvenile's family and others involved with the case; and~~

~~4. Provide written progress reports to the referring agency at agreed upon intervals.~~

6VAC35-150-570. Response to crises. (Repealed.)

~~All programs providing supervision or direct individualized services shall provide for response to juveniles' crises 24 hours a day and shall notify juveniles in writing how to get these services.~~

[6VAC35-150-575. Physical and mechanical restraints and chemical agents in programs and services.

A. Only staff who have received department-approved training may apply physical restraint and only as a last resort, after less restrictive behavior intervention techniques have failed, to control residents whose behavior poses a risk to the safety of the resident, others, or the public, or to avoid extreme destruction of property.

1. Staff shall use the least force necessary to eliminate the risk and shall never use physical restraint as punishment or with intent to inflict injury.
2. The application of physical restraint shall be fully documented in the juvenile's record, including the (i) date and time of the incident, (ii) staff involved, (iii) justification for the restraint, (iv) less restrictive interventions that were unsuccessfully attempted prior to or harm that would have resulted without using physical restraint, (v) duration, (vi) method and extent of any physical restraint techniques used, (vii) signature of the person completing the report, and (viii) reviewer's signature and date.
3. Staff whose job responsibilities include applying physical restraint techniques, when necessary, shall receive training sufficient to maintain a current certification for the administration of the physical restraints.

B. Mechanical restraints, except in electronic monitoring and outreach detention programs, shall not be used for behavior management purposes.

C. Chemical agents, such as pepper spray, shall not be used by staff for behavior management purposes.]

6VAC35-150-590. Referrals. (Repealed.)

~~Each program and service that accepts referrals shall have a written description of:~~

- ~~1. The population to be served;~~
- ~~2. Its criteria and requirements for accepting referrals, including whether a social history and diagnostic testing is required before accepting a youth; and~~
- ~~3. Intake and acceptance procedures.~~

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6VAC35-150-600. Surveillance officers. (Repealed.)

Programs that use staff or volunteer surveillance officers shall specify:

- ~~1. The nature and number of the surveillance officer's contacts with the youth under supervision;~~
- ~~2. How and to whom the officer will report such contacts and any problems identified.~~

6VAC35-150-610. Substance abuse and testing services. (Repealed.)

Programs that provide substance abuse and testing services shall have a written description of:

- ~~1. The substance abuse assessment tools or instruments used;~~
- ~~2. The training required of persons who will conduct testing and the professional license or certification required of staff or contracted providers who will provide treatment services; and~~
- ~~3. How and to whom the results of the assessment and evaluation and any recommendations for treatment or other services will be reported.~~

Article 2

Alternative Day Treatment and Structured Day Programs

6VAC35-150-615. Applicability of Part III, Article 2.

The following provisions apply to alternative day treatment and structured day treatment programs, including those operated by CSUs. All applicable provisions for the general requirements for programs set forth in Article 1 (6VAC35-150-425 et seq.) of this part also apply to alternative day treatment and structured day treatment programs.

Article 3

Alternative Day Treatment and Structured Day Programs

6VAC35-150-620. Supervision of juveniles [in alternative day treatment and structured day programs].

~~A. At all times that juveniles are on any premises where alternative day treatment or structured day programs are provided, there shall be at least one qualified person actively supervising who has a current first aid and CPR certification.~~

~~B. Program staff are responsible for managing juveniles' behavior, and shall not delegate this responsibility to other juveniles except as part of an approved leadership training program under the supervision of qualified staff.~~

6VAC35-150-640. Fire Emergency and fire safety [in alternative day treatment and structured day programs].

A. Each site to which juveniles report shall have a written emergency and fire plan safety plans.

1. In accordance with the emergency plan, the program shall implement safety and security procedures, including, but not limited to, procedures for responding in cases of a fire, bomb threat, hostage and medical emergency situations, and natural disaster.

2. The fire safety plan shall be developed with the consultation and approval of the appropriate local fire authority and reviewed with the local fire authority at least annually and updated if necessary.

B. At each site to which juveniles report, there shall be at least one documented fire drill each month.

C. Each new staff member shall be trained in fire safety and emergency procedures before assuming supervision of juveniles.

6VAC35-150-650. First aid kits. (Repealed.)

~~A well stocked first aid kit shall be available at each site to which juveniles report and in any vehicle used to transport juveniles and shall be readily accessible for minor injuries and medical emergencies.~~

6VAC35-150-660. Delivery of medication. (Repealed.)

~~Written policy, procedure and practice governing the delivery of medication shall either (i) prohibit staff from delivering medication or (ii) designate staff persons authorized to deliver prescribed medication by written agreement with a juvenile's parents; and shall either (i) permit or (ii) prohibit self medication by juveniles.~~

6VAC35-150-670. Juveniles' medical needs [in alternative day treatment and structured day programs].

~~When necessary, A. At the time of referral, the program staff shall be notified of request from the referring agency or party any information regarding individual juveniles' medical needs or restrictions and given specific, if necessary, instructions for meeting these needs.~~

B. Written procedure governing the delivery of medication shall:

1. Either prohibit staff from delivering medication or designate staff persons authorized to deliver prescribed medication by written agreement with a juvenile's parents; and

2. Either permit or prohibit self-medication by juveniles.

C. An up-to-date, well-stocked first-aid kit shall be available at each site to which juveniles report and shall be readily accessible for minor injuries and medical emergencies.

6VAC35-150-680. [Physical and mechanical restraint restraints and chemical agents. (Repealed.)]

~~[A. Only staff who have received] department-sanctioned [department approved training may apply physical restraint, and only when a juvenile's uncontrolled behavior could result~~

~~in harm to self or others, or to avoid extreme destruction of property, and when less restrictive interventions have failed.~~

~~B. The use of physical restraint shall be only that which is minimally necessary to protect the juvenile or others.~~

~~C. Any application of physical restraint shall be fully documented in the juvenile's record as to date, time, staff involved, circumstances, reasons for use of physical restraint, and extent of physical restraint used.]~~

~~D. Except in electronic monitoring and outreach detention programs serving juveniles who would otherwise be placed in secure detention or when a juvenile resists being taken into lawful custody, the use of mechanical devices to restrain a juvenile's behavior is prohibited.~~

~~E. [D. The use of mechanical restraint devices, except in outreach detention and electronic monitoring programs, or chemical] substances [agents] to restrain a juvenile's behavior [is prohibited.]~~

6VAC35-150-690. Procedural requirements for time-out [in alternative day treatment and structured day programs].

A. A program that uses time-out shall have written policy, procedure and practice procedures to provide that juveniles in time-out shall:

1. Be able to communicate with staff;
2. Have bathroom privileges according to need; and
3. Be served any meal scheduled during the time-out period.

B. A time-out room shall not be locked nor the door secured in any way that will prohibit the juvenile from opening it, except if such confinement has been approved by the program's regulatory authority.

C. Time-out shall not be used for periods longer than 30 consecutive minutes.

Article 4
Electronic Monitoring

6VAC35-150-700. ~~Not an automatic condition of supervision.~~ (Repealed.)

~~Electronic monitoring shall not be an automatic condition of probation, parole or predispositional supervision.~~

6VAC35-150-710. ~~Conditions of home and parents.~~ (Repealed.)

~~A. Juveniles in an electronic monitoring program must reside in their own home or a surrogate home.~~

~~B. Before a juvenile is placed on electronic monitoring, parents or guardians must:~~

~~1. Give written consent, unless the electronic monitoring is ordered by a court of competent jurisdiction; and~~

~~2. Be fully oriented to the operation of the electronic monitoring device and program rules.~~

6VAC35-150-720. ~~Required contacts.~~ (Repealed.)

~~As often as required by the written supervision or service plan, designated staff or volunteers shall:~~

- ~~1. See each juvenile face to face; and~~
- ~~2. Contact the juvenile's parents or guardians in person or by telephone.~~

6VAC35-150-730. ~~Tampers and violations.~~ (Repealed.)

~~The program shall have written policy, procedure and practice for responding to and investigating tampers and program violations.~~

6VAC35-150-740. ~~Time limits.~~ (Repealed.)

~~Written policy, procedure and practice shall establish the maximum time a juvenile may be electronically monitored but shall not permit electronic monitoring to extend beyond 45 days unless an individual case, upon review by the program administrator, meets specific written criteria justifying a longer time period or continued electronic monitoring is ordered by a court of competent jurisdiction.~~

DOCUMENTS INCORPORATED BY REFERENCE
(6VAC35-150)

[~~Guidelines for Transporting Juveniles in Detention,~~]
Board of Youth and Family Services, June 13, 1991 [~~State Board of Juvenile Justice, September 2004.~~

[Guidelines for Transporting Juveniles in Detention, September 2004, State Board of Juvenile Justice.](#)]

"~~Guidelines for Custody Investigations,~~" Board of Juvenile Justice and Board of Social Services, 1995.

VA.R. Doc. No. R08-1226; Filed January 17, 2011, 1:50 p.m.



TITLE 9. ENVIRONMENT

VIRGINIA WASTE MANAGEMENT BOARD

Final Regulation

REGISTRAR'S NOTICE: Due to the length, the following regulations filed by the Virginia Waste Management Board (9VAC20-80, Solid Waste Management Regulations; 9VAC20-81, Solid Waste Management Regulations; and 9VAC20-101, Vegetative Waste Management and Yard Waste Composting Regulations) are not being published. However, in accordance with § 2.2-4031 of the Code of Virginia, the summary is being published in lieu of the full

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text. The full text of the regulation is available for public inspection at the office of the Registrar of Regulations and at the Virginia Waste Management Board (see contact information below) and is accessible on the Virginia Register of Regulations' website at <http://register.dls.virginia.gov/vol27/Welcome.htm>.

Titles of Regulations: 9VAC20-80. Solid Waste Management Regulations (repealing 9VAC20-80-10 through 9VAC20-80-790).

9VAC20-81. Solid Waste Management Regulations (adding 9VAC20-81-10 through 9VAC20-81-760).

9VAC20-101. Vegetative Waste Management and Yard Waste Composting Regulations (repealing 9VAC20-101-10 through 9VAC20-101-210).

Statutory Authority: § 10.1-1402 of the Code of Virginia; 42 USC § 6941 et seq.; 40 CFR Part 258.

Effective Date: March 16, 2011.

Agency Contact: Cindy Berndt, Regulatory Coordinator, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4378, FAX (804) 698-4346, or email cindy.berndt@deq.virginia.gov.

Summary:

This action recodifies the Virginia Solid Waste Management Regulations and incorporates the Vegetative Waste and Yard Waste Composting Regulations into the regulations. The regulations (i) no longer necessitate a full permit application for changes made to the operations manual of a solid waste facility; (ii) remove the composting facility capacity limit for a full permit and allow a facility to obtain a permit by rule; (iii) reduce the number of permit modifications considered major; (iv) add new standards for centralized sludge treatment facilities; (v) remove the Phase I groundwater monitoring; (vi) change the adoption of alternate concentration limit from a variance procedure to an approval procedure; (vii) modify language to conform to existing statutes and add citations to federal regulations; (viii) add a preapproved alternate liner to eliminate the variance process for those alternate liners routinely approved; (ix) make composting permitting requirements less burdensome; and (x) format, reorganize, and edit the regulations to improve clarity and streamline the flow of language.

Substantive changes made to the proposed regulation include the addition of four definitions. The four definitions are "land clearing activities," "land clearing debris," "landfill mining," and "institutional waste." Another substantive change is the removal of the requirement in 9VAC20-81-570 A 10 that would have resulted in permit revocation if the facility was not constructed within five years of obtaining the permit.

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

STATE WATER CONTROL BOARD

Final Regulation

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

Title of Regulation: 9VAC25-110. Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Domestic Sewage Discharges of Less Than or Equal to 1,000 Gallons Per Day (amending 9VAC25-110-10, 9VAC25-110-20, 9VAC25-110-60, 9VAC25-110-70, 9VAC25-110-80).

Statutory Authority: § 62.1-44.15 of the Code of Virginia; § 402 of the federal Clean Water Act; 40 CFR Parts 122, 123, and 124.

Effective Date: August 2, 2011.

Agency Contact: George Cosby, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4067, FAX (804) 698-4032, or email george.cosby@deq.virginia.gov.

Summary:

This regulatory action amends and reissues the existing VPDES general permit that expires on August 1, 2011, which will continue the existence of the general permit that establishes limitations and monitoring requirements for domestic sewage discharges of less than or equal to 1,000 gallons per day. The substantive changes (i) add two reasons why the department would deny coverage under the general permit; (ii) allow owners of currently permitted facilities to be automatically covered without requiring the owner to submit a new registration statement under certain conditions; (iii) clarify that maintenance contracts are required for treatment works serving individual single

family dwellings; and (iv) clarify the footnotes to the effluent limits table regarding "shellfish waters." Since publication of the proposed regulation (i) a provision was added that maintenance contracts are required by Virginia Department of Health (VDH) regulations and must be kept in force for the life of the permit, unless the owner received a VDH variance; (ii) changes were made to the bacteria effluent limits in 9VAC25-110-80 Part I A 1 and Part I B 1; and (iii) certain editorial changes were made.

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

9VAC25-110-10. Definitions.

The words and terms used in this chapter shall have the same meanings as given in the State Water Control Law, Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Code of Virginia and the VPDES Permit Regulation (9VAC25-31), unless the context clearly indicates otherwise, except that for the purposes of this chapter:

"7Q10" means the lowest flow averaged over a period of seven consecutive days that can be statistically expected to occur once every 10 climatic years.

"Climatic year" means a year beginning on April 1 and ending on March 31.

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

"Domestic sewage" means the water-carried human wastes from residences, buildings, industrial establishments or other places.

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

9VAC25-110-20. Purpose; delegation of authority; effective date of permit.

A. This general permit regulation governs domestic sewage discharges to surface waters from treatment works with a design discharge flow of less than or equal to 1,000 gallons per day on a monthly average. ~~[No discharge of pollutants from domestic sewage treatment works is allowed except when in compliance with the conditions of this permit.]~~

B. The Director of the Department of Environmental Quality, or his designee, may perform any act of the board provided under this chapter, except as limited by § 62.1-44.14 of the Code of Virginia.

C. This general VPDES permit will become effective on August 2, ~~2006~~ 2011, and it expires on August 1, ~~2011~~ 2016. With respect to a particular facility, this general permit shall become effective upon the facility owner's compliance with the provisions of 9VAC25-110-60 ~~and receipt of a copy of the general VPDES permit.~~

9VAC25-110-60. Authorization to discharge.

A. Any owner of a treatment works governed by this general permit is hereby authorized to discharge treated domestic sewage to surface waters of the Commonwealth of Virginia provided that ~~the~~:

1. The owner ~~has filed with the department the~~ submits a registration statement ~~described, if required to do so, in accordance with 9VAC25-110-70, has complied and that registration statement is accepted by the~~ [department board];

2. The owner ~~complies with the effluent limitations and other requirements of 9VAC25-110-80, and has complied with all the following conditions;~~ and

3. The [owner board] ~~has not [been] notified [by the department that authorization is denied the owner,] in accordance with subsection B of this section [, that the discharge is not eligible for coverage under this permit]~~.

B. The [department board] will notify an owner [~~of denial of authorization that the discharge is not eligible for coverage under this permit~~] in the event of any of the following:

1. The owner ~~shall not have been~~ is required to obtain an individual VPDES permit ~~as may be required in accordance with 9VAC25-31-170 B 3 of the VPDES Permit Regulation;~~

2. The owner ~~shall not be authorized by this general permit is proposing~~ to discharge to surface waters specifically named in other board regulations [~~or policies~~] that prohibit such discharges;

3. The owner ~~shall not be authorized by this general permit is proposing~~ to discharge to surface waters in an area where there are central sewage facilities reasonably available, as determined by the [department board]; ~~and~~

4. The owner of any proposed treatment works or any treatment works that has not previously been issued a ~~valid~~ VPDES permit ~~shall have~~ has applied to the Virginia Department of Health for an onsite sewage disposal system permit, and the Virginia Department of Health ~~must have~~ has determined that [~~there is~~] ~~no~~ [~~technology an onsite system is~~] available to serve that parcel of land [~~with an onsite system~~];

5. The discharge would violate the antidegradation policy stated in 9VAC25-260-30 of the Virginia Water Quality Standards; or

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6. A TMDL (board adopted, EPA approved, or EPA imposed) contains [~~a~~ an individual] WLA for the facility, unless this general permit specifically addresses the TMDL pollutant of concern and the permit limits are at least as stringent as those required by the TMDL WLA.

~~B. Receipt of~~ C. Compliance with this general permit constitutes compliance with the Clean Water Act, the State Water Control Law, and applicable regulations under either, with the exceptions stated in 9VAC25-31-60 of the VPDES Permit Regulation. Approval for coverage under this general VPDES permit does not relieve any owner of the responsibility to comply with any other applicable federal, state or local statute, ordinance or regulation, including applicable regulations, for owners of sewage treatment works that serve individual single family dwellings, the Alternative Discharging Sewage Treatment Regulations for Individual Single Family Dwellings (12VAC5-640) of the Virginia Department of Health adopted pursuant to §§ 32.1-12, 32.1-163, and 32.1-164 of the Code of Virginia and, for ~~any owner~~ owners of sewage treatment works that serve nonsingle family dwellings, the Sewage Collection and Treatment Regulations (9VAC25-790) adopted by the State Water Control Board pursuant to § 62.1-44.18 of the Code of Virginia.

D. Continuation of permit coverage.

1. Any owner that was authorized to discharge under the general permit issued in 2006, and who is required to and submits a complete registration statement on or before August 1, 2011, is authorized to continue to discharge treated domestic sewage under the terms of the 2006 general permit until such time as the [~~department~~ board] either:

- a. Issues coverage to the owner under this general permit; or
- b. Notifies the owner that coverage under this permit is denied.

2. When the [~~facility~~ owner] that was covered under the expiring or expired general permit [~~is not in compliance with~~ has violated or is violating] the conditions of that permit, the board may choose to do any or all of the following:

- a. Initiate enforcement action based upon the general permit which has been continued;
- b. Issue a notice of intent to deny coverage under the new general permit. If the general permit coverage is denied, the owner would then be required to cease the activities authorized by the continued general permit or be subject to enforcement action for operating without a permit;
- c. Issue an individual permit with appropriate conditions; or

d. Take other actions authorized by the VPDES Permit Regulation (9VAC25-31).

9VAC25-110-70. Registration statement.

A. Deadlines for submitting registration statement. ~~The~~ Any owner [seeking coverage under this general permit, and who is] required to submit a registration statement [,] shall ~~file~~ submit a complete General VPDES Permit Registration Statement in accordance with this chapter, which shall serve as a notice of intent to be covered under the general VPDES permit for domestic sewage discharges of less than or equal to 1,000 gallons per day ~~in accordance with this chapter.~~

1. New facilities. Any owner proposing a new discharge shall ~~file~~ submit a complete registration statement with to the department at least 60 days prior to the date planned for commencing operation of the treatment works.

2. Existing facilities.

a. Any owner of an existing treatment works covered by an individual VPDES permit who is proposing to be covered by this general permit shall ~~file~~ notify the department [~~at least 180 days prior to the expiration date of the individual VPDES permit.~~] and [shall] submit a complete registration statement at least 180 [~~60~~ 240] days prior to the expiration date of the individual VPDES permit.

b. Any owner of ~~an existing~~ a treatment works that was authorized to discharge under the general permit issued in 2001 shall ~~have filed a complete registration statement prior to June 2, 2006, and who intends to continue coverage under this general permit, is automatically covered [under by] this general permit and is not required to submit a registration statement if:~~

(1) The ownership of the treatment works has not changed since the registration statement for coverage under the 2006 general permit was submitted, or, if the ownership has changed, a new registration statement or VPDES Change of Ownership form was submitted to the department at the time of the title transfer;

(2) There has been no change in the design or operation, or both, of the treatment works since the registration statement for coverage under the 2006 general permit was submitted;

(3) For treatment works serving individual single family dwellings, the Virginia Department of Health has no objection to the automatic permit coverage renewal for this treatment works based on system performance issues, enforcement issues, or other issues sufficient to the [~~department~~ board]. If the Virginia Department of Health objects to the automatic renewal for this treatment works, the owner will be notified by the [~~department~~ board] in writing; and

(4) For treatment works serving nonsingle family dwellings, the [department board] has no objection to the automatic permit coverage renewal for this treatment works based on system performance issues, or enforcement issues. If the [department board] objects to the automatic renewal for this treatment works, the owner will be notified in writing.

Any owner that does not qualify for automatic permit coverage renewal shall submit a complete registration statement to the department on or before June 2, 2011.

~~[e. Any owner of an existing treatment works not currently covered by a VPDES permit who is proposing to be covered by this general permit shall file submit a complete registration statement by August 2, 2006 to the department.~~

~~3. New owners of existing facilities. Any new owner of an existing facility that is covered by this general permit must submit a complete registration statement or a " VPDES Change of Ownership" form to the department within 30 days of the ownership change transfer of title.~~

~~4. 3.] Late notifications. Any owner of a new or existing facility is not precluded from submitting a registration statement after the applicable dates provided in subdivisions 1, 2 and 3 of this subsection. If a late registration statement is submitted, the owner is only authorized for discharges that occur after permit coverage is granted. The department reserves the right to take appropriate enforcement actions for any unpermitted discharges. Late registration statements will be accepted by the [department board], but authorization to discharge will not be retroactive.~~

B. Registration statement. The registration statement shall contain the following information:

1. a. Indicate if the facility served by the treatment works is a single family dwelling. If the facility is not a single family dwelling, describe the facility's use.

b. Name and location street address of the facility/residence facility served by the treatment works.

2. Name, mailing address, email address (where available), and work and home telephone numbers of the facility owner. Indicate For a dwelling, indicate if the owner is or will be the occupant of the facility dwelling.

3. Name of the water body receiving the discharge. Indicate if the discharge point is on a stream that usually flows during dry weather.

4. The amount of discharge, in gallons per day, on a monthly average, and the design flow of the treatment works, in gallons per day.

5. A description of any pollutants, other than domestic sewage, to be discharged.

~~6. If For a proposed treatment works, indicate if there are central sewage facilities available to serve this the facility.~~

~~7. If the facility currently has a VPDES permit. Provide , provide the permit number, if applicable. Indicate if the facility has been built and begun discharge discharging.~~

~~8. For the owner of any proposed treatment works or any treatment works that has not previously been issued a valid VPDES permit:~~

~~a. A [7.5 minute USGS] topographic map or [equivalent (e.g., a] computer generated map [)] that indicates the discharge point, the location of the property to be served by the treatment works, and the location of any wells, springs, and other water bodies, or downstream and any residences within 1/2 mile downstream from the discharge point;~~

~~b. A site diagram of the existing or proposed sewage treatment works; and including to include the property boundaries, the location of the facility/residence facility or dwelling to be served, the individual sewage treatment units, the receiving water body, and the discharge line location; and~~

~~c. A copy of the notification from the Virginia Department of Health that an onsite sewage disposal system permit has been applied for and that the Virginia Department of Health has determined that there is no [technology onsite system] available to serve that parcel of land [with an onsite system].~~

9. Maintenance contract.

a. For the owner of [an existing a] treatment works serving an individual single family dwelling, [provide indicate if a valid maintenance contract has been obtained in accordance with the requirements in 12VAC5-640-500, or if an variance to the maintenance contract requirement has been requested and granted by the Virginia Department of Health. Provide] the name of the individual or company contracted to perform the treatment works maintenance [;] and the expiration date of the current contract [, if applicable. If the treatment works has not been constructed yet, provide the name after construction is complete and prior to starting the treatment plant operation.

Indicate if a monitoring contract has been obtained in accordance with the requirements in 12VAC5-640-490 F, or if the monitoring contract requirement has been waived by the Virginia Department of Health, or if the monitoring requirements are included as part of the maintenance contract. Provide the name of the individual or company contracted to perform the treatment works monitoring and the expiration date of the current contract, if applicable. If the treatment works has not been constructed yet, provide the name after construction

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is complete and prior to starting the treatment plant operation];

b. For the owner of any [~~an existing a~~] treatment works servicing a nonsingle family dwelling, indicate if a valid maintenance contract has been obtained, or if an exception to the maintenance contract requirement has been requested and granted in accordance with subdivision 10 of this subsection. Provide the name of the ~~contract provider~~ individual or company contracted to perform the treatment works maintenance [~~z~~] and the expiration date of the current contract, if applicable. [If the treatment works has not been constructed yet, provide the name after the certificate to construct (CTC) is issued, and prior to requesting a certificate to operate (CTO).] A valid maintenance contract shall provide for the following:

a. (1) Performance of all testing required in accordance with either 9VAC25-110-80 Part I A or Part I B, as appropriate, and periodic (at least annual) inspections of the treatment works. Note: The treatment works should be sampled during normal discharging operations or normal discharging conditions (i.e., operations that are normal for that facility). The owner or maintenance provider should not force a discharge in order to collect a sample;

b. (2) A written notification to the owner within 24 hours whenever the contract provider becomes aware that maintenance or repair of the owner's treatment works is necessary. The owner is responsible for prompt maintenance and repair of the treatment works including all costs associated with the maintenance or repair. Immediately upon receipt of notice that repair or maintenance is required, the owner shall begin emergency pump and haul of all sewage generated ~~in~~ from the facility or dwelling if full and complete repairs cannot be accomplished within 48 hours.

e. (3) A log of the following items ~~will~~ shall be maintained by the contract provider for as long as the contract is in force:

(+) (a) Results of all tests and sampling. Note: If sampling is attempted, but no sample was taken or possible, the log shall show all sampling attempts, and document and explain why no sample was taken or possible;

(-) (b) Alarm activation incidents;

(-) (c) Maintenance, corrective, or repair activities performed;

(-) (d) Recommended repair or replacement items; and

(-) (e) Copies of all reports prepared by the contract provider.

~~d.~~ (4) An inspection ~~will~~ shall be conducted by the contract provider within 48 hours after notification by the owner that a problem may be occurring; and

~~e.~~ A (5) The maintenance contract [shall be kept in force during the entire permit term, and] shall be valid for a minimum of 24 months of consecutive coverage under the maintenance contract.

10. The owner of any [~~an existing a~~] treatment works servicing a nonsingle family dwelling may request an exception to the maintenance contract requirement by submitting an operation and maintenance plan to the [~~department board~~] for review and approval. If an operation and maintenance plan has been approved by the [~~department board~~] previously and remains current and complete, then it does not need to be resubmitted. In such cases, the owner shall provide the date of approval of the operation and maintenance plan, and identify any changes that have been made to the approved ~~operation and maintenance~~ plan. At a minimum, the operation and maintenance plan shall contain the following information:

a. An up-to-date operation and maintenance manual for the treatment works;

b. A log of all maintenance performed on the ~~plant~~ treatment works including, but not limited to, the following:

(1) The date and amount of disinfection chemicals added to the chlorinator.

(2) If dechlorination is used, the date and amount of any dechlorination chemicals that are added.

(3) The date and time of equipment failure(s) and the date and time the equipment was restored to service.

(4) The date and approximate volume of sludge removed.

(5) Results of all tests and sampling. Note: If sampling is attempted, but no sample was taken or possible, the log shall show all sampling attempts, and document and explain why no sample was taken or possible;

c. Dated receipts for chemicals purchased, equipment purchased, and maintenance performed; and

d. An effluent monitoring plan ~~in accordance to conform~~ with the requirements of 9VAC25-110-80 Part I A or Part I B, as appropriate, including all sample collection, preservation, and analysis procedures. Note: The treatment works should be sampled during normal discharging operations or normal discharging conditions (i.e., operations that are normal for that facility). The owner or maintenance provider should not force a discharge in order to collect a sample.

11. The following certification: "I hereby grant to duly authorized agents of the Department of Environmental

Quality, upon presentation of credentials, permission to enter the property where the treatment works is located for the purpose of determining compliance with or the suitability of coverage under the General Permit. I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations."

The registration statement shall be signed in accordance with the requirements of 9VAC25-31-110.

9VAC25-110-80. General permit.

Any owner whose registration statement is accepted by the board ~~will receive the following permit and, or whose permit coverage is automatically renewed,~~ shall comply with the requirements contained ~~therein~~ herein and be subject to all requirements of 9VAC25-31-170.

General Permit No.: VAG40
Effective Date: August 2, ~~2006~~ 2011
Expiration Date: August 1, ~~2014~~ 2016

GENERAL PERMIT FOR DOMESTIC SEWAGE
DISCHARGES OF LESS THAN OR EQUAL TO 1,000
GALLONS PER DAY

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

In compliance with the provisions of the Clean Water Act (33 USC § 1251 et seq.), as amended, and pursuant to the State Water Control Law and regulations adopted pursuant thereto, owners of treatment works with domestic sewage discharges of a design flow of less than or equal to 1,000 gallons per day on a monthly average are authorized to discharge to surface waters within the boundaries of the Commonwealth of Virginia, except those waters specifically named in board regulations [~~or policies~~] that prohibit such discharges.

The authorized discharge shall be in accordance with this cover page, Part I-Effluent Limitations, Monitoring Requirements and Special Conditions, and Part II-Conditions Applicable to All VPDES Permits, as set forth herein.

Part I
Effluent Limitations, Monitoring Requirements and Special Conditions

A. Effluent limitations and monitoring requirements—receiving waters where the 7Q10 flows are less than 0.2 MGD.

1. During the period beginning with the permit's effective date and lasting until the permit's expiration date, the permittee is authorized to discharge from outfall number 001 to receiving waters where the 7Q10 flows are less than 0.2 MGD.

The discharge shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Instantaneous Minimum	Instantaneous Maximum	Frequency	Sample Type
Flow (MGD) * (1)	NA	NL	1/year	Estimate
BOD ₅	NA	30 mg/l	1/year	Grab
Total Suspended Solids	NA	30 mg/l	1/year	Grab
Total Residual Chlorine ** (2)				
After contact tank	1.0 mg/l	NA	1/year	Grab
Final effluent	NA	0.016 mg/l	1/year	Grab
E. coli *** (3)	NA	235/100 [126/100 235/100] ml	1/year	Grab
enterococci **** (4)	NA	104/100 [35/100 104/100] ml	1/year	Grab
Fecal Coliform Bacteria ***** (5)	NA	200/100 ml	1/year	Grab

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pH (standard units)	6.0	9.0	1/year	Grab
Dissolved Oxygen	5.0 mg/l	NA	1/year	Grab

NL = No Limitation, monitoring required

NA = Not Applicable

* (1) The design flow of this treatment facility is less than or equal to 1,000 gallons per day.

** (2) Applies only when chlorine is used for disinfection and the discharge is ~~in~~ into freshwater (see 9VAC25-260-140 C for the classes of waters and boundary designations). ~~The quantification level of chlorine shall be 0.1 mg/l.~~

*** (3) Applies only when methods other than chlorine are used for disinfection and the discharge is ~~in~~ into freshwater (see 9VAC25-260-140 C for the classes of waters and boundary designations). ~~Continuous~~ When the facility is discharging, continuous disinfection ~~capability~~ shall be provided in order to maintain this effluent limit.

**** (4) Applies only when the discharge is ~~in~~ into saltwater or the transition zone (see 9VAC25-260-140 C for the classes of waters and boundary designations). ~~Continuous~~ When the facility is discharging, continuous disinfection ~~capability~~ shall be provided in order to maintain this effluent limit.

***** (5) Applies only when the discharge is ~~in~~ into shellfish ~~water~~ waters (see 9VAC25-260-160 for the description of what are shellfish waters). ~~Continuous~~ When the facility is discharging, continuous disinfection ~~capability~~ shall be provided in order to maintain this effluent limit.

2. All monitoring data required by Part I A 1 shall be maintained on site in accordance with Part II B. Reporting of results to DEQ is not required; however, the monitoring results shall be made available to DEQ [~~or Virginia Department of Health~~] personnel upon request. [Monitoring results for treatment works serving individual single family dwellings shall be submitted to the Virginia Department of Health in accordance with 12VAC5-640.]

3. ~~40 CFR 133.102(e) requires that the~~ The 30-day average percent removal for BOD₅ and total suspended solids shall not be less than 85%.

Part I

Effluent Limitations Monitoring Requirements and Special Conditions

A. B. Effluent limitations and monitoring requirements—receiving waters where the 7Q10 flows are equal to or greater than 0.2 MGD.

1. During the period beginning with the permit's effective date and lasting until the permit's expiration date, the permittee is authorized to discharge from outfall number 001 to receiving waters where the 7Q10 flows are equal to or greater than 0.2 MGD.

The discharge shall be limited and monitored by the permittee as specified below: EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS		MONITORING REQUIREMENTS	
	Instantaneous Minimum	Instantaneous Maximum	Frequency	Sample Type
Flow (MGD) * (1)	NA	NL	1/year	Estimate
BOD ₅	NA	30 mg/l	1/year	Grab
Total Suspended Solids	NA	30 mg/l	1/year	Grab
Total Residual Chlorine ** (2)				
Final effluent	1.0 mg/l	2.0 mg/l	1/year	Grab
E. coli *** (3)	NA	235/100 [126/100 235/100] ml	1/year	Grab
enterococci **** (4)	NA	404/100 [35/100 104/100] ml	1/year	Grab
Fecal Coliform Bacteria ***** (5)	NA	200/100 ml	1/year	Grab
pH (standard units)	6.0	9.0	1/year	Grab

NL = No Limitation, monitoring required	NA = Not Applicable
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- * (1) The design flow of this treatment facility is less than or equal to 1,000 gallons per day.
- ** (2) Applies only when chlorine is used for disinfection and the discharge is ~~in~~ into freshwater (see 9VAC25-260-140 C for the classes of waters and boundary designations).
- *** (3) Applies only when methods other than chlorine are used for disinfection and the discharge is ~~in~~ into freshwater (see 9VAC25-260-140 C for the classes of waters and boundary designations). ~~Continuous~~ When the facility is discharging, continuous disinfection capability shall be provided in order to maintain this effluent limit.
- **** (4) Applies only when the discharge is ~~in~~ into saltwater or the transition zone (see 9VAC25-260-140 C for the classes of waters and boundary designations). ~~Continuous~~ When the facility is discharging, continuous disinfection capability shall be provided in order to maintain this effluent limit.
- ***** (5) Applies only when the discharge is ~~in~~ into shellfish ~~water~~ waters (see 9VAC25-260-160 for the description of what are shellfish waters). ~~Continuous~~ When the facility is discharging, continuous disinfection capability shall be provided in order to maintain this effluent limit.

2. All monitoring data required by Part I ~~A~~ B 1 shall be maintained on site in accordance with Part II B. Reporting of results to DEQ is not required; however, the monitoring results shall be made available to DEQ [~~or Virginia Department of Health~~] personnel upon request. [Monitoring results for treatment works serving individual single family dwellings shall be submitted to the Virginia Department of Health in accordance with 12VAC5-640.]

3. ~~40 CFR 133.102(e) requires that the~~ The 30-day average percent removal for BOD₅ and total suspended solids shall not be less than 85%.

~~B. C.~~ C. Special conditions.

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

~~2. Schedule of compliance. This compliance schedule shall be allowed only for treatment works that were existing as of their dates of coverage under this general permit. Treatment works constructed after their dates of coverage are expected to comply with the limitations and conditions~~

~~of the general permit from the date of operation. For existing facilities that require upgrades, the permittee shall install equipment or unit processes or make other physical modifications to the treatment works that are necessary to achieve compliance with the limitations and conditions of this permit within 180 days of the date of coverage under the permit. The modifications shall not be initiated until written authorization is first provided by the Virginia Department of Health or DEQ. The permittee shall submit to the DEQ Regional Office a written notice certifying completion of any necessary modifications on or before the 180 day compliance deadline. If the permittee is unable to meet the deadline, a written notice shall be submitted that shall include the~~

~~cause of the delay, any actions taken to eliminate the delay, and the projected date for compliance.~~

~~3.~~ 2. Maintenance contract.

a. Treatment works serving individual single family dwellings. [The Virginia Department of Health regulations at 12VAC5-640-500 require maintenance contracts for treatment works serving individual single family dwellings.]

(1) For existing treatment works, the permittee shall keep a maintenance contract in force during the permit term [, unless the permittee has been granted a variance from the maintenance contract requirement by the Virginia Department of Health] . A copy of the maintenance contract [, if applicable,] shall be [~~maintained~~ kept] at the site of [the] treatment works and shall be made available to DEQ or to the Virginia Department of Health for examination upon request. [The permittee is also responsible for ensuring that the local health department has a current copy of a valid maintenance agreement in accordance with 12VAC5-640-500 B.]

(2) For proposed treatment works, the permittee shall submit a copy of a valid maintenance contract to both DEQ and the Virginia Department of Health prior to operation of the treatment works [unless the permittee has been granted a variance from the maintenance contract requirement by the Virginia Department of Health]. The maintenance contract shall be kept in force during the permit term [, ~~maintained~~. A copy of the maintenance contract, if applicable, shall be kept] at the site of treatment works, and made available to DEQ or the Virginia Department of Health for examination upon request. [The permittee is also responsible for ensuring that the local health department has a current copy of a valid maintenance agreement in accordance with 12VAC5-640-500 B.]

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(3) At a minimum, the maintenance contract shall provide for the following:

(a) Performance of all testing required in [either Part I A or Part I B of this permit, as appropriate, and in] the Alternative Discharging Sewage Treatment Regulations for Individual Single Family Dwellings, 12VAC5-640-490 B, unless the owner maintains a separate monitoring contract in accordance with 12VAC5-640-490 F. Note: The treatment works should be sampled during normal discharging operations or normal discharging conditions (i.e., operations that are normal for that facility). The owner or maintenance provider should not force a discharge in order to collect a sample;

(b) A written notification to the owner within 24 hours whenever the contract provider becomes aware that maintenance or repair of the owner's treatment works is necessary. The owner is responsible for prompt maintenance and repair of the treatment works including all costs associated with the maintenance or repair. Immediately upon receipt of notice that repair or maintenance is required, the owner shall begin emergency pump and haul of all sewage generated in the dwelling if full and complete repairs cannot be accomplished within 48 hours; and

(c) The maintenance contract shall be valid for a minimum of 24 months of consecutive coverage.

b. Treatment works serving nonsingle family dwellings.

(1) For existing treatment works, the permittee shall ~~maintain~~ keep a maintenance contract in force during the permit term, unless an exception to the maintenance contract requirement has been requested and granted in accordance with Part I B-4 C 3. A copy of [a valid the] maintenance contract [, if applicable,] shall be [maintained kept] at the site of [the] treatment works and made available to DEQ ~~or to the Virginia Department of Health~~ for examination upon request.

(2) For proposed treatment works, the permittee shall submit a copy of a valid maintenance contract to DEQ prior to operation of the treatment works, unless an exception to the maintenance contract requirement has been requested and granted in accordance with Part I B-4 C 3. [The maintenance contract shall be kept in force during the permit term. A copy of the maintenance contract shall be kept at the site of treatment works, and shall be made available to DEQ for examination upon request.]

~~The~~ (3) At a minimum, the maintenance contract shall provide for the following:

~~a.~~ (a) Performance of all testing required in accordance with either Part I A or Part I B, as appropriate, and periodic (at least annual) inspections of the treatment works. Note: The treatment works should be sampled during normal discharging operations or normal discharging conditions (i.e., operations that are normal for that facility). The owner or maintenance provider should not force a discharge in order to collect a sample;

~~b.~~ (b) A written notification to the owner within 24 hours whenever the contract provider becomes aware that maintenance or repair of the owner's treatment works is necessary. The owner is responsible for prompt maintenance and repair of the treatment works including all costs associated with the maintenance or repair. Immediately upon receipt of notice that repair or maintenance is required, the owner shall begin emergency pump and haul of all sewage generated ~~in~~ from the facility or dwelling if full and complete repairs cannot be accomplished within 48 hours;

~~c.~~ (c) A log of the following items ~~will~~ shall be maintained by the contract provider:

(1) (i) Results of all tests and sampling. Note: If sampling is attempted, but no sample was taken or possible, the log shall show all sampling attempts, and document and explain why no sample was taken or possible;

(2) (ii) Alarm activation incidents;

(3) (iii) Maintenance, corrective, or repair activities performed;

(4) (iv) Recommended repair or replacement items; and

(5) (v) Copies of all reports prepared by the contract provider;

~~d.~~ (d) An inspection ~~will~~ shall be conducted by the contract provider within 48 hours after notification by the owner that a problem may be occurring; and

~~e.~~ A (e) The maintenance contract shall be valid for a minimum of 24 months of consecutive coverage ~~under the maintenance contract.~~

~~4. 3.~~ Operation and maintenance plan. The owner of any treatment works serving a nonsingle family dwelling may request an exception to the maintenance contract requirement by submitting an operation and maintenance plan to [DEQ the board] for review and approval. At a minimum, the operation and maintenance plan shall contain the following information:

a. An up-to-date operation and maintenance manual for the treatment works;

b. A log of all maintenance performed on the ~~plant~~ treatment works including, but not limited to, the following:

- (1) The date and amount of disinfection chemicals added to the chlorinator.
- (2) If dechlorination is used, the date and amount of any dechlorination chemicals that are added.
- (3) The date and time of equipment failure(s) and the date and time the equipment was restored to service.
- (4) The date and approximate volume of sludge removed.

(5) Results of all tests and sampling. Note: If sampling is attempted, but no sample was taken or possible, the log shall show all sampling attempts, and document and explain why no sample was taken or possible;

c. Dated receipts for chemicals purchased, equipment purchased, and maintenance performed; and

d. An effluent monitoring plan ~~in accordance to~~ conform with the requirements of Part I A or Part I B, as appropriate, including all sample collection, preservation, and analysis procedures. Note: The treatment works should be sampled during normal discharging operations or normal discharging conditions (i.e., operations that are normal for that facility). The owner or maintenance provider should not force a discharge in order to collect a sample.

Should the permittee fail to implement the approved operation and maintenance plan, or if there are violations of effluent limitations, [~~DEQ~~ the board] reserves the right to require the permittee to obtain a maintenance contract.

4. Compliance recordkeeping under Part I A and Part I B.

a. The quantification levels (QL) shall be less than or equal to the following concentrations:

<u>Effluent Parameter</u>	<u>Quantification Level</u>
<u>BOD₅</u>	<u>2.0 mg/l</u>
<u>TSS</u>	<u>1.0 mg/l</u>
<u>Chlorine</u>	<u>0.10 mg/l</u>

The QL is defined as the lowest concentration used to calibrate a measurement system in accordance with the procedures published for the test method.

b. Recording results. Any concentration data below the QL used in the analysis shall be recorded as "<QL" if it is less than the QL in subdivision a. Otherwise the numerical value shall be recorded.

c. Monitoring results shall be recorded using the same number of significant digits as listed in the permit. Regardless of the rounding convention used by the permittee (e.g., 5 always rounding up or to the nearest even number), the permittee shall use the convention consistently, and shall ensure that consulting laboratories employed by the permittee use the same convention.

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

Part II

Conditions Applicable to all VPDES Permits

A. Monitoring.

1. Samples and measurements taken as required by this permit shall be representative of the monitored activity.
2. Monitoring shall be conducted according to procedures approved under 40 CFR Part 136 or alternative methods approved by the U.S. Environmental Protection Agency, unless other procedures have been specified in this permit.
3. The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will ensure accuracy of measurements.

B. Records.

1. Records of monitoring information shall include:
 - a. The date, exact place, and time of sampling or measurements;
 - b. The individual(s) who performed the sampling or measurements;
 - c. The date(s) and time(s) analyses were performed;
 - d. The individual(s) who performed the analyses;
 - e. The analytical techniques or methods used; and
 - f. The results of such analyses.
2. Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years, the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the registration statement for this permit, for a period of at least three years from the date of the sample, measurement, report or request for coverage. This period of retention shall be extended automatically during the course of any unresolved litigation regarding

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the regulated activity or regarding control standards applicable to the permittee, or as requested by the board.

C. Reporting monitoring results. Monitoring results under this permit are not required to be submitted to the department. However, should the [department board] request that the permittee submit monitoring results, the following subsections would apply.

1. The permittee shall submit the results of the monitoring required by this permit not later than the 10th day of the month after monitoring takes place, unless another reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the department's regional office.
2. Monitoring results shall be reported on a Discharge Monitoring Report (DMR) or on forms provided, approved or specified by the department.
3. If the permittee monitors any pollutant specifically addressed by this permit more frequently than required by this permit using test procedures approved under 40 CFR Part 136 or using other test procedures approved by the U.S. Environmental Protection Agency or using procedures specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted on the DMR or reporting form specified by the department.
4. Calculations for all limitations that require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this permit.

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

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

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

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

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

1. A description of the nature and location of the discharge;
2. The cause of the discharge;
3. The date on which the discharge occurred;
4. The length of time that the discharge continued;
5. The volume of the discharge;
6. If the discharge is continuing, how long it is expected to continue;
7. If the discharge is continuing, what the expected total volume of the discharge will be; and
8. Any steps planned or taken to reduce, eliminate and prevent a recurrence of the present discharge or any future discharges not authorized by this permit.

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

H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge including a bypass or upset should occur from a treatment works and the discharge enters or could be expected to enter state waters, the permittee shall promptly notify, in no case later than 24 hours, the department by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse affects on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit it to the department within five days of discovery of the discharge in accordance with Part II I 2. Unusual and

extraordinary discharges include, but are not limited to, any discharge resulting from:

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

I. Reports of noncompliance. The permittee shall report any noncompliance that may adversely affect state waters or may endanger public health.

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

- a. Any unanticipated bypass; and
- b. Any upset that causes a discharge to surface waters.

2. A written report shall be submitted within five days and shall contain:

- a. A description of the noncompliance and its cause;
- b. The period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and
- c. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

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

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

NOTE: The immediate (within 24 hours) reports required in Parts II G, H, and I may be made to the department's regional office. Reports may be made by telephone or by fax. For reports outside normal working hours, leave a message and this shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Management maintains a 24-hour telephone service at 1-800-468-8892.

J. Notice of planned changes.

1. The permittee shall give notice to the department as soon as possible of any planned physical alterations or

additions to the permitted facility. Notice is required only when:

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

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

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

b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are subject neither to effluent limitations nor to notification requirements specified elsewhere in this permit; or

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

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

K. Signatory requirements.

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

a. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with

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environmental laws and regulations; the manager can ensure that the necessary systems are established or other actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

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

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

2. Reports, etc. All reports required by permits, and other information requested by the board shall be signed by a person described in Part II K 1 or by a duly authorized representative of that person. A person is a duly authorized representative only if:

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

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

c. The written authorization is submitted to the department.

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

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

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my

inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

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

The permittee shall comply with effluent standards or prohibitions established under Section 307(a) of the Clean Water Act for toxic pollutants and with standards for sewage sludge use or disposal established under Section 405(d) of the Clean Water Act within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if this permit has not yet been modified to incorporate the requirement.

M. Duty to reapply.

1. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, and the permittee does not qualify for automatic permit coverage renewal, the permittee shall submit a new registration statement at least ~~180~~ 60 days before the expiration date of the existing permit, unless permission for a later date has been granted by the board. The board shall not grant permission for registration statements to be submitted later than the expiration date of the existing permit.

2. A permittee qualifies for automatic permit coverage renewal and is not required to submit a registration statement if:

a. The ownership of the treatment works has not changed since this general permit went into effect on August 2, 2011, or, if the ownership has changed, a new registration statement or VPDES Change of Ownership form was submitted to the department at the time of the title transfer;

b. There has been no change in the design or operation, or both, of the treatment works since this general permit went into effect on August 2, 2011;

c. For treatment works serving individual single family dwellings, the Virginia Department of Health

does not object to the automatic permit coverage renewal for this treatment works based on system performance issues, enforcement issues, or other issues sufficient to the [department board]. If the Virginia Department of Health objects to the automatic renewal for this treatment works, the permittee will be notified by the [department board] in writing; and

d. For treatment works serving nonsingle family dwellings, the [department board] has no objection to the automatic permit coverage renewal for this treatment works based on system performance issues, or enforcement issues. If the [department board] objects to the automatic renewal for this treatment works, the permittee will be notified in writing.

Any permittee that does not qualify for automatic permit coverage renewal shall submit a new registration statement in accordance with Part II M 1.

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

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

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

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

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

S. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit that has a reasonable likelihood of adversely affecting human health or the environment.

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

U. Bypass.

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

2. Notice.

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

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

3. Prohibition of bypass.

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

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

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

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

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

V. Upset.

1. An upset constitutes an affirmative defense to an action brought for noncompliance with technology-based permit effluent limitations if the requirements of Part II V 2 are met. A determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is not a final administrative action subject to judicial review.

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

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

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

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

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

For purposes of this section, the time for inspection shall be deemed reasonable during regular business hours, and whenever the facility is discharging. Nothing contained herein shall make an inspection unreasonable during an emergency.

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

Y. Transfer of permits.

1. Permits are not transferable to any person except after notice to the department. Except as provided in Part II Y 2, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued, or a minor modification made, to identify the new permittee and incorporate such other requirements as may be necessary under the State Water Control Law and the Clean Water Act.

2. As an alternative to transfers under Part II Y 1, this permit may be automatically transferred to a new permittee if:

- a. The current permittee notifies the department ~~at least~~ within 30 days ~~in advance~~ of the ~~proposed~~ transfer of the title to the facility or property;
- b. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and
- c. The board does not notify the existing permittee and the proposed new permittee of its intent to modify or revoke and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part II Y 2 b.

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

<p>NOTICE: The following form used in administering the regulation was filed by the agency. The form is not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name to access the form. The form is also available through the agency contact or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.</p>

FORMS (9VAC25-110)

[VPDES Change of Ownership Agreement Form \(eff. 7/10\).](#)

VA.R. Doc. No. R09-2062; Filed January 10, 2011, 3:05 p.m.

Final Regulation

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

Title of Regulation: **9VAC25-115. General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Seafood Processing Facilities (amending 9VAC25-115-10 through 9VAC25-115-50).**

Statutory Authority: § 62.1-44.15 of the Code of Virginia; § 402 of the federal Clean Water Act; 40 CFR Parts 122, 123, and 124.

Effective Date: July 24, 2011.

Agency Contact: George Cosby, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4067, FAX (804) 698-4032, or email george.cosby@deq.virginia.gov.

Summary

This regulatory action amends and reissues the general permit that expires on July 23, 2011, which will continue the existence of the general permit that establishes limitations and monitoring requirements for wastewater discharges from seafood processing facilities. As with an individual VPDES permit, the effluent limits in the general permit are set to protect the quality of the waters receiving the discharges. The substantive changes (i) add two reasons authorization to discharge cannot be granted, (ii) add language to allow for administrative continuances of coverage, (iii) add three new special conditions, (iv) update the storm water pollution prevention plan section, and (v) modify

due dates in the conditions applicable to all permits section.

9VAC25-115-10. Definitions.

The words and terms used in this chapter shall have the meanings defined in the State Water Control Law, Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Code of Virginia and the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31) unless the context clearly indicates otherwise. Additionally, for the purposes of this chapter:

"Industrial activity" means the facilities classified under SIC Code 2091 or 2092.

~~"Runoff coefficient" means the fraction of total rainfall that will appear at the conveyance as runoff.~~

"Seafood processing facility" means any facility classified under SIC Code 2091, 2092, 5142, or 5146, ~~except a mechanized clam facility~~, which processes or handles seafood intended for human consumption or as bait, except a mechanized clam facility. Seafood includes but is not limited to crabs, oysters, hand-shucked clams, scallops, squid, eels, turtles, fish, conchs and crayfish.

"SIC" means the Standard Industrial Classification Code or Industrial Grouping from the U.S. Office of Management and Budget Standard Industrial Classification Manual, 1987 edition.

"Significant materials" includes, but is not limited to, raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production (except oyster, clam or scallop shells); hazardous substances designated under § 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42 USC § 9601); any chemical the facility is required to report pursuant to § 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) (42 USC § 11023); fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with storm water discharges.

"Storm water" means storm water runoff, snow melt runoff, and surface runoff and drainage.

"Storm water discharge associated with industrial activity" means the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the VPDES program under 9VAC25-31-10 et seq. For the categories of industries identified in the "industrial activity" definition, the term includes, but is not limited to, storm water discharges from industrial plant yards;

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immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or byproducts (except for oyster, clam or scallop shells) used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process wastewaters; sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage area (including tank farms) for raw materials, and intermediate and finished products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the purposes of this paragraph, material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, finished product, byproduct or waste product (except for oyster, clam or scallop shells). The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas.

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

9VAC25-115-20. Purpose; delegation of authority; effective date of permit.

A. This general permit regulation governs the discharge of wastewater and storm water associated with industrial activity from seafood processing facilities. ~~[It does not cover] wastewater [discharges from mechanized clam processing facilities. No discharge from seafood processing facilities is allowed except when in compliance with this permit.]~~

B. The director, or an authorized representative, may perform any act of the board provided under this regulation, except as limited by § 62.1-44.14 of the Code of Virginia.

C. This general permit will become effective on July 24, ~~2004~~ 2011, and will expire on July 23, ~~2011~~ 2016. For any covered owner, this general permit is effective upon compliance with all the provisions of 9VAC25-115-30 ~~and the receipt of this general permit.~~

9VAC25-115-30. Authorization to discharge.

A. Any owner governed by this general permit is hereby authorized to discharge to surface waters of the

Commonwealth of Virginia provided that the owner files a registration statement in accordance with 9VAC25-115-40 that is accepted by the board, ~~[files submits]~~ the required permit fee, complies with the effluent limitations and other requirements of 9VAC25-115-50, and provided that: ~~the owner has not been notified by the [department board] that authorization is denied in accordance with subsection B of this section.~~

B. The ~~[department board]~~ will notify an owner of denial of authorization in the event of any of the following:

- ~~1. Individual permit.~~ The owner ~~shall not have been is~~ required to obtain an individual permit ~~as may be required in the VPDES Permit Regulation (9VAC25-31-)~~ in accordance with 9VAC25-31-170 B 3 of the VPDES Permit Regulation;
- ~~2. Prohibited discharge locations.~~ The owner ~~shall not be authorized by this general permit is proposing~~ to discharge to state waters specifically named in other board regulations ~~[or policies]~~ that prohibit such discharges;
- ~~3. Nutrient discharges.~~ ~~Annual~~ The owner ~~is proposing to discharge annual~~ mass loadings of total nitrogen in excess of 2,300 pounds per year or of total phosphorus in excess of 300 pounds per year ~~are not authorized by this general permit;~~
4. The discharge would violate the antidegradation policy stated in 9VAC25-260-30 of the Virginia Water Quality Standards; or
5. A TMDL (board adopted and EPA approved or EPA imposed) contains a WLA for the facility, unless this general permit specifically addresses the TMDL pollutant of concern and the permit limits are at least as stringent as those required by the TMDL WLA.

~~Receipt of this general permit does not relieve any owner of the responsibility to comply with any other federal, state or local statute, ordinance or regulation.~~ C. Compliance with this general permit constitutes compliance with the Clean Water Act, the State Water Control Law, and applicable regulations under either, with the exceptions stated in 9VAC25-31-60 of the VPDES Permit Regulation. Approval for coverage under this general permit does not relieve any owner of the responsibility to comply with any other federal, state or local statute, ordinance or regulation.

D. Continuation of permit coverage.

1. Any owner that was authorized to discharge under the general permit issued in 2006, and who submits a complete registration statement on or before July 23, 2011, is authorized to continue to discharge under the terms of the 2006 general permit until such time as the [department board] either:

a. Issues coverage to the owner under this general permit; or

b. Notifies the owner that coverage under this permit is denied.

2. When the [facility owner] that was covered under the expiring or expired general permit [is not in compliance with has violated or is violating] the conditions of that permit, the board may choose to do any or all of the following:

a. Initiate enforcement action based upon the general permit that has been continued;

b. Issue a notice of intent to deny coverage under the amended general permit. If the general permit coverage is denied, the owner would then be required to cease the activities authorized by the continued general permit or be subject to enforcement action for operating without a permit;

c. Issue an individual permit with appropriate conditions; or

d. Take other actions authorized by the VPDES permit Regulation (9VAC25-31).

9VAC25-115-40. Registration statement.

A. Deadlines for submitting registration statement. The owner [seeking coverage under this general permit] shall ~~file~~ submit a complete general VPDES permit registration statement in accordance with this chapter, which ~~will~~ shall serve as a notice of intent for coverage under the general permit for seafood processors.

1. New facilities. Any owner proposing a new discharge shall submit a complete registration statement to the [department board] at least 30 days prior to the date planned for commencing operation of the treatment works.

2. Existing facilities.

a. Any owner of an existing seafood processing facility covered by an individual VPDES permit who is proposing to be covered by this general permit [shall notify the department at least 180 days prior to the expiration date of the individual VPDES permits, and] shall submit a complete registration statement at least [30 210] days prior to the expiration date of the individual VPDES permit.

b. Any owner of an existing facility covered by the that was authorized to discharge under the general VPDES permit for seafood processing facilities that became effective on July 24, 2004 2006, and who wishes to remain covered by intends to continue coverage under this general permit shall file a new submit a complete registration statement to the

~~[department board] prior to June 24, 2011 in accordance with the general permit requirements in order to avoid a lapse in coverage. Any owner proposing a new discharge shall file the registration statement at least 30 days prior to the date planned for operation of the new discharge. Any owner of an existing seafood processing facility covered by an individual VPDES permit who is proposing to be covered by this general permit shall file the registration statement at least 180 days prior to the expiration date of the individual VPDES permit.~~

~~[e. Any owner of an existing seafood processing facility not currently covered by a VPDES permit who is proposing to be covered by this general permit shall] file the [submit a complete registration statement to the department.]~~

~~After [d. c.] Any owner of an existing seafood processing facility adding a new process after coverage under the general permit is obtained, shall submit an amended registration statement must be submitted to the [department board] at least 30 days prior to commencing operation of any the new process not included on the original registration statement.~~

~~[3. New owners of existing facilities. Any new owner of an existing facility that is covered by this general permit must submit a complete registration statement or a VPDES Change of Ownership form within 30 days of the transfer of title.~~

~~4. 3.] Late registration statements will be accepted but authorization to discharge will not be retroactive.~~

B. The registration statement shall contain the following information:

1. Facility name, owner, mailing address, email address (where available), and telephone number;

2. Facility location street address (if different from mailing address);

3. Facility operator name, address, email address, and telephone number if different than owner;

4. Does the facility discharge to surface waters? Name of receiving stream if yes and, if no, describe the discharge;

5. Does the facility have a current VPDES Permit? Permit Number if yes;

6. The original date of construction of the seafood processing facility building and dates and description of all subsequent facility construction;

7. A USGS topographic or computer generated map showing the facility discharge location and receiving water body;

Regulations

8. Facility SIC Code(s);
9. Nature of business at facility;
10. Discharge outfall information;
11. Facility maximum production information;
12. Facility line (water balance) drawing;
13. Discharge and outfall descriptions for different seafood processes that operate simultaneously;
14. Treatment and solid waste disposal information;
15. Information on use of chemicals at the facility; and
16. The following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations."

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

9VAC25-115-50. General permit.

Any owner whose registration statement is accepted by the director will receive the following permit and shall comply with the requirements therein and be subject to all requirements of the VPDES Permit Regulation, 9VAC25-31.

General Permit No.: VAG52
 Effective Date: July 24, ~~2006~~ 2011
 Expiration Date: July 23 [,] ~~2011~~ 2016

GENERAL PERMIT FOR SEAFOOD PROCESSING FACILITY

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

In compliance with the provisions of the Clean Water Act, as amended, and pursuant to the State Water Control Law and regulations adopted pursuant to it, owners of seafood processing facilities, other than mechanized clam processing facilities, are authorized to discharge to surface waters within the boundaries of the Commonwealth of Virginia, except those specifically named in board regulations [~~or policies~~] that prohibit such discharges.

The authorized discharge shall be in accordance with this cover page, Part I—Effluent Limitations and Monitoring Requirements, Part II—Storm Water Pollution Prevention Plans, and Part III—Conditions Applicable to All VPDES Permits, as set forth herein.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS—SEAFOOD PROCESSING NOT LIMITED ELSEWHERE IN PART I. A.— SIC 2091, 2092, 5142 AND 5146 SOURCES EXCEPT MECHANIZED CLAM FACILITIES

1. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from seafood processing not otherwise classified from outfall(s) _____.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/YEAR	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/YEAR	Grab
TSS	NL	NL	NA	NA	NA	1/YEAR	Comp <u>Composite</u>
Oil and Grease	NL	NL	NA	NA	NA	1/YEAR	Grab
Production	NA	NL	NA	NA	NA	1/YEAR	Measure <u>Measurement</u>

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

~~Comp Composite~~ = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production—see Special Condition No. 5.

Samples shall be collected by the end of the year and reported by the 10th of January of the following year on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS—CONVENTIONAL (HANDPICKED) BLUE CRAB PROCESSING—EXISTING SOURCES PROCESSING MORE THAN 3,000 LBS OF RAW MATERIAL PER DAY ON ANY DAY

2. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from conventional blue crab processing, from outfall(s) _____.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	0.74	2.2	NA	1/3 Months	Comp Composite
Oil and Grease	NL	NL	0.20	0.60	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measure Measurement

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

~~Comp Composite~~ = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production—see Special Condition No. 5.

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring

Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS—CONVENTIONAL (HANDPICKED) BLUE CRAB PROCESSING—ALL NEW SOURCES

3. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from conventional blue crab processing, from outfall(s) _____.

Regulations

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD ₅	NL	NL	0.15	0.30	NA	1/3 Months	Comp <u>Composite</u>
TSS	NL	NL	0.45	0.90	NA	1/3 Months	Comp <u>Composite</u>
Oil and Grease	NL	NL	0.065	0.13	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measure <u>Measurement</u>

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

~~Comp Composite~~ = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production—see Special Condition No. 5.

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS—MECHANIZED BLUE CRAB PROCESSING—ALL EXISTING SOURCES

4. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from mechanized blue crab processing, from outfall(s)

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	12.0	36.0	NA	1/3 Months	Comp <u>Composite</u>
Oil and Grease	NL	NL	4.2	13.0	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measure <u>Measurement</u>

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

~~Comp Composite~~ = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production—see Special Condition No. 5.

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS—MECHANIZED BLUE CRAB PROCESSING—
ALL NEW SOURCES

5. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from mechanized blue crab processing, from outfall(s) _____.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD ₅	NL	NL	2.5	5.0	NA	1/3 Months	Comp Composite
TSS	NL	NL	6.3	13	NA	1/3 Months	Comp Composite
Oil and Grease	NL	NL	1.3	2.6	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measure Measurement

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

~~Comp Composite~~ = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production—see Special Condition No. 5.

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS—NONBREADED SHRIMP PROCESSING—
EXISTING SOURCES PROCESSING MORE THAN 2,000 LBS OF RAW MATERIAL PER DAY ON ANY DAY

6. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from non-breaded shrimp processing, from outfall(s) _____.

Regulations

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	38-0	110	NA	1/3 Months	Comp <u>Composite</u>
Oil and Grease	NL	NL	12-0	36-0	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measure <u>Measurement</u>

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

~~Comp Composite~~ = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production—see Special Condition No. 5.

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS—NONBREADED SHRIMP PROCESSING—ALL NEW SOURCES

7. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from nonbreaded shrimp processing, from outfall(s)

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD ₅	NL	NL	25-0	63-0	NA	1/3 Months	Comp <u>Composite</u>
TSS	NL	NL	10-0	25-0	NA	1/3 Months	Comp <u>Composite</u>
Oil and Grease	NL	NL	1.6	4.0	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measure <u>Measurement</u>

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

~~Comp Composite~~ = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production—see Special Condition No. 5.

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS—BREADED SHRIMP PROCESSING—EXISTING SOURCES PROCESSING MORE THAN 2,000 LBS OF RAW MATERIAL PER DAY ON ANY DAY

8. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from breaded shrimp processing, from outfall(s) _____.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	93.0	280	NA	1/3 Months	Comp Composite
Oil and Grease	NL	NL	12.0	36.0	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measure <u>Measurement</u>

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

~~Comp Composite~~ = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production—see Special Condition No. 5.

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS—BREADED SHRIMP PROCESSING—ALL NEW SOURCES

9. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from breaded shrimp processing, from outfall(s) _____.

Such discharges shall be limited and monitored by the permittee as specified below:

Regulations

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD ₅	NL	NL	40- 0	100	NA	1/3 Months	Comp <u>Composite</u>
TSS	NL	NL	22- 0	55- 0	NA	1/3 Months	Comp <u>Composite</u>
Oil and Grease	NL	NL	1.5	3.8	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measure <u>Measurement</u>

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

~~Comp Composite~~ = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production—see Special Condition No. 5.

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS—TUNA PROCESSING—ALL EXISTING SOURCES

10. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from tuna processing, from outfall(s) _____.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	3.3	8.3	NA	1/3 Months	Comp <u>Composite</u>
Oil and Grease	NL	NL	0.84	2.1	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measure <u>Measurement</u>

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

~~Comp Composite~~ = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production—see Special Condition No. 5.

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS—TUNA PROCESSING—ALL NEW SOURCES

11. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from tuna processing, from outfall(s) _____.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD ₅	NL	NL	8.1	20-0	NA	1/3 Months	Comp Composite
TSS	NL	NL	3.0	7.5	NA	1/3 Months	Comp Composite
Oil and Grease	NL	NL	0.76	1.9	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measure Measurement

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

~~Comp Composite~~ = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production—see Special Condition No. 5.

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS—CONVENTIONAL BOTTOM FISH PROCESSING—EXISTING SOURCES PROCESSING MORE THAN 4,000 LBS OF RAW MATERIAL PER DAY ON ANY DAY

12. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from conventional bottom fish processing, from outfall(s) _____.

Regulations

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	2.0	3.6	NA	1/3 Months	Comp <u>Composite</u>
Oil and Grease	NL	NL	0.55	1.0	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measure <u>Measurement</u>

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

~~Comp Composite~~ = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production—see Special Condition No. 5.

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring

Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS—CONVENTIONAL BOTTOM FISH PROCESSING—ALL NEW SOURCES

13. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from conventional bottom fish processing, from outfall(s) _____.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD ₅	NL	NL	0.71	1.2	NA	1/3 Months	Comp <u>Composite</u>
TSS	NL	NL	0.73	1.5	NA	1/3 Months	Comp <u>Composite</u>
Oil and Grease	NL	NL	0.042	0.077	NA	1/3 Months	Grab

Production	NA	NL	NA	NA	NA	1/3 Months	<u>Measure Measurement</u>
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NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

~~Comp Composite~~ = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production—see Special Condition No. 5.

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS—MECHANIZED BOTTOM FISH PROCESSING—ALL EXISTING SOURCES

14. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from mechanized bottom fish processing, from outfall(s) _____.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	12.0	22.0	NA	1/3 Months	Comp Composite
Oil and Grease	NL	NL	3.9	9.9	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	<u>Measure Measurement</u>

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

~~Comp Composite~~ = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production—see Special Condition No. 5.

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Regulations

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS—MECHANIZED BOTTOM FISH PROCESSING—ALL NEW SOURCES

15. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from mechanized bottom fish processing, from outfall(s)

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD ₅	NL	NL	7.5	13- 0	NA	1/3 Months	Comp <u>Composite</u>
TSS	NL	NL	2.9	5.3	NA	1/3 Months	Comp <u>Composite</u>
Oil and Grease	NL	NL	0.47	1.2	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measure <u>Measurement</u>

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

~~Comp Composite~~ = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production—see Special Condition No. 5.

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS—HAND-SHUCKED CLAM PROCESSING—EXISTING SOURCES WHICH PROCESS MORE THAN 4,000 LBS OF RAW MATERIAL PER DAY ON ANY DAY

16. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from hand-shucked clam processing, from outfall(s)

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate

Regulations

pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	18.0	59.0	NA	1/3 Months	Comp <u>Composite</u>
Oil and Grease	NL	NL	0.23	0.60	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measure <u>Measurement</u>

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

~~Comp Composite~~ = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production—see Special Condition No. 5.

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS—HAND-SHUCKED CLAM PROCESSING—ALL NEW SOURCES

17. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from hand-shucked clam processing, from outfall(s)

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	17.0	55.0	NA	1/3 Months	Comp <u>Composite</u>
Oil and Grease	NL	NL	0.21	0.56	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measure <u>Measurement</u>

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

~~Comp Composite~~ = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production—see Special Condition No. 5.

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Regulations

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS—HAND-SHUCKED OYSTER PROCESSING—EXISTING SOURCES WHICH PROCESS MORE THAN 1,000 LBS OF RAW MATERIAL PER DAY ON ANY DAY

18. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from hand-shucked oyster processing, from outfall(s)

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	16- 0	23- 0	NA	1/3 Months	Comp <u>Composite</u>
Oil and Grease	NL	NL	0.77	1.1	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measure <u>Measurement</u>

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

~~Comp~~ Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production—see Special Condition No. 5.

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS—HAND-SHUCKED OYSTER PROCESSING—ALL NEW SOURCES

19. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from hand-shucked oyster processing, from outfall(s)

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	16- 0	23- 0	NA	1/3 Months	Comp <u>Composite</u>

Oil and Grease	NL	NL	0.77	1.1	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	<u>Measure Measurement</u>

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

~~Comp Composite~~ = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production—see Special Condition No. 5.

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS—STEAMED AND CANNED OYSTER PROCESSING—ALL EXISTING SOURCES

20. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from mechanized oyster processing, from outfall(s) _____.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	190	270	NA	1/3 Months	Comp Composite
Oil and Grease	NL	NL	1.7	2.3	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	<u>Measure Measurement</u>

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

~~Comp Composite~~ = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production—see Special Condition No. 5.

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

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Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS—STEAMED AND CANNED OYSTER PROCESSING—ALL NEW SOURCES

21. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from mechanized oyster processing, from outfall(s) _____.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD ₅	NL	NL	17- 0	67- 0	NA	1/3 Months	Comp <u>Composite</u>
TSS	NL	NL	39- 0	56- 0	NA	1/3 Months	Comp <u>Composite</u>
Oil and Grease	NL	NL	0.42	0.84	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measure <u>Measurement</u>

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

~~Comp Composite~~ = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production—see Special Condition No. 5.

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS—SCALLOP PROCESSING—ALL EXISTING SOURCES

22. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from scallop processing, from outfall(s) _____.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab

Regulations

TSS	NL	NL	1.4	5.7	NA	1/3 Months	<u>Comp Composite</u>
Oil and Grease	NL	NL	0.23	7.3	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	<u>Measure Measurement</u>

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Comp Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production—see Special Condition No. 5.

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS—SCALLOP PROCESSING—ALL NEW SOURCES

23. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from scallop processing, from outfall(s) _____.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	1.4	5.7	NA	1/3 Months	<u>Comp Composite</u>
Oil and Grease	NL	NL	0.23	7.3	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	<u>Measure Measurement</u>

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Comp Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production—see Special Condition No. 5.

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

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Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS—FARM-RAISED CATFISH PROCESSING—EXISTING SOURCES WHICH PROCESS MORE THAN 3,000 LBS OF RAW MATERIAL PER DAY ON ANY DAY

24. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from farm-raised catfish processing, from outfall(s)

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	9.2	28	NA	1/3 Months	Comp <u>Composite</u>
Oil and Grease	NL	NL	3.4	10.0	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measure <u>Measurement</u>

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

~~Comp~~ Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production—see Special Condition No. 5.

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS—FARM-RAISED CATFISH PROCESSING—ALL NEW SOURCES

25. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from farm-raised catfish processing, from outfall(s)

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD ₅	NL	NL	2.3	4.6	NA	1/3 Months	Comp <u>Composite</u>

Regulations

TSS	NL	NL	5.7	11.0	NA	1/3 Months	<u>Comp Composite</u>
Oil and Grease	NL	NL	0.45	0.90	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	<u>Measure Measurement</u>

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Comp Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production—see Special Condition No. 5.

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS—HERRING PROCESSING—EXISTING SOURCES

26. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from herring processing, from outfall(s) _____.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	24	32	NA	1/3 Months	<u>Comp Composite</u>
Oil and Grease	NL	NL	10	27	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	<u>Measure Measurement</u>

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

Comp Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production—see Special Condition No. 5.

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

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Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS—HERRING PROCESSING—ALL NEW SOURCES

27. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from herring processing, from outfall(s) _____.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD ₅	NL	NL	15	16	NA	1/3 Months	Comp Composite
TSS	NL	NL	5.2	7.0	NA	1/3 Months	Comp Composite
Oil and Grease	NL	NL	1.1	2.9	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measure Measurement

NL = No Limitation, monitoring required

NA = Not applicable

Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

~~Comp~~ Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

Production—see Special Condition No. 5.

Samples shall be collected by March 31, June 30, September 30, and December 31 and reported by the 10th of the following month on the facility's Discharge Monitoring Report (DMR). All calculations shall be submitted with the DMR.

B. Special conditions.

1. No sewage shall be discharged from a point source to surface waters at this facility except under the provisions of another VPDES permit specifically issued for that purpose.

2. There shall be no chemicals added to the water or waste to be discharged [~~including sodium tripolyphosphate~~], other than those listed on the owner's accepted registration statement.

3. Wastewater should be reused or recycled to the maximum extent practicable.

4. The permittee shall comply with the following solids management plan:

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

b. All floors, machinery, conveyor belts, dock areas, etc. shall be dry swept or dry brushed prior to washdown.

c. All settling basins shall be cleaned frequently in order to achieve effective settling.

d. All solids resulting from the seafood processes covered under this general permit, other than oyster, clam or scallop shells, shall be handled, stored and disposed of so as to prevent a discharge to state waters of such solids or industrial wastes or other wastes from those solids.

e. The permittee shall install and properly maintain wastewater treatment necessary in order to remove organic solids present in the wastewater that may settle and accumulate on the substrate of the receiving waters in other than trace amounts.

f. All employees shall receive training relative to preventive measures taken to control the release of solids from the facility into surface waters.

5. Production to be reported and used in calculating effluent discharge levels in terms of kg/kkg shall be the weight in kilograms of raw material processed, in the form in which it is received at the processing plant, on the day of effluent sampling, except for the hand-shucked oyster, steamed and canned oyster, and scallop processing subcategories, for which production shall mean the weight of oyster or scallop meat after processing. The effluent levels in terms of kg/kkg shall be calculated by dividing the measured pollutant load in kg/day by the production level in kkg (thousands of kilograms).

6. The permittee shall notify the department as soon as they know or have reason to believe:

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

- (1) One hundred micrograms per liter (100 µg/l);
- (2) Two hundred micrograms per liter (200 µg/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;
- (3) Five times the maximum concentration value reported for that pollutant in the permit application; or
- (4) The level established by the board.

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

- (1) Five hundred micrograms per liter (500 µg/l);
- (2) One milligram per liter (1 mg/l) for antimony;
- (3) Ten times the maximum concentration value reported for that pollutant in the permit application; or
- (4) The level established by the board.

7. Compliance reporting and recordkeeping under Part I A.

a. The quantification levels (QL) shall be less than or equal to the following concentrations:

<u>Effluent Parameter</u>	<u>Quantification Level</u>
<u>BOD</u>	<u>2.0 mg/l</u>
<u>TSS</u>	<u>1.0 mg/l</u>
<u>Oil and Grease</u>	<u>5.0 mg/l</u>

The QL is defined as the lowest concentration used to calibrate a measurement system in accordance with the procedures published for the test method.

b. Recording results. Any concentration below the QL used in the analysis shall be recorded as < "QL" if it is less than the QL used in the analysis (the QL must be less than or equal to the QL in subdivision a of this subdivision. Otherwise the numerical value shall be recorded.

c. Monitoring results shall be recorded using the same number of significant digits as listed in the permit. Regardless of the rounding conventions used by the permittee (e.g., 5 always rounding up or to the nearest even number), the permittee shall use the convention consistently, and shall ensure that consulting laboratories employed by the permittee use the same convention.

8. The discharges authorized by this permit shall be controlled as necessary to meet water quality standards in 9VAC25-260.

9. If a new process is added after coverage under the general permit is obtained, an amended registration statement must be submitted at least 30 days prior to commencing operation of the new process.

Part II
Storm Water Pollution Prevention Plans

A storm water pollution prevention plan (SWPPP) shall be developed for each facility covered by this permit, which has storm water discharges and is classified under SIC Code 2091 or 2092.

The SWPPP shall be prepared in accordance with good engineering practices and shall identify potential sources of pollution that may reasonably be expected to affect the quality of storm water discharges from the facility. In addition, the plan shall describe and ensure the implementation of practices that will be used to reduce the pollutants in storm water discharges from the facility, and shall assure compliance with the terms and conditions of this permit. Permittees must implement the provisions of the SWPPP as a condition of this permit.

The SWPPP requirements of this general permit may be fulfilled by incorporating by reference other plans or documents such as an erosion and sediment control (ESC) plan, a spill prevention control and countermeasure (SPCC) plan developed for the facility under § 311 of the

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Clean Water Act or best management practices (BMP) programs otherwise required for the facility provided that the incorporated plan meets or exceeds the plan requirements of this section. If an ESC plan is being incorporated by reference, it shall have been approved by the locality in which the activity is to occur or by another appropriate plan approving authority authorized under the Erosion and Sediment Control Regulations, 4VAC50-30. All plans incorporated by reference into the SWPPP become enforceable under this permit.

A. Deadlines for plan preparation and compliance.

1. Facilities that were covered under the ~~2004~~ 2006 Seafood Processing General Permit. Owners of facilities that were covered under the ~~2004~~ 2006 Seafood Processing General Permit who are continuing coverage under this general permit shall update and implement any revisions to the SWPPP not later than December 30, ~~2006~~ 2011.

2. New facilities, facilities previously covered by an expiring individual permit, and existing facilities not currently covered by a VPDES permit. Owners of new facilities, facilities previously covered by an expiring individual permit, and existing facilities not currently covered by a VPDES permit who elect to be covered under this general permit must prepare and implement the SWPPP prior to submitting the registration statement.

3. New owners of existing facilities. Where the owner of an existing facility that is covered by this permit changes, the new owner of the facility must update and implement any revisions to the SWPPP within 60 days of the ~~ownership change~~ transfer of title.

4. Extensions. Upon a showing of good cause, the director may establish a later date in writing for the preparation and compliance with the SWPPP.

B. Contents of the plan. The plan shall include, at a minimum, the following items:

1. Pollution prevention team. The plan shall identify the staff individuals by name or title that comprise the facility's storm water pollution prevention team. The pollution prevention team is responsible for assisting the facility or plant manager in developing, implementing, maintaining, ~~and~~ revising, and maintaining compliance with the facility's SWPPP. ~~Responsibilities~~ Specific responsibilities of each staff individual on the team ~~must~~ shall be identified and listed.

2. Site description. The SWPPP shall include the following:

a. Activities at the facility. A description of the nature of the industrial ~~activity(ies)~~ activities at the facility.

b. General location map. A general location map (e.g., USGS quadrangle or other map) with enough detail to identify the location of the facility and the receiving waters within one mile of the facility.

c. Site map. A site map identifying the following:

(1) The size of the property (in acres);

(2) The location and extent of significant structures and impervious surfaces (roofs, paved areas, and any other impervious areas);

(3) Locations of all storm water conveyances including ditches, pipes, swales, and inlets, and the ~~Directions~~ directions of storm water flow (e.g., use arrows to show which ways storm water will flow);

~~(2)~~ (4) Locations of all existing structural and source control BMPs;

~~(3)~~ (5) Locations of all surface water bodies, including wetlands;

(4) (6) Locations of identified potential pollutant sources and where significant materials are exposed to precipitation;

~~(5)~~ (7) Locations where major significant spills or leaks have occurred;

~~(6)~~ (8) Locations of the following activities where such activities are exposed to precipitation: fueling stations; vehicle and equipment maintenance and/or cleaning areas; loading/unloading areas; locations used for the treatment, storage or disposal of wastes; and liquid storage tanks; processing and storage areas; access roads, rail cars and tracks; transfer areas for substances in bulk; and machinery;

~~(7)~~ (9) Locations of storm water outfalls and an approximate outline of the area draining to each outfall, and location of municipal storm sewer systems (MS4s), if the storm water from the facility discharges to them;

~~(8)~~ (10) Location and description of all nonstorm water discharges;

~~(9)~~ Locations of the following activities where such activities are exposed to precipitation: processing and storage areas; access roads, rail cars and tracks; the location of transfer of substance in bulk; and machinery; (11) Location of any storage piles containing salt used for deicing or other commercial or industrial purposes; and

~~(10)~~ (12) Location and source of runoff runoff to the site from adjacent property containing, where the runoff contains significant quantities of pollutants of concern to the facility (the. The permittee may shall include an evaluation with the SWPPP of how the

quality of the storm water running onto the facility impacts the facility's storm water ~~discharges)~~ discharges.

d. Receiving waters and wetlands. The name of ~~the nearest all surface waters~~ receiving ~~water(s) discharges from the site~~, including intermittent streams, dry sloughs, and arroyos ~~and the areal extent and~~. Provide a description of wetland sites that may receive discharges from the facility. If the facility discharges through an MS4, identify the MS4 operator and the receiving water to which the MS4 discharges.

3. Summary of potential pollutant sources. The plan shall identify each separate area at the facility where industrial materials or activities are exposed to storm water. Industrial materials or activities include, but are not limited to: material handling equipment or activities, industrial machinery, raw materials, industrial production and processes, intermediate products, byproducts, final products, ~~or~~ and waste products. Material handling activities include, but are not limited to, the storage, loading and unloading, transportation, disposal, or conveyance of any raw material, intermediate product, final product or waste product. For each separate area identified, the description must shall include:

a. Activities in area. A list of the activities (e.g., material storage, equipment fueling and cleaning, cutting steel beams);

b. Pollutants. A list of the associated pollutant(s) or pollutant parameter(s) (e.g., crankcase oil, ~~iron, biochemical oxygen demand, pH, zinc, sulfuric acid, cleaning solvents~~, etc.) for each activity. The pollutant list must shall include all significant materials ~~that have been~~ handled, treated, stored, or disposed ~~in a manner to allow exposure that have been~~ exposed to storm water ~~between the time of in the~~ three years before being covered under this permit and the present prior to the date this SWPP was prepared or amended. The list shall include any hazardous substance or oil at the facility.

4. Spills and leaks. The SWPPP must shall clearly identify areas where potential spills and leaks that can contribute pollutants to storm water discharges can occur and their ~~accompanying drainage points corresponding outfalls~~. ~~For areas that are exposed to precipitation or that otherwise drain to a storm water conveyance at the facility to be covered under this permit, the~~ The plan must shall include a list of significant spills and leaks of toxic or hazardous pollutants that actually occurred at exposed areas, or that drained to a storm water conveyance during the three-year period prior to the date of the submission of a registration statement this SWPPP was prepared or

amended. The list ~~must shall~~ be updated if significant spills or leaks occur in exposed areas of the facility during the term of the permit. Significant spills and leaks include releases of oil or hazardous substances in excess of reportable quantities, and may also include releases of oil or hazardous substances that are not in excess of reporting requirements.

5. Sampling data. The plan ~~must shall~~ include a summary of existing discharge sampling data taken at the facility, and ~~must shall~~ also include a summary of sampling data collected during the term of this permit.

6. Storm water controls. ~~The SWPPP shall include a description of storm water management controls appropriate for the facility. The description of controls shall address the following minimum components:~~

a. Description of existing and planned BMPs. ~~The plan shall describe the type and location of existing nonstructural and structural best management practices (BMPs) selected for each of the areas where industrial materials or activities are exposed to storm water. All BMPs shall be implemented for all the areas identified in Part III B 3 Part II B 3 (summary of potential pollutant sources) should have a BMP(s) identified for the area's discharges. For areas where BMPs are not currently in place, include a description of appropriate BMPs that will be used to control pollutants in storm water discharges to prevent or control pollutants in storm water discharges from the facility. All reasonable steps shall be taken to control or address the quality of discharges from the site that may not originate at the facility. The SWPPP shall describe the type, location, and implementation of all BMPs for each area where industrial materials or activities are exposed to storm water. Selection of BMPs should shall take into consideration:~~

~~(1) The quantity and nature of the pollutants, and their potential to impact the water quality of receiving waters;~~

~~(2) Opportunities to combine the dual purposes of water quality protection and local flood control benefits, including physical impacts of high flows on streams (e.g., bank erosion, impairment of aquatic habitat, etc.);~~

~~(3) Opportunities to offset the impact of impervious areas of the facility on ground water recharge and base flows in local streams, taking into account the potential for ground water contamination.~~

(1) That preventing storm water from coming into contact with polluting materials is generally more effective, and less costly, than trying to remove pollutants from storm water;

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(2) BMPs generally shall be used in combination with each other for most effective water quality protection;

(3) Assessing the type and quantity of pollutants, including their potential to impact receiving water quality, is critical to designing effective control measures;

(4) That minimizing impervious areas at the facility can reduce runoff and improve groundwater recharge and stream base flows in local streams (however, care must be taken to avoid ground water contamination);

(5) Flow attenuation by use of open vegetated swales and natural depressions can reduce in-stream impacts of erosive flows;

(6) Conservation or restoration of riparian buffers will help protect streams from storm water runoff and improve water quality; and

(7) Treatment interceptors (e.g., swirl separators and sand filters) may be appropriate in some instances to minimize the discharge of pollutants.

b. ~~BMP types to be considered~~ Control measures. The permittee ~~must consider~~ shall implement the following types of structural, nonstructural and other BMPs for implementation ~~at to prevent and control pollutants in the storm water discharges from the facility, unless it can be demonstrated and documented that such controls are not relevant to the discharges (e.g., there are no storage piles containing salt). The SWPPP shall describe how each BMP is, or will be, implemented. The BMP examples listed below are not intended to be an exclusive list of BMPs that may be used. The permittee is encouraged to keep abreast of new BMPs or new applications of existing BMPs to find the most cost effective means of permit compliance for the facility. If BMPs are being used or planned at the facility that are not listed here (e.g., replacing a chemical with a less toxic alternative, adopting a new or innovative BMP, etc.), descriptions of them shall be included in this section of the SWPPP.~~

(1) Nonstructural BMPs.

~~(a) Good housekeeping. The permittee must keep all exposed areas of the facility in a clean, orderly manner where such exposed areas could contribute pollutants to storm water discharges. Common problem areas include around trash containers, storage areas and loading docks. Measures must also include a schedule for regular pickup and disposal of garbage and waste materials and routine inspections for leaks and conditions of drums, tanks and containers shall keep clean all exposed areas of the facility that are potential sources of pollutants to storm water discharges. Typical problem areas include areas around trash~~

containers, storage areas, loading docks, and vehicle fueling and maintenance areas. The plan shall include a schedule for regular pickup and disposal of waste materials, along with routine inspections for leaks and conditions of drums, tanks, and containers. The introduction of raw, final or waste materials to exposed areas of the facility shall be minimized to the maximum extent practicable. The generation of dust, along with off-site vehicle tracking of raw, final or waste materials, or sediments, shall be minimized to the maximum extent practicable.

~~(b) Minimizing~~ (2) Eliminating and minimizing exposure. ~~Where~~ To the extent practicable, industrial materials and activities shall be located inside, or protected by a storm-resistant shelter covering to prevent exposure to rain, snow, snowmelt, or and runoff.

~~(c) (3) Preventive maintenance. The permittee must shall have a preventive maintenance program that includes timely inspection and maintenance of storm water management devices (e.g., cleaning oil/water separators, catch basins), as well as inspection, testing, maintenance and repairing of facility equipment and systems to avoid breakdowns or failures that could result in discharges of pollutants to surface waters regular inspection, testing, maintenance, and repairing of all industrial equipment and systems to avoid breakdowns or failures that could result in leaks, spill, and other releases. This program is in addition to the specific BMP maintenance required under Part II C (Maintenance of BMPs).~~

~~(d) (4) Spill prevention and response procedures. The plan must shall describe the procedures that will be followed for cleaning up spills or leaks. The procedures and necessary spill response equipment must be made available to those employees who may cause or detect a spill or leak. Where appropriate, the plan must include an explanation of existing or planned material handling procedures, storage requirements, secondary containment, and equipment (e.g., diversion valves), that are intended to minimize spills or leaks at the facility. Measures for cleaning up hazardous material spills or leaks must be consistent with applicable RCRA regulations at 40 CFR Part 264 (2005) and 40 CFR Part 265 (2005) preventing and responding to spills and leaks.~~

(a) Preventive measures include barriers between material storage and traffic areas, secondary containment provisions, and procedures for material storage and handling.

(b) Response procedures shall include (i) notification of appropriate facility personnel, emergency agencies, and regulatory agencies; and (ii) procedures for

stopping, containing, and cleaning up spills. Measures for cleaning up hazardous material spills or leaks shall be consistent with applicable RCRA regulations at 40 CFR Part 264 (2005) and 40 CFR Part 265 (2005). Employees who may cause, detect, or respond to a spill or leak shall be trained in these procedures and have necessary spill response equipment available. If possible, one of these individuals shall be a member of the Pollution Prevention Team.

(c) Contact information for individuals and agencies that must be notified in the event of a spill shall be included in the SWPPP, and in other locations where it will be readily available.

(e) (5) Routine facility inspections. Facility personnel who are familiar with the industrial activity, the BMPs and the storm water pollution prevention plan shall be identified to inspect all areas of the facility where industrial materials or activities are exposed to storm water. These inspections are in addition to, or as part of, the comprehensive site evaluation and must include an evaluation of the existing storm water BMPs. The inspection frequency shall be specified in the plan based upon a consideration of the level of industrial activity at the facility, but shall be a minimum of quarterly unless more frequent intervals are specified elsewhere in the permit. Any deficiencies in the implementation of the SWPPP that are found must be corrected as soon as practicable, but not later than within 14 days of the inspection, unless permission for a later date is granted in writing by the director. The results of the inspections must be documented in the SWPPP, along with any corrective actions that were taken in response to any deficiencies or opportunities for improvement that were identified possess the knowledge and skills to assess conditions and activities that could impact storm water quality at the facility, and who can also evaluate the effectiveness of BMPs shall regularly inspect all areas of the facility where industrial materials or activities are exposed to storm water. These inspections are in addition to, or as part of, the comprehensive site evaluation required under Part II D. At least one member of the Pollution Prevention Team shall participate in the routine facility inspections. The inspection frequency shall be specified in the plan based upon a consideration of the level of industrial activity at the facility, but shall be a minimum of quarterly unless more frequent intervals are specified elsewhere in the permit or written approval is received from the department for less frequent intervals. Any deficiencies in the implementation of the SWPPP that are found shall be corrected as soon as practicable, but not later than within 30 days of the inspection, unless permission for a later date is granted in writing by the director. The

results of the inspections shall be documented in the SWPPP, along with the date(s) and description(s) of any corrective actions that were taken in response to any deficiencies or opportunities for improvement that were identified.

(f) (6) Employee training. The SWPPP must describe the storm water employee training program for the facility. The description should include the topics to be covered, such as spill response, good housekeeping, and material management practices, and must identify periodic dates for such training (e.g., every six months during the months of July and January). Employee training must be provided for all employees who work in areas where industrial materials or activities are exposed to storm water, and for employees who are responsible for implementing activities identified in the SWPPP (e.g., inspectors, maintenance people). The training should inform employees of the components and goals of the SWPPP permittee shall implement a storm water employee training program for the facility. The SWPPP shall include a schedule for all types of necessary training, and shall document all training sessions and the employees who received the training. Training shall be provided for all employees who work in areas where industrial materials or activities are exposed to storm water, and for employees who are responsible for implementing activities identified in the SWPPP (e.g., inspectors, maintenance personnel, etc.). The training shall cover the components and goals of the SWPPP, and include such topics as spill response, good housekeeping, material management practices, BMP operation and maintenance, etc. The SWPPP shall include a summary of any training performed.

(2) Structural BMPs.

(a) (7) Sediment and erosion control. The plan shall identify areas at the facility that, due to topography, land disturbance (e.g., construction), construction, landscaping, site grading), or other factors, have a potential for significant soil erosion. The plan must permittee shall identify and implement structural, vegetative, and/or stabilization BMPs that will be implemented to limit to prevent or control on-site and off-site erosion and sedimentation. Flow velocity dissipation devices shall be placed at discharge locations and along the length of any outfall channel if the flows would otherwise create erosive conditions.

(b) (8) Management of runoff. The plan shall describe the traditional storm water runoff management practices (permanent (i.e., permanent structural BMPs) other than those that control the generation or source(s) of pollutants) that currently exist or that are planned for the facility. These types of BMPs are

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typically used to divert, infiltrate, reuse, or otherwise reduce pollutants in storm water discharges from the site. The plan shall provide that all measures that the permittee determines to be reasonable and appropriate, or are required by a state or local authority shall be implemented and maintained. Factors for the permittee to consider when selecting appropriate BMPs should include:

(i) ~~The industrial materials and activities that are exposed to storm water, and the associated pollutant potential of those materials and activities;~~

(ii) ~~The beneficial and potential detrimental effects on surface water quality, ground water quality, receiving water base flow (dry weather stream flow), and physical integrity of receiving waters. Structural measures should be placed on upland soils, avoiding wetlands and floodplains, if possible.~~

(c) ~~Example BMPs. BMPs that could be used include but are not limited to: storm water detention structures (including wet ponds); storm water retention structures; flow attenuation by use of open vegetated swales and natural depressions; infiltration of runoff on-site; and sequential systems (which combine several practices).~~

(d) ~~Other Controls. Off site vehicle tracking of raw, final, or waste materials or sediments, and the generation of dust must be minimized. Tracking or blowing of raw, final, or waste materials from areas of no exposure to exposed areas must be minimized. Velocity dissipation devices (or equivalent measures) must be placed at discharge locations and along the length of any outfall channel if they are necessary to provide a nonerosive flow velocity from the structure to a water course. Structural BMPs may require a separate permit under § 404 of the CWA and the Virginia Water Protection Permit Program Regulation (9VAC25-210) before installation begins.~~

C. Maintenance. All BMPs identified in the SWPPP shall ~~must~~ be maintained in effective operating condition. ~~If site inspections identify BMPs that are not operating effectively, maintenance must be performed before the next anticipated storm event, or as necessary to maintain the continued effectiveness of storm water controls. If maintenance prior to the next anticipated storm event is impracticable, maintenance must be scheduled and accomplished as soon as practicable. In the case of nonstructural BMPs, the effectiveness of the BMP must be maintained by appropriate means (e.g., spill response supplies available and personnel trained, etc.). Storm water BMPs identified in the SWPPP shall be observed during active operation (i.e., during a storm water runoff event) to ensure that they are functioning correctly. Where discharge locations are inaccessible, nearby downstream locations~~

shall be observed. The observations shall be documented in the SWPPP.

The SWPPP shall include a description of procedures and a regular schedule for preventive maintenance of all BMPs, and shall include a description of the back-up practices that are in place should a runoff event occur while a BMP is off line. The effectiveness of nonstructural BMPs shall also be maintained by appropriate means (e.g., spill response supplies available and personnel trained, etc.).

If site inspections required by Part II B 6 b (5) (Routine facility inspections) or Part II D (Comprehensive site compliance evaluation) identify BMPs that are not operating effectively, repairs or maintenance shall be performed before the next anticipated storm event. If maintenance prior to the next anticipated storm event is not possible, maintenance shall be scheduled and accomplished as soon as practicable. In the interim, back-up measures shall be employed and documented in the SWPPP until repairs or maintenance is complete. Documentation shall be kept with the SWPPP of maintenance and repairs of BMPs, including the date or dates of regular maintenance, date or dates of discovery of areas in need of repair or replacement, and for repairs, date or dates that the BMPs returned to full function, and the justification for any extended maintenance or repair schedules.

D. Comprehensive site compliance evaluation. ~~The permittee shall conduct facility inspections (site compliance evaluations) comprehensive site compliance evaluations at least once a year. The inspections must evaluations shall be done by qualified personnel who may be either facility employees or outside constituents hired by the facility. The inspectors must be familiar with the industrial activity, the BMPs and the SWPPP, and must possess the skills to assess conditions at the facility that could impact storm water quality, and to assess the effectiveness of the BMPs that have been chosen to control the quality of the storm water discharges. If more frequent inspections are conducted, the SWPPP must specify the frequency of inspections possess the knowledge and skills to assess conditions and activities that could impact storm water quality at the facility, and who can also evaluate the effectiveness of BMPs. The personnel conducting the evaluations may be either facility employees or outside constituents hired by the facility.~~

1. Scope of the compliance evaluation. Inspections must Evaluations shall include all areas where industrial materials or activities are exposed to storm water and areas where spills and leaks have occurred within the past three years. Inspectors should look for, as identified in Part II B 3. The personnel shall evaluate:

a. Industrial materials, residue or trash ~~on the ground that may have or could contaminate or be washed away in~~ come into contact with storm water;

b. Leaks or spills from industrial equipment, drums, barrels, tanks or ~~similar~~ other containers that have occurred within the past three years;

c. Off-site tracking of industrial or waste materials or sediment where vehicles enter or exit the site;

d. Tracking or blowing of raw, final, or waste materials from areas of no exposure to exposed areas;

e. Evidence of, or the potential for, pollutants entering the drainage system;

f. Evidence of pollutants discharging to surface waters at all facility outfalls, and the condition of and around the outfall, including flow dissipation measures to prevent scouring;

g. Review of training performed, inspections completed, maintenance performed, quarterly visual examinations, and effective operation of BMPs; and

h. Results of both visual and any analytical monitoring done during the past year must shall be taken into consideration during the evaluation. Storm water BMPs identified in the SWPPP must be observed to ensure that they are operating correctly. Where discharge locations or points are accessible, they must be inspected to see whether BMPs are effective in preventing significant impacts to receiving waters. Where discharge locations are inaccessible, nearby downstream locations must be inspected if possible.

2. Based on the results of the ~~inspection~~ evaluation, the SWPPP shall be modified as necessary (e.g., show additional controls on the map required by Part II B 2 c; revise the description of controls required by Part II B 6 to include additional or modified BMPs designed to correct problems identified). Revisions to the SWPPP shall be completed within ~~two weeks~~ 30 days following the ~~inspection~~ evaluation, unless permission for a later date is granted in writing by the director. If existing BMPs need to be modified or if additional BMPs are necessary, implementation ~~must~~ shall be completed before the next anticipated storm event, if practicable, but not more than ~~12 weeks~~ 60 days after completion of the comprehensive site evaluation, unless permission for a later date is granted in writing by the ~~director~~ department.

3. Compliance evaluation report. A report shall be written summarizing the scope of the ~~inspection~~ evaluation, name(s) name or names of personnel making the ~~inspection~~ evaluation, the date(s) date or dates of the ~~inspection~~ evaluation, and ~~major~~ all observations relating to the implementation of the SWPPP, ~~and~~

~~actions taken shall be made and retained as part of the SWPPP for at least three years from the date of the inspection including elements stipulated in Part II D 1 (a) through (f) of this general permit. Major observations should~~ Observations shall include such things as: the location(s) location or locations of discharges of pollutants from the site; location or locations of previously unidentified sources of pollutants; location(s) location or locations of BMPs that need to be maintained or repaired; location(s) location or locations of failed BMPs that failed to operate as designed or proved inadequate for a particular location need replacement; and location(s) location or locations where additional BMPs are needed that did not exist at the time of inspection. The report shall identify any incidents of noncompliance that were observed. Where a report does not identify any incidents of noncompliance, the report shall contain a certification that the facility is in compliance with the SWPPP and this permit. The report shall be signed in accordance with Part III K; and maintained with the SWPPP.

4. Where compliance evaluation schedules overlap with routine inspections required under Part II B 6 b (5), the annual compliance evaluation may be used as one of the routine inspections.

F. E. Signature and plan review.

1. Signature/location. The ~~plan~~ SWPPP shall be signed in accordance with Part III K, dated, and retained on-site at the facility covered by this permit. All changes to the SWPPP, and other permit compliance documentation, must be signed and dated by the person preparing the change or documentation.

2. Availability. The permittee shall make the SWPPP, annual site compliance ~~inspection~~ evaluation report, and other information available to the department upon request.

3. Required modifications. The director may notify the permittee at any time that the ~~plan does~~ SWPPP, BMPs, or other components of the facility's storm water program do not meet one or more of the ~~minimum~~ requirements of this permit. The notification shall identify ~~those~~ specific provisions of the permit that are not being met, as well as the and may include required modifications to the storm water program, additional monitoring requirements, and special reporting requirements. The permittee shall make ~~the any~~ any required changes to the SWPPP within 60 days of receipt of such notification, unless permission for a later date is granted in writing by the director, and shall submit a written certification to the director that the requested changes have been made.

G. F. Maintaining an updated SWPPP.

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1. The permittee shall review and amend the SWPPP as appropriate whenever:

~~1. a. There is construction or a change in design, construction, operation, or maintenance at the facility that has a significant effect on the discharge, or the potential for the discharge, of pollutants from the facility;~~

~~b. Routine inspections or compliance evaluations determine that there are deficiencies in the BMPs;~~

~~2. During inspections, monitoring, or investigations c. Inspections by facility personnel or by local, state, or federal officials ~~it is determined~~ determine that modifications the SWPPP is ineffective in eliminating or significantly minimizing pollutants from sources or is otherwise not achieving the general objectives of controlling pollutants in discharges from the facility. are necessary;~~

~~d. There is a spill, leak or other release at the facility; or~~

~~e. There is an unauthorized discharge from the facility.~~

2. SWPPP modifications shall be made within 30 calendar days after discovery, observation, or event requiring a SWPPP modification. Implementation of new or modified BMPs (distinct from regular preventive maintenance of existing BMPs described in Part II C) shall be initiated before the next storm event if possible, but no later than 60 days after discovery, or as otherwise provided or approved by the director. The amount of time taken to modify a BMP or implement additional BMPs shall be documented in the SWPPP.

3. If the SWPPP modification is based on a release or unauthorized discharge, include a description and date of the release, the circumstances leading to the release, actions taken in response to the release, and measures to prevent the recurrence of such releases. Unauthorized releases and discharges are subject to the reporting requirements of Part III G of this permit.

H. Special pollution prevention plan requirements.

~~1. Additional requirements for storm water discharges associated with industrial activity that discharge into or through municipal separate storm sewer systems.~~

~~a. In addition to the applicable requirements of this permit, facilities covered by this permit must comply with applicable requirements in municipal storm water management programs developed under VPDES permits issued for the discharge of the municipal separate storm sewer system that receives the facility's discharge, provided the permittee has been notified of such conditions.~~

~~b. Permittees that discharge storm water associated with industrial activity through a municipal separate storm sewer system, or a municipal system designated by the director shall make plans available to the municipal operator of the system upon request.~~

~~2. Additional requirements for storm water discharges associated with industrial activity from facilities subject to EPCRA § 313 reporting requirements. Any potential pollutant sources for which the facility has reporting requirements under EPCRA § 313 must be identified in the SWPPP.~~

Part III

Conditions Applicable to All VPDES Permits

A. Monitoring.

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

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

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

B. Records.

1. Records of monitoring information shall include:

a. The date, exact place, and time of sampling or measurements;

b. The individual(s) who performed the sampling or measurements;

c. The date(s) and time(s) analyses were performed;

d. The individual(s) who performed the analyses;

e. The analytical techniques or methods used; and

f. The results of such analyses.

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

during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the board.

C. Reporting monitoring results.

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

2. Monitoring results shall be reported on a Discharge Monitoring Report (DMR) or on forms provided, approved or specified by the department.

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

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

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

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

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

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or

2. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, or for recreation, or for other uses.

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

1. A description of the nature and location of the discharge;
2. The cause of the discharge;
3. The date on which the discharge occurred;
4. The length of time that the discharge continued;
5. The volume of the discharge;
6. If the discharge is continuing, how long it is expected to continue;
7. If the discharge is continuing, what the expected total volume of the discharge will be; and
8. Any steps planned or taken to reduce, eliminate and prevent a recurrence of the present discharge or any future discharges not authorized by this permit.

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

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

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

I. Reports of noncompliance. The permittee shall report any noncompliance that may adversely affect state waters or may endanger public health.

1. An oral report shall be provided within 24 hours from the time the permittee becomes aware of the circumstances. The following shall be included as information that shall be reported within 24 hours under this subdivision:

- a. Any unanticipated bypass; and
- b. Any upset that causes a discharge to surface waters.

2. A written report shall be submitted within 5 days and shall contain:

- a. A description of the noncompliance and its cause;
- b. The period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and
- c. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

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

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

NOTE: The immediate (within 24 hours) reports required in Parts III G, H, and I may be made to the department's regional office. Reports may be made by telephone or by fax. For reports outside normal working hours, leave a message and this shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Services maintains a 24-hour telephone service at 1-800-468-8892.

J. Notice of planned changes.

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

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

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

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

b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are subject neither to effluent limitations nor to notification requirements specified elsewhere in this permit; or

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

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

K. Signatory requirements.

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

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

taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

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

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

2. Reports, etc. All reports required by permits, and other information requested by the board, shall be signed by a person described in Part III K 1 or by a duly authorized representative of that person. A person is a duly authorized representative only if:

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

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

c. The written authorization is submitted to the department.

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

4. Certification. Any person signing a document under Parts III K 1 or 2 shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted

is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

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

The permittee shall comply with effluent standards or prohibitions established under § 307(a) of the federal Clean Water Act for toxic pollutants and with standards for sewage sludge use or disposal established under § 405(d) of the federal Clean Water Act within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if this permit has not yet been modified to incorporate the requirement.

M. Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall submit a new registration statement at least ~~180~~ 30 days before the expiration date of the existing permit, unless permission for a later date has been granted by the board. The board shall not grant permission for registration statements to be submitted later than the expiration date of the existing permit.

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

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

P. Oil and hazardous substance liability. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the

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permittee is or may be subject under §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

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

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

S. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

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

U. Bypass.

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

2. Notice.

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

b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in Part III I (reports of noncompliance).

3. Prohibition of bypass.

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

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

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

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

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

V. Upset.

1. An upset, defined in 9VAC25-31-10, constitutes an affirmative defense to an action brought for noncompliance with technology-based permit effluent limitations if the requirements of Part III V 2 are met. A determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is not a final administrative action subject to judicial review.

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

a. An upset occurred and that the permittee can identify the cause(s) of the upset;

b. The permitted facility was at the time being properly operated;

c. The permittee submitted notice of the upset as required in Part III I; and

d. The permittee complied with any remedial measures required under Part III S.

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

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

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted or where records must be kept under the conditions of this permit;

2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
4. Sample or monitor at reasonable times, for the purposes of ensuring permit compliance or as otherwise authorized by the federal Clean Water Act and the State Water Control Law, any substances or parameters at any location.

For purposes of this section, the time for inspection shall be deemed reasonable during regular business hours and whenever the facility is discharging. Nothing contained herein shall make an inspection unreasonable during an emergency.

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

Y. Transfer of permits.

1. Permits are not transferable to any person except after notice to the department. Except as provided in Part III Y 2, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued, or a minor modification made, to identify the new permittee and incorporate such other requirements as may be necessary under the State Water Control Law and the federal Clean Water Act.

2. As an alternative to transfers under Part III Y 1, this permit may be automatically transferred to a new permittee if:

- a. The current permittee notifies the department at least within 30 days in advance of the ~~proposed~~ transfer of the title to the facility or property;
- b. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and
- c. The board does not notify the existing permittee and the proposed new permittee of its intent to modify or revoke and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part III Y 2 b.

Z. Severability. The provisions of this permit are severable, and if any provision of this permit or the

application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances and the remainder of this permit shall not be affected thereby.

NOTICE: The following form used in administering the regulation was filed by the agency. The form is not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name to access a form. The form is also available through the agency contact or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

FORMS (9VAC25-115)

[~~[VPDES Change of Ownership Agreement Form \(eff. 7/10\)](#)~~]

[VPDES Change of Ownership Agreement Form \(undated\)](#)]

V.A.R. Doc. No. R10-2155; Filed January 10, 2011, 3:05 p.m.

Proposed Regulation

Title of Regulation: **9VAC25-260. Water Quality Standards (amending 9VAC25-260-450).**

Statutory Authority: § 62.1-44.15 of the Code of Virginia; 33 USC § 1251 et seq.; 40 CFR Part 131.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: April 15, 2011.

Agency Contact: David C. Whitehurst, Department of Environmental Quality, P.O. Box 1105, 629 East Main Street, Richmond, VA 23218, telephone (804) 698-4121, FAX (804) 698-4116, or email david.whitehurst@deq.virginia.gov.

Basis: Section 62.1-44.15 of the Code of Virginia mandates and authorizes the board to establish water quality standards and policies for any state waters consistent with the purpose and general policy of the State Water Control Law and to modify, amend, or cancel any such standards or policies established. The federal Clean Water Act at § 303(c) mandates the State Water Control Board to review and, as appropriate, modify and adopt water quality standards. The corresponding federal water quality standards regulation at 40 CFR 131.6 describes the minimum requirements for water quality standards. The minimum requirements are use designations, water quality criteria to protect the designated uses, and an antidegradation policy.

The proposed amendments do not exceed the minimum requirements of any legally binding state or federal mandates, nor are they more stringent than federal requirements, which require, as a minimum, that states

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have a process whereby states may designate the uses for a water body. The U.S. Environmental Protection Agency (EPA) Water Quality Standards regulation (40 CFR 131.10) is the regulatory basis for the EPA requiring the states to specify designated uses. EPA retains approval/disapproval oversight, but delegates to the states the election and designation of specific public water supplies.

Purpose: The proposed amendments to the regulation are necessary to protect the health, safety, or welfare of citizens by providing appropriate water quality protection for a downstream public water supply. Although the majority of the water supply users would be citizens of North Carolina, the water supply (Dan River) is shared by Virginia and North Carolina. Federal regulation (40 CFR 131.10(b)) states "...the State shall take into consideration the water quality standards of downstream waters and shall ensure that its water quality standards provide for the attainment and maintenance of the water quality standards of downstream waters." North Carolina water quality standards require public water supply protection for a 10-mile distance upriver from a drinking water supply intake that includes tributaries as well as the river main stem. The Dan River and some of its tributaries exit North Carolina and enter Virginia before this 10-mile limit from the North Carolina proposed intake is reached.

Substance: The proposed amendment adds a public water supply (PWS) notation in the special standards column of 9VAC25-260-450 and associated narrative language describing that portion of the Dan River and tributaries to which the PWS special standard applies.

Issues: The primary advantage to the public is providing appropriate water quality protection to a public drinking water supply source. The primary disadvantage is that PWS criteria listed in the parameter table of 9VAC25-260-140 B apply to waters designated as PWS and may lead to more stringent effluent limits for affected dischargers. There are two permitted facilities within the proposed PWS segment. One is an individual permit with several stormwater discharges and the other is a Stormwater Industrial General Permit. Agency water permits staff is not aware of any impacts the designation would have on these facilities. The City of Danville North Side waste water treatment facility discharge point (with a diffuser) to the Dan River is a little over one-tenth of a mile upstream of the terminus of the proposed PWS segment. Low flow conditions are utilized at the point of discharge when permit limits are calculated. A downstream water withdrawal would not affect calculation of permit limits for Danville's discharge.

This regulatory action poses no disadvantages to the public or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The State Water Control Board (Board) proposes to amend the Water Quality Standards, Section 9VAC25-260-450, by designating as Public Water Supply (9VAC25-260-380 D 1) an approximately one mile segment of the Dan River in Virginia and its tributaries in Virginia near the North Carolina border.

Result of Analysis. There is insufficient data to accurately compare the magnitude of the benefits versus the costs.

Estimated Economic Impact. A raw water intake intended to serve Roxboro, North Carolina, and the North Carolina counties of Person and Caswell has been proposed by the state of North Carolina for the Dan River near the town of Milton, North Carolina, approximately 10 miles downriver from Danville, Virginia. North Carolina water quality standards require public water supply protections to extend 10 miles upriver from the intake. The Board received a petition to designate as public water supply (PWS) a sufficient portion of the Dan River and its tributaries to complete the 10-mile run of the river as required by North Carolina water quality standards. In order to comply with North Carolina's request, the Board proposes to designate approximately a one mile segment of the Dan River in Virginia and its tributaries in Virginia near the state line as PWS.

Waters designated as PWS have more stringent effluent limits for affected dischargers. According to the Department of Environmental Quality (Department) there are two permitted facilities within the proposed PWS segment. One has an individual permit with several stormwater discharges (Goodyear) and the other has a stormwater industrial general permit (Blue Ridge Fiberboard). The Department does not believe that the more stringent effluent limits for waters designated PWS will affect these two firms given their current type and level of discharge. Thus the proposed amendment does not produce an immediate cost. There is some potential future cost in that designating the segment as PWS would make some potential industrial uses (for firms who may consider locating within the segment in question) more expensive with the more stringent PWS discharge standards.

On the other hand, federal regulation (40 CFR 131.10(b)) states "...the State shall take into consideration the water quality standards of downstream waters and shall ensure that its water quality standards provide for the attainment and maintenance of the water quality standards of downstream waters." Though the benefit for public drinking water quality by designating the segment as PWS would be for North Carolina in this case, complying with North Carolina's request will likely generate goodwill and

may increase the likelihood that North Carolina will comply with potential future requests from Virginia.

Since it is unknown whether any firms would in practice wish to exceed the more stringent PWS discharge standards in the future, and the amount of goodwill and the likely benefit of such goodwill cannot be easily quantified, there is insufficient information to conclusively determine whether or not the costs of the proposed amendment exceed the benefits.

Businesses and Entities Affected. Currently there are two permitted facilities within the proposed PWS designation: Goodyear-Danville on Hogans Creek, which is a tributary to the Dan River, and Blue Ridge Fiberboard on the Dan River. Blue Ridge Fiberboard is a small business while Goodyear is not. These two firms and any other potential firms that may wish to locate within the proposed PWS designated area are potentially affected by the proposed amendment.

Localities Particularly Affected. The proposed amendment particularly affects Pittsylvania County and the City of Danville.

Projected Impact on Employment. The proposal amendment is unlikely to significantly affect employment, at least in the near term.

Effects on the Use and Value of Private Property. The proposed amendments are unlikely to significantly affect current use of private property. Some potential industrial uses (for firms who may consider locating within the segment in question) would be more costly with the more stringent PWS discharge standards. This could potentially discourage some development on the approximately one mile segment of the Dan River in Virginia and its tributaries.

Small Businesses: Costs and Other Effects. The proposed amendments are unlikely to significantly affect small businesses currently located within the segment. Some potential industrial uses (for firms who may consider locating within the segment in question) would be more costly with the more stringent PWS discharge standards.

Small Businesses: Alternative Method that Minimizes Adverse Impact. Other than denying North Carolina's request to designate the segment as PWS, there is no alternative method that would reduce adverse impact.

Real Estate Development Costs. Designating the approximately one mile segment of the Dan River in Virginia and its tributaries as PWS could increase the costs of development on the segment if the potential development involved discharge in excess of the PWS criteria. This could potentially discourage some

development on the approximately one mile segment of the Dan River in Virginia and its tributaries.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14 (10). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency Response to Economic Impact Analysis: The Department of Environmental Quality has reviewed the economic impact analysis prepared by the Department of Planning and Budget and has no comment.

Summary:

The proposed amendments designate an approximately one-mile segment of the Dan River in Virginia and its tributaries in Virginia near the Virginia/North Carolina state line as public water supply. A raw water intake intended to serve Roxboro, North Carolina, and the North Carolina counties of Person and Caswell is proposed by the state of North Carolina for the Dan River near the town of Milton, North Carolina, approximately 10 miles downriver from Danville, Virginia. North Carolina water quality standards require public water supply protections to extend 10 miles upriver from the intake. The State Water Control Board received a petition to designate as public water supply a sufficient portion of the Dan River and its tributaries to complete the 10-mile run of the river as required by North Carolina water quality standards.

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9VAC25-260-450. Roanoke River Basin.

SEC.	CLASS	SP. STDS.	SECTION DESCRIPTION
1	III	PWS	Lake Gaston and the John Kerr Reservoir in Virginia and their tributaries in Virginia, unless otherwise designated in this chapter (not including the Roanoke or the Dan Rivers). The Roanoke River Service Authority's water supply intake is in this section.
1a	III		Dockery Creek and its tributaries to their headwaters.
2	III		Dan River and its tributaries from the John Kerr Reservoir to the Virginia-North Carolina state line just east of the Pittsylvania-Halifax County line, unless otherwise designated in this chapter.
2a	III	PWS	Dan River and its tributaries from South Boston's raw water intake to points 5 miles upstream.
2b	III	PWS	Banister River and its tributaries from Burlington Industries' inactive raw water intake (about 2000 feet downstream of Route 360) inclusive of the Town of Halifax intake at the Banister Lake dam upstream to the Pittsylvania/Halifax County Line (designation for main stem and tributaries ends at the county line).
2c			(Deleted)
2d	III	PWS	Cherrystone Creek and its tributaries from Chatham's raw water intake upstream to their headwaters.
2e	III	PWS	Georges Creek from Gretna's raw water intake upstream to its headwaters.
2f	III	PWS	Banister River and its tributaries from point below its confluence with Bearskin Creek (at latitude 36°46'15"; longitude 79°27'08") just east of Route 703, upstream to their headwaters.
2g	III	PWS	Whitethorn Creek and its tributaries from its confluence with Georges Creek upstream to their headwaters.
3	III		Dan River and its tributaries from the Virginia-North Carolina state line just east of the Pittsylvania-Halifax County line upstream to the state line just east of Draper, N. C., unless otherwise designated in this chapter.
	<u>III</u>	<u>PWS</u>	<u>Dan River and its tributaries from the Virginia-North Carolina state line just south of Danville to points 1.34 miles upstream and the first unnamed tributary to Hogans Creek from the Virginia-North Carolina state line to a point 0.45 mile upstream.</u>
3a	III	PWS	Dan River and its tributaries from the Schoolfield Dam including the City of Danville's main water intake located just upstream of the Schoolfield Dam, upstream to the Virginia-North Carolina state line.
3b	IV	PWS	Cascade Creek and its tributaries.
3c	IV	PWS	Smith River and its tributaries from the Virginia-North Carolina state line to, but not including, Home Creek.
3d	VI	PWS	Smith River from DuPont's (inactive) raw water intake upstream to the Philpott Dam, unless otherwise designated in this chapter.
	VI	PWS	Natural Trout Waters in Section 3d
	ii		Smith River from DuPont's (inactive) raw water intake upstream to the Philpott Dam, unless otherwise designated in this chapter.
3e	IV		Philpott Reservoir, Fairystone Lake and their tributaries.
	V		Stockable Trout Waters in Section 3e

	v		Otter Creek from its confluence with Rennet Bag Creek (Philpott Reservoir) to its headwaters.
	v		Smith River (Philpott Reservoir portion) from the Philpott Dam (river mile 46.80) to river mile 61.14, just above the confluence with Small Creek.
	v		Rennet Bag Creek from its confluence with the Smith River to the confluence of Long Branch Creek.
	VI		Natural Trout Waters in Section 3e
	ii		Brogan Branch from its confluence with Rennet Bag Creek upstream including all named and unnamed tributaries.
	ii		Rennet Bag Creek from the confluence of Long Branch Creek upstream including all named and unnamed tributaries.
	ii		Roaring Run from its confluence with Rennet Bag Creek upstream including all named and unnamed tributaries.
3f	IV	PWS	North Mayo River and South Mayo River and their tributaries from the Virginia-North Carolina state line to points 5 miles upstream.
3g	IV		Interstate streams in the Dan River watershed above the point where the Dan crosses the Virginia-North Carolina state line just east of Draper, N. C., (including the Mayo and the Smith watersheds), unless otherwise designated in this chapter.
	V		Stockable Trout Waters in Section 3g
	vi		Dan River from the Virginia-North Carolina state line upstream to the Pinnacles Power House.
	***		Little Dan River from its confluence with the Dan River 7.8 miles upstream.
	v		Smith River from river mile 61.14 (just below the confluence of Small Creek), to Route 704 (river mile 69.20).
	VI		Natural Trout Waters in Section 3g
	ii		Dan River from Pinnacles Power House to Townes Dam.
	ii		Dan River from headwaters of Townes Reservoir to Talbott Dam.
	iii		Little Dan River from 7.8 miles above its confluence with the Dan River upstream including all named and unnamed tributaries.
	i		North Prong of the North Fork Smith River from its confluence with the North Fork Smith River upstream including all named and unnamed tributaries.
	ii		North Fork Smith River from its confluence with the Smith River upstream including all named and unnamed tributaries.
	iii		Smith River from Route 704 (river mile 69.20) to Route 8 (river mile 77.55).
	ii		Smith River from Route 8 (approximate river mile 77.55) upstream including all named and unnamed tributaries.
	ii		South Mayo River from river mile 38.8 upstream including all named and unnamed tributaries.
3h	IV	PWS	South Mayo River and its tributaries from the Town of Stuart's raw water intake 0.4 mile upstream of its confluence with the North Fork Mayo River to points 5 miles upstream.
	VI		Natural Trout Waters in Section 3h

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	iii		Brushy Fork from its confluence with the South Mayo River upstream including all named and unnamed tributaries.
	iii		Lily Cove Branch from its confluence with Rye Cove Creek upstream including all named and unnamed tributaries.
	iii		Rye Cove Creek from its confluence with the South Mayo River upstream including all named and unnamed tributaries.
	iii		South Mayo River from river mile 33.8 upstream including all named and unnamed tributaries.
3i	IV	PWS	Hale Creek and its tributaries from the Fairy Stone State Park's raw water intake 1.7 miles from its confluence with Fairy Stone Lake upstream to its headwaters.
3j	VI	PWS	Smith River and its tributaries from the Henry County Public Service Authority's raw water intake about 0.2 mile upstream of its confluence with Town Creek to points 5 miles upstream.
4	III		Intrastate tributaries to the Dan River above the Virginia-North Carolina state line just east of Draper, North Carolina, to their headwaters, unless otherwise designated in this chapter.
	V		Stockable Trout Waters in Section 4
	vi		Browns Dan River from the intersection of Routes 647 and 646 to its headwaters.
	vi		Little Spencer Creek from its confluence with Spencer Creek to its headwaters.
	vi		Poorhouse Creek from its confluence with North Fork South Mayo River upstream to Route 817.
	***		Rock Castle Creek from its confluence with the Smith River upstream to Route 40.
	VI		Natural Trout Waters in Section 4
	ii		Barnard Creek from its confluence with the Dan River upstream including all named and unnamed tributaries.
	ii		Big Cherry Creek from its confluence with Ivy Creek upstream including all named and unnamed tributaries.
	iii		Ivy Creek from its confluence with the Dan River upstream including all named and unnamed tributaries.
	iii		Camp Branch from its confluence with Ivy Creek upstream including all named and unnamed tributaries.
	iii		Haunted Branch from its confluence with Barnard Creek upstream including all named and unnamed tributaries.
	ii		Hookers Creek from its confluence with the Little Dan River upstream including all named and unnamed tributaries.
	iii		Ivy Creek from Coleman's Mill Pond upstream to Route 58 (approximately 2.5 miles).
	iii		Little Ivy Creek from its confluence with Ivy Creek upstream including all named and unnamed tributaries.
	iii		Little Rock Castle Creek from its confluence with Rock Castle Creek upstream including all named and unnamed tributaries.
	ii		Maple Swamp Branch from its confluence with Round Meadow Creek upstream including all named and unnamed tributaries.

	iii		Mayberry Creek from its confluence with Round Meadow Creek upstream including all named and unnamed tributaries.
	ii		Mill Creek from its confluence with the Dan River upstream including all named and unnamed tributaries.
	iii		North Fork South Mayo River from its confluence with the South Mayo River upstream including all named and unnamed tributaries.
	vi**		Patrick Springs Branch from its confluence with Laurel Branch upstream including all named and unnamed tributaries.
	iii		Polebridge Creek from Route 692 upstream including all named and unnamed tributaries.
	ii		Poorhouse Creek from Route 817 upstream including all named and unnamed tributaries.
	ii		Rhody Creek from its confluence with the South Mayo River upstream including all named and unnamed tributaries.
	iii		Rich Creek from Route 58 upstream including all named and unnamed tributaries.
	ii		Roaring Creek from its confluence with the Dan River upstream including all named and unnamed tributaries.
	i		Rock Castle Creek from Route 40 upstream including all named and unnamed tributaries.
	iii		Round Meadow Creek from its confluence with the Dan River upstream including all named and unnamed tributaries.
	ii		Sawpit Branch from its confluence with Round Meadow Creek upstream including all named and unnamed tributaries.
	ii		Shooting Creek from its confluence with the Smith River upstream including all named and unnamed tributaries.
	vi**		Spencer Creek from Route 692 upstream including all named and unnamed tributaries.
	iii		Squall Creek from its confluence with the Dan River upstream including all named and unnamed tributaries.
	ii		Tuggle Creek from its confluence with the Dan River upstream including all named and unnamed tributaries.
	ii		Widgeon Creek from its confluence with the Smith River upstream including all named and unnamed tributaries.
4a	III	PWS	Intrastate tributaries (includes Beaver Creek, Little Beaver Creek, and Jones Creek, for the City of Martinsville) to the Smith River from DuPont's (inactive) raw water intake to points 5 miles upstream from Fieldcrest Cannon's raw water intake.
4b	III	PWS	Marrowbone Creek and its tributaries from the Henry County Public Service Authority's raw water intake (about 1/4 mile upstream from Route 220) to their headwaters.
4c	III	PWS	Leatherwood Creek and its tributaries from the Henry County Public Service Authority's raw water intake 8 miles upstream of its confluence with the Smith River to points 5 miles upstream.
5	IV	PWS	Roanoke Staunton River from the headwaters of the John Kerr Reservoir to Leesville Dam unless otherwise designated in this chapter.

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5a	III		Tributaries to the Roanoke Staunton River from the headwaters of the John Kerr Reservoir to Leesville Dam, unless otherwise designated in this chapter.
	V		Stockable Trout Waters in Section 5a
	vi		Day Creek from Route 741 to its headwaters.
	VI		Natural Trout Waters in Section 5a
	iii		Gunstock Creek from its confluence with Overstreet Creek upstream including all named and unnamed tributaries.
	ii		Overstreet Creek from its confluence with North Otter Creek upstream including all named and unnamed tributaries.
5b	III	PWS	Spring Creek from Keysville's raw water intake upstream to its headwaters.
5c	III	PWS	Falling River and its tributaries from a point just upstream from State Route 40 (the raw water source for Dan River, Inc.) to points 5 miles upstream and including the entire Phelps Creek watershed which contains the Brookneal Reservoir.
5d	III		Falling River and its tributaries from 5 miles above Dan River, Inc. raw water intake to its headwaters.
5e	III	PWS	Reed Creek and its tributaries from Altavista's raw water intake upstream to their headwaters.
5f	III	PWS	Big Otter River and its tributaries from Bedford's raw water intake to points 5 miles upstream, and Stony Creek and Little Stony Creek upstream to their headwaters.
	VI	PWS	Natural Trout Waters in Section 5f
	ii		Little Stony Creek from 1 mile above its confluence with Stony Creek upstream including all named and unnamed tributaries.
	ii		Stony Creek from the Bedford Reservoir upstream including all named and unnamed tributaries.
5g	III		Big Otter River and its tributaries from 5 miles above Bedford's raw water intake upstream to their headwaters.
5h	III		Ash Camp Creek and that portion of Little Roanoke Creek from its confluence with Ash Camp Creek to the Route 47 bridge.
5i	III	PWS	The Roanoke River and its tributaries from the Town of Altavista's raw water intake, 0.1 mile upstream from the confluence of Sycamore Creek, to points 5 miles upstream.
5j	III	PWS	Big Otter River and its tributaries from the Campbell County Utilities and Service Authority's raw water intake to points 5 miles upstream.
6	IV	pH-6.5-9.5	Roanoke River from a point (at latitude 37°15'53"; longitude 79°54'00") 5 miles above the headwaters of Smith Mountain Lake upstream to Salem's #1 raw water intake.
	V		Stockable Trout Waters in Section 6
	***	pH-6.5-9.5	Roanoke River from its junction from Routes 11 and 419 to Salem's #1 raw water intake.
6a	III	NEW-1	Tributaries of the Roanoke River from Leesville Dam to Niagra Reservoir, unless otherwise designated in this chapter.
	V		Stockable Trout Waters in Section 6a

vi			Gourd Creek from 1.3 miles above its confluence with Snow Creek to its headwaters.
vi			Maggodee Creek from Boones Mill upstream to Route 862 (approximately 3.8 miles).
vii			South Fork Blackwater River from its confluence with the Blackwater River upstream to Roaring Run.
vi			South Prong Pigg River from its confluence with the Pigg River to its headwaters.
VI			Natural Trout Waters in Section 6a
iii			Daniels Branch from its confluence with the South Fork Blackwater River upstream including all named and unnamed tributaries.
ii			Green Creek from Roaring Run upstream including all named and unnamed tributaries.
ii			Pigg River from 1 mile above the confluence of the South Prong Pigg River upstream including all named and unnamed tributaries.
ii			Roaring Run from its confluence with the South Fork Blackwater River upstream including all named and unnamed tributaries.
6b			(Deleted)
6c	III	PWS	Falling Creek Reservoir and Beaverdam Reservoir.
6d	IV		Tributaries of the Roanoke River from Niagra Reservoir to Salem's #1 raw water intake, unless otherwise designated in this chapter.
	V		Stockable Trout Waters in Section 6d
vii			Tinker Creek from its confluence with the Roanoke River north to Routes 11 and 220.
VI			Natural Trout Waters in Section 6d
iii			Glade Creek from its junction with Berkley Road NE to the confluence of Coyner Branch.
6e	IV	PWS	Carvin Cove Reservoir and its tributaries to their headwaters.
6f	IV	PWS, NEW-1	Blackwater River and its tributaries from the Town of Rocky Mount's raw water intake (just upstream of State Route 220) to points 5 miles upstream.
6g	IV	PWS	Tinker Creek and its tributaries from the City of Roanoke's raw water intake (about 0.4 mile downstream from Glebe Mills) to points 5 miles upstream.
6h	IV	PWS	Roanoke River from Leesville Dam to Smith Mountain Dam (Gap of Smith Mountain), excluding all tributaries to Leesville Lake.
6i	IV	PWS	Roanoke River from Smith Mountain Dam (Gap of Smith Mountain) upstream to a point (at latitude 37°15'53"; longitude 79°54'00" and its tributaries to points 5 miles above the 795.0 foot contour (normal pool elevation) of Smith Mountain Lake.
7	IV	pH-6.5-9.5,ESW-2	Roanoke River and its tributaries, unless otherwise designated in this chapter, from Salem's #1 raw water intake to their headwaters.
	V		Stockable Trout Waters in Section 7
vi		pH-6.5-9.5	Elliott Creek from the confluence of Rocky Branch to its headwaters.
vi		pH-6.5-9.5	Goose Creek from its confluence with the South Fork Roanoke River to its headwaters.

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	vi	pH-6.5-9.5	Mill Creek from its confluence with Bottom Creek to its headwaters.
	***	pH-6.5-9.5	Roanoke River from 5 miles above Salem's #2 raw water intake to the Spring Hollow Reservoir intake (see section 7b).
	vi	pH-6.5-9.5	Smith Creek from its confluence with Elliott Creek to its headwaters.
	vi	pH-6.5-9.5	South Fork Roanoke River from 5 miles above the Spring Hollow Reservoir intake (see section 7b) to the mouth of Bottom Creek (river mile 17.1).
	VI		Natural Trout Waters in Section 7
	ii	pH-6.5-9.5	Big Laurel Creek from its confluence with Bottom Creek upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	Bottom Creek from its confluence with the South Fork Roanoke River upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	Lick Fork (Floyd County) from its confluence with Goose Creek upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	Mill Creek from its confluence with the North Fork Roanoke River upstream including all named and unnamed tributaries.
	iii	pH-6.5-9.5	Purgatory Creek from Camp Alta Mons upstream including all named and unnamed tributaries.
	ii	pH-6.5-9.5	Spring Branch from its confluence with the South Fork Roanoke River upstream including all named and unnamed tributaries.
7a	IV	PWS pH-6.5-9.5	Roanoke River and its tributaries from Salem's #1 raw water intake to points 5 miles upstream from Salem's #2 raw water intake.
	V	PWS	Stockable Trout Waters in Section 7a
	***	pH-6.5-9.5	Roanoke River from Salem's #1 raw water intake to a point 5 miles upstream from Salem's #2 raw water intake.
7b	IV	PWS pH-6.5-9.5	Roanoke River and its tributaries from the Spring Hollow Reservoir intake upstream to points 5 miles upstream.
	V	PWS	Stockable Trout Waters in Section 7b
	***	pH-6.5-9.5, hh	Roanoke River from the Spring Hollow Reservoir intake to the Montgomery County line.
	vi	pH-6.5-9.5	South Fork Roanoke River from its confluence with the Roanoke River to 5 miles above the Spring Hollow Reservoir intake.

VA.R. Doc. No. R09-24; Filed January 10, 2011, 3:05 p.m.

Final Regulation

Effective Date: March 16, 2011.

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

Agency Contact: David Lazarus, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4299, FAX (804) 698-4116, or email david.lazarus@deq.virginia.gov.

Summary:

The amendments add a total of 48 total maximum daily load wasteload allocations for the following river basins: Potomac-Shenandoah River Basin (9VAC25-720-50 A), James River Basin (9VAC25-720-60 A), Roanoke River Basin (9VAC25-720-80 A), Tennessee/Big Sandy River Basin (9VAC25-720-90 A), and Chesapeake Bay - Small Coastal - Eastern Shore Basin (9VAC25-720-110 A).

Title of Regulation: **9VAC25-720. Water Quality Management Planning Regulation (amending 9VAC25-720-50, 9VAC25-720-60, 9VAC25-720-80, 9VAC25-720-90, 9VAC25-720-110).**

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

9VAC25-720-50. Potomac-Shenandoah River Basin.

A. Total Maximum Daily Load (TMDLs).

TMDL #	Stream Name	TMDL Title	City/County	WBID	Pollutant	WLA	Units
1.	Muddy Creek	Nitrate TMDL Development for Muddy Creek/Dry River, Virginia	Rockingham	B21R	Nitrate	49,389.00	LB/YR
2.	Blacks Run	TMDL Development for Blacks Run and Cooks Creek	Rockingham	B25R	Sediment	32,844.00	LB/YR
3.	Cooks Creek	TMDL Development for Blacks Run and Cooks Creek	Rockingham	B25R	Sediment	69,301.00	LB/YR
4.	Cooks Creek	TMDL Development for Blacks Run and Cooks Creek	Rockingham	B25R	Phosphorus	0	LB/YR
5.	Muddy Creek	TMDL Development for Muddy Creek and Holmans Creek, Virginia	Rockingham	B22R	Sediment	286,939.00	LB/YR
6.	Muddy Creek	TMDL Development for Muddy Creek and Holmans Creek, Virginia	Rockingham	B22R	Phosphorus	38.00	LB/YR
7.	Holmans Creek	TMDL Development for Muddy Creek and Holmans Creek, Virginia	Rockingham/Shenandoah	B45R	Sediment	78,141.00	LB/YR

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8.	Mill Creek	TMDL Development for Mill Creek and Pleasant Run	Rockingham	B29R	Sediment	276.00	LB/YR
9.	Mill Creek	TMDL Development for Mill Creek and Pleasant Run	Rockingham	B29R	Phosphorus	138.00	LB/YR
10.	Pleasant Run	TMDL Development for Mill Creek and Pleasant Run	Rockingham	B27R	Sediment	0.00	LB/YR
11.	Pleasant Run	TMDL Development for Mill Creek and Pleasant Run	Rockingham	B27R	Phosphorus	0.00	LB/YR
12.	Linville Creek	Total Maximum Daily Load Development for Linville Creek: Bacteria and Benthic Impairments	Rockingham	B46R	Sediment	5.50	TONS/YR
13.	Quail Run	Benthic TMDL for Quail Run	Rockingham	B35R	Ammonia	7,185.00	KG/YR
14.	Quail Run	Benthic TMDL for Quail Run	Rockingham	B35R	Chlorine	27.63	KG/YR
15.	Shenandoah River	Development of Shenandoah River PCB TMDL (South Fork and Main Stem)	Warren & Clarke	B41R B55R B57R B58R	PCBs	179.38	G/YR
16.	Shenandoah River	Development of Shenandoah River PCB TMDL (North Fork)	Warren & Clarke	B51R	PCBs	0.00	G/YR
17.	Shenandoah River	Development of Shenandoah River PCB TMDL (Main Stem)	Warren & Clarke	WV	PCBs	179.38	G/YR
18.	Cockran Spring	Benthic TMDL Reports for Six Impaired Stream Segments in the Potomac-Shenandoah and James River Basins	Augusta	B10R	Organic Solids	1,556.00	LB/YR
19.	Lacey Spring	Benthic TMDL Reports for Six Impaired Stream Segments in the Potomac-Shenandoah and James River Basins	Rockingham	B47R	Organic Solids	680.00	LB/YR

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20.	Orndorff Spring	Benthic TMDL Reports for Six Impaired Stream Segments in the Potomac-Shenandoah and James River Basins	Shenandoah	B52R	Organic Solids	103.00	LB/YR
21.	Toms Brook	Benthic TMDL for Toms Brook in Shenandoah County, Virginia	Shenandoah	B50R	Sediment	8.1	T/YR
22.	Goose Creek	Benthic TMDLs for the Goose Creek Watershed	Loudoun, Fauquier	A08R	Sediment	1,587	T/YR
23.	Little River	Benthic TMDLs for the Goose Creek Watershed	Loudoun	A08R	Sediment	105	T/YR
24.	Christians Creek	Fecal Bacteria and General Standard Total Maximum Daily Load Development for Impaired Streams in the Middle River and Upper South River Watersheds, Augusta County, VA	Augusta	B14R	Sediment	145	T/YR
25.	Moffett Creek	Fecal Bacteria and General Standard Total Maximum Daily Load Development for Impaired Streams in the Middle River and Upper South River Watersheds, Augusta County, VA	Augusta	B13R	Sediment	0	T/YR
26.	Upper Middle River	Fecal Bacteria and General Standard Total Maximum Daily Load Development for Impaired Streams in the Middle River and Upper South River Watersheds, Augusta County, VA	Augusta	B10R	Sediment	1.355	T/YR

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27.	Mossy Creek	Total Maximum Daily Load Development for Mossy Creek and Long Glade Run: Bacteria and General Standard (Benthic) Impairments	Rockingham	B19R	Sediment	0.04	T/YR
28.	Smith Creek	Total Maximum Daily Load (TMDL) Development for Smith Creek	Rockingham, Shenandoah	B47R	Sediment	353,867	LB/YR
29.	Abrams Creek	Opequon Watershed TMDLs for Benthic Impairments: Abrams Creek and Lower Opequon Creek, Frederick and Clarke counties, Virginia	Frederick	B09R	Sediment	478	T/YR
30.	Lower Opequon Creek	Opequon Watershed TMDLs for Benthic Impairments: Abrams Creek and Lower Opequon Creek, Frederick and Clarke counties, Virginia	Frederick, Clarke	B09R	Sediment	1,039	T/YR
31.	Mill Creek	Mill Creek Sediment TMDL for a Benthic Impairment, Shenandoah County, Virginia	Shenandoah	B48R	Sediment	0.9	T/YR
32.	South Run	Benthic TMDL Development for South Run, Virginia	Fauquier	A19R	Phosphorus	0.038	T/YR
33.	Lewis Creek	Total Maximum Daily Load Development for Lewis Creek, General Standard (Benthic)	Augusta	B12R	Sediment	40	T/YR
34.	Lewis Creek	Total Maximum Daily Load Development for Lewis Creek, General Standard (Benthic)	Augusta	B12R	Lead	0	KG/YR
35.	Lewis Creek	Total Maximum Daily Load Development for Lewis Creek, General Standard (Benthic)	Augusta	B12R	PAHs	0	KG/YR

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36.	Bull Run	Total Maximum Daily Load Development for Lewis Creek, General Standard (Benthic)	Loudoun, Fairfax, and Prince William counties, and the Cities of Manassas and Manassas Park	A23R-01	Sediment	5,986.8	T/TR
37.	Popes Head Creek	Total Maximum Daily Load Development for Lewis Creek, General Standard (Benthic)	Fairfax County and Fairfax City	A23R-02	Sediment	1,594.2	T/YR
38.	Accotink Bay	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Fairfax	A15R	PCBs	0.0992	G/YR
39.	Aquia Creek	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Stafford	A28E	PCBs	6.34	G/YR
40.	Belmont Bay/ Occoquan Bay	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Prince William	A25E	PCBs	0.409	G/YR
41.	Chopawamsic Creek	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Prince William	A26E	PCBs	1.35	G/YR
42.	Coan River	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Northumberland	A34E	PCBs	0	G/YR
43.	Dogue Creek	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Fairfax	A14E	PCBs	20.2	G/YR

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44.	Fourmile Run	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Arlington	A12E	PCBs	11	G/YR
45.	Gunston Cove	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Fairfax	A15E	PCBs	0.517	G/YR
46.	Hooff Run & Hunting Creek	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Fairfax	A13E	PCBs	36.8	G/YR
47.	Little Hunting Creek	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Fairfax	A14E	PCBs	10.1	G/YR
48.	Monroe Creek	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Fairfax	A31E	PCBs	.0177	G/YR
49.	Neabsco Creek	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Prince William	A25E	PCBs	6.63	G/YR
50.	Occoquan River	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Prince William	A25E	PCBs	2.86	G/YR
51.	Pohick Creek/Pohick Bay	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Fairfax	A16E	PCBs	13.5	G/YR

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52.	Potomac Creek	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Stafford	A29E	PCBs	0.556	G/YR
53.	Potomac River, Fairview Beach	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	King George	A29E	PCBs	0.0183	G/YR
54.	Powells Creek	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Prince William	A26R	PCBs	0.0675	G/YR
55.	Quantico Creek	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Prince William	A26R	PCBs	0.742	G/YR
56.	Upper Machodoc Creek	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	King George	A30E	PCBs	0.0883	G/YR
57.	Difficult Creek	Benthic TMDL Development for Difficult Run, Virginia	Fairfax	A11R	Sediment	3,663.2	T/YR
58.	Abrams Creek	Opequon Watershed TMDLs for Benthic Impairments	Frederick and Clark	B09R	Sediment	1039	T/YR
59.	Lower Opequon	Opequon Watershed TMDLs for Benthic Impairments	Frederick and Clark	B09R	Sediment	1039	T/YR
<u>60.</u>	<u>South River</u>	<u>Bacteria and Benthic Total Maximum Daily Load Development for South River</u>	<u>Augusta and Rockingham</u>	<u>B32R</u>	<u>Sediment</u>	<u>619.4</u>	<u>T/YR</u>
<u>61.</u>	<u>South River</u>	<u>Bacteria and Benthic Total Maximum Daily Load Development for South River</u>	<u>Augusta and Rockingham</u>	<u>B32R</u>	<u>Phosphorus</u>	<u>6,929.9</u>	<u>KG/YR</u>

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<u>62.</u>	<u>South River</u>	<u>Total Maximum Daily Load Development for Mercury in the South River, South Fork Shenandoah River, and Shenandoah River, Virginia</u>	<u>Augusta, Rockingham, Page, and Warren</u>	<u>B32R</u>	<u>Mercury</u>	<u>112</u>	<u>G/YR</u>
<u>63.</u>	<u>South Fork Shenandoah River</u>	<u>Total Maximum Daily Load Development for Mercury in the South River, South Fork Shenandoah River, and Shenandoah River, Virginia</u>	<u>Augusta, Rockingham, Page, and Warren</u>	<u>B32R, B33R</u>	<u>Mercury</u>	<u>112</u>	<u>G/YR</u>
<u>64.</u>	<u>Shenandoah River</u>	<u>Total Maximum Daily Load Development for Mercury in the South River, South Fork Shenandoah River, and Shenandoah River, Virginia</u>	<u>Augusta, Rockingham, Page, and Warren</u>	<u>B32R, B33R</u>	<u>Mercury</u>	<u>112</u>	<u>G/YR</u>
<u>65.</u>	<u>Spout Run</u>	<u>Total Maximum Daily Load Development to Address Bacteria and Benthic Impairments in the Spout Run Watershed, Clarke County, Virginia</u>	<u>Clarke</u>	<u>B57R</u>	<u>Sediment</u>	<u>7.44</u>	<u>T/YR</u>
<u>66.</u>	<u>West Strait Creek</u>	<u>Benthic Total Maximum Daily Load Development for Strait Creek and West Strait Creek</u>	<u>Highland</u>	<u>B02R</u>	<u>Sediment</u>	<u>0.02</u>	<u>T/D</u>
<u>67.</u>	<u>West Strait Creek</u>	<u>Benthic Total Maximum Daily Load Development for Strait Creek and West Strait Creek</u>	<u>Highland</u>	<u>B02R</u>	<u>CBOD5</u>	<u>11</u>	<u>KG/D</u>
<u>68.</u>	<u>West Strait Creek</u>	<u>Benthic Total Maximum Daily Load Development for Strait Creek and West Strait Creek</u>	<u>Highland</u>	<u>B02R</u>	<u>Dry season (June – December) ammonia as N</u>	<u>1.6</u>	<u>KG/D</u>

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<u>69.</u>	<u>West Strait Creek</u>	<u>Benthic Total Maximum Daily Load Development for Strait Creek and West Strait Creek</u>	<u>Highland</u>	<u>B02R</u>	<u>Wet season (January – May) ammonia as N</u>	<u>2.9</u>	<u>KG/D</u>
<u>70.</u>	<u>Strait Creek</u>	<u>Benthic Total Maximum Daily Load Development for Strait Creek and West Strait Creek</u>	<u>Highland</u>	<u>B02R</u>	<u>Sediment</u>	<u>0.08</u>	<u>T/D</u>

B. Non-TMDL waste load allocations.

Water Body	Permit No.	Facility Name	Outfall No.	Receiving Stream	River Mile	Parameter Description	WLA	Units WLA
VAV-B02R	VA0023281	Monterey STP	001	West Strait Creek	3.85	CBOD ₅	11.4	KG/D
VAV-B08R	VA0065552	Opequon Water Reclamation Facility	001	Opequon Creek	32.66	BOD ₅ , JUN-NOV	207	KG/D
		AKA Winchester - Frederick Regional				CBOD ₅ , DEC-MAY	1514	KG/D
VAV-B14R	VA0025291	Fishersville Regional STP	001	Christians Creek	12.36	BOD ₅	182	KG/D
VAV-B23R	VA0060640	North River WWTF	001	North River	15.01	CBOD ₅ , JAN-MAY	700	KG/D
	7.23.04	AKA Harrisonburg - Rockingham Reg. Sewer Auth.				CBOD ₅ , JUN-DEC	800	KG/D
						TKN, JUN-DEC	420	KG/D
						TKN, JAN-MAY	850	KG/D
VAV-B32R	VA0002160	INVISTA - Waynesboro Formerly Dupont - Waynesboro	001	South River	25.3	BOD ₅	272	KG/D
VAV-B32R	VA0025151	Waynesboro STP	001	South River	23.54	CBOD ₅	227	KG/D
VAV-B32R	VA0028037	Skyline Swannanoa STP	001	South River UT	2.96	CBOD ₅ , JUN-OCT	113.6	KG/D
VAV-B32R	VA0028037	Skyline Swannanoa STP	001	South River UT	2.96	BOD ₅	8.5	KG/D
VAV-B35R	VA0024732	Massanutten Public Service STP	001	Quail Run	5.07	BOD ₅	75.7	KG/D
VAV-B37R	VA0002178	Merck & Company	001	S.F. Shenandoah River	88.09	BOD ₅	1570	KG/D
VAV-B37R	VA0002178	Merck & Company	001	S.F. Shenandoah River	88.09	AMMONIA, AS N	645.9	KG/D

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VAV-B49R	VA0028380	Stoney Creek Sanitary District STP	001	Stoney Creek	19.87	BOD ₅ , JUN-NOV	29.5	KG/D
VAV-B53R	VA0020982	Middletown STP	001	Meadow Brook	2.19	CBOD ₅	24.0	KG/D
VAV-B58R	VA0020532	Berryville STP	001	Shenandoah River	24.23	CBOD ₅	42.6	KG/D

C. Nitrogen and phosphorus waste load allocations to restore the Chesapeake Bay and its tidal rivers. The following table presents nitrogen and phosphorus waste load allocations for the identified significant dischargers and the total nitrogen and total phosphorus waste load allocations for the listed facilities.

Virginia Waterbody ID	Discharger Name	VPDES Permit No.	Total Nitrogen (TN) Waste Load Allocation (lbs/yr)	Total Phosphorus (TP) Waste Load Allocation (lbs/yr)
B37R	Coors Brewing Company	VA0073245	54,820	4,112
B14R	Fishersville Regional STP	VA0025291	48,729	3,655
B32R	INVISTA - Waynesboro (Outfall 101)	VA0002160	78,941	1,009
B39R	Luray STP	VA0062642	19,492	1,462
B35R	Massanutten PSA STP	VA0024732	18,273	1,371
B37R	Merck - Stonewall WWTP (Outfall 101) (10)	VA0002178	14,619	1,096
B12R	Middle River Regional STP	VA0064793	82,839	6,213
B23R	North River WWTF (2)	VA0060640	253,391	19,004
B22R	VA Poultry Growers -Hinton	VA0002313	27,410	1,371
B38R	Pilgrims Pride - Alma	VA0001961	18,273	914
B31R	Stuarts Draft WWTP	VA0066877	48,729	3,655
B32R	Waynesboro STP	VA0025151	48,729	3,655
B23R	Weyers Cave STP	VA0022349	6,091	457
B58R	Berryville STP	VA0020532	8,528	640
B55R	Front Royal STP	VA0062812	48,729	3,655
B49R	Georges Chicken LLC	VA0077402	31,065	1,553
B48R	Mt. Jackson STP (3)	VA0026441	8,528	640
B45R	New Market STP	VA0022853	6,091	457
B45R	North Fork (SIL) WWTF	VA0090263	23,390	1,754
B49R	Stoney Creek SD STP	VA0028380	7,309	548
B50R	North Fork Regional WWTP (1)	VA0090328	9,137	685
B51R	Strasburg STP	VA0020311	11,939	895
B50R	Woodstock STP	VA0026468	24,364	1,827

A06R	Basham Simms WWTF (4)	VA0022802	18,273	1,371
A09R	Broad Run WRF (5)	VA0091383	134,005	3,350
A08R	Leesburg WPCF	MD0066184	121,822	9,137
A06R	Round Hill Town WWTF	VA0026212	9,137	685
A25R	DSC - Section 1 WWTF (6)	VA0024724	42,029	2,522
A25R	DSC - Section 8 WWTF (7)	VA0024678	42,029	2,522
A25E	H L Mooney WWTF	VA0025101	219,280	13,157
A22R	UOSA - Centreville	VA0024988	1,315,682	16,446
A19R	Vint Hill WWTF (8)	VA0020460	8,680	868
B08R	Opequon WRF	VA0065552	102,336	7,675
B08R	Parkins Mills STP (9)	VA0075191	60,911	4,568
A13E	Alexandria SA WWTF	VA0025160	493,381	29,603
A12E	Arlington County Water PCF	VA0025143	365,467	21,928
A16R	Noman M Cole Jr PCF	VA0025364	612,158	36,729
A12R	Blue Plains (VA Share)	DC0021199	581,458	26,166
A26R	Quantico WWTF	VA0028363	20,101	1,206
A28R	Aquia WWTF	VA0060968	73,093	4,386
A31E	Colonial Beach STP	VA0026409	18,273	1,827
A30E	Dahlgren WWTF	VA0026514	9,137	914
A29E	Fairview Beach	MD0056464	1,827	183
A30E	US NSWC-Dahlgren WWTF	VA0021067	6,578	658
A31R	Purkins Corner STP	VA0070106	1,096	110
	TOTALS:		5,156,169	246,635

NOTE: (1) Shenandoah Co. - North Fork Regional WWTP waste load allocations (WLAs) based on a design flow capacity of 0.75 million gallons per day (MGD). If plant is not certified to operate at 0.75 MGD design flow capacity by December 31, 2010, the WLAs will be deleted and facility removed from Significant Discharger List.

(2) Harrisonburg-Rockingham Regional S.A.-North River STP: waste load allocations (WLAs) based on a design flow capacity of 20.8 million gallons per day (MGD). If plant is not certified to operate at 20.8 MGD design flow capacity by December 31, 2011, the WLAs will decrease to TN = 194,916 lbs/yr; TP = 14,619 lbs/yr, based on a design flow capacity of 16.0 MGD.

(3) Mount Jackson STP: waste load allocations (WLAs) based on a design flow capacity of 0.7 million gallons per day (MGD). If plant is not certified to operate at 0.7 MGD design flow capacity by December 31, 2010, the WLAs will decrease to TN = 7,309 lbs/yr; TP = 548 lbs/yr, based on a design flow capacity of 0.6 MGD.

(4) Purcellville-Basham Simms STP: waste load allocations (WLAs) based on a design flow capacity of 1.5 million gallons per day (MGD). If plant is not certified to operate at 1.5 MGD design flow capacity by December 31, 2010, the WLAs will decrease to TN = 12,182 lbs/yr; TP = 914 lbs/yr, based on a design flow capacity of 1.0 MGD.

(5) Loudoun Co. S.A.-Broad Run WRF: waste load allocations (WLAs) based on a design flow capacity of 11.0 million gallons per day (MGD). If plant is not certified to operate at 11.0 MGD design flow capacity by December 31, 2010, the WLAs will decrease to TN = 121,822 lbs/yr; TP = 3,046 lbs/yr, based on a design flow capacity of 10.0 MGD.

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(6) Dale Service Corp.-Section 1 WWTF: waste load allocations (WLAs) based on a design flow capacity of 4.6 million gallons per day (MGD). If plant is not certified to operate at 4.6 MGD design flow capacity by December 31, 2010, the WLAs will decrease to TN = 36,547 lbs/yr; TP = 2,193 lbs/yr, based on a design flow capacity of 4.0 MGD.

(7) Dale Service Corp.-Section 8 WWTF: waste load allocations (WLAs) based on a design flow capacity of 4.6 million gallons per day (MGD). If plant is not certified to operate at 4.6 MGD design flow capacity by December 31, 2010, the WLAs will decrease to TN = 36,547 lbs/yr; TP = 2,193 lbs/yr, based on a design flow capacity of 4.0 MGD.

(8) Fauquier Co. W&SA-Vint Hill STP: waste load allocations (WLAs) based on a design flow capacity of 0.95 million gallons per day (MGD). If plant is not certified to operate at 0.95 MGD design flow capacity by December 31, 2011, the WLAs will decrease to TN = 5,482 lbs/yr; TP = 548 lbs/yr, based on a design flow capacity of 0.6 MGD.

(9) Parkins Mill STP: waste load allocations (WLAs) based on a design flow capacity of 5.0 million gallons per day (MGD). If plant is not certified to operate at 5.0 MGD design flow capacity by December 31, 2010, the WLAs will decrease to TN = 36,547 lbs/yr; TP = 2,741 lbs/yr, based on a design flow capacity of 3.0 MGD.

(10) Merck-Stonewall – (a) on January 1, 2011, the following waste load allocations (WLAs) are effective and supersede the existing WLAs: total nitrogen of 43,835 lbs/yr and total phosphorus of 4,384 lbs/yr; (b) waste load allocations will be reviewed and possibly reduced based on "full-scale" results showing the optimal treatment capability of the 4-stage Bardenpho technology at this facility consistent with the level of effort by other dischargers in the region. The "full scale" evaluation will be completed by December 31, 2011, and the results submitted to DEQ for review and subsequent board action; (c) in any year when credits are available after all other exchanges within the Shenandoah-Potomac River Basin are completed in accordance with § 62.1-44.19:18 of the Code of Virginia, Merck shall acquire credits for total nitrogen discharged in excess of 14,619 lbs/yr and total phosphorus discharged in excess of 1,096 lbs/yr; and (d) the allocations are not transferable and compliance credits are only generated if discharged loads are less than the loads identified in clause (c).

9VAC25-720-60. James River Basin.

A. Total maximum daily load (TMDLs).

TMDL #	Stream Name	TMDL Title	City/County	WBID	Pollutant	WLA	Units
1.	Pheasanty Run	Benthic TMDL Reports for Six Impaired Stream Segments in the Potomac-Shenandoah and James River Basins	Bath	I14R	Organic Solids	1,231.00	LB/YR
2.	Wallace Mill Stream	Benthic TMDL Reports for Six Impaired Stream Segments in the Potomac-Shenandoah and James River Basins	Augusta	I32R	Organic Solids	2,814.00	LB/YR
3.	Montebello Sp. Branch	Benthic TMDL Reports for Six Impaired Stream Segments in the Potomac-Shenandoah and James River Basins	Nelson	H09R	Organic Solids	37.00	LB/YR

Regulations

4.	Unnamed Tributary to Deep Creek	General Standard Total Maximum Daily Load for Unnamed Tributary to Deep Creek	Nottoway	J11R	Raw Sewage	0	GAL/YR
5.	Unnamed Tributary to Chickahominy River	Total Maximum Daily Load (TMDL) Development for the Unnamed Tributary to the Chickahominy River	Hanover	G05R	Total Phosphorus	409.35	LB/YR
6.	Rivanna River	Benthic TMDL Development for the Rivanna River Watershed	Albemarle, Greene, Nelson, and Orange	H27R H28R	Sediment	10,229	Lbs/Day
<u>7.</u>	<u>Jackson River</u>	<u>Benthic TMDL Development for the Jackson River, Virginia</u>	<u>Alleghany, Bath, Highland</u>	<u>I04R, I09R</u>	<u>Total Phosphorus</u>	<u>72,955</u>	<u>LB/GS¹</u>
<u>8.</u>	<u>Jackson River</u>	<u>Benthic TMDL Development for the Jackson River, Virginia</u>	<u>Alleghany, Bath, Highland</u>	<u>I04R, I09R</u>	<u>Total Nitrogen</u>	<u>220,134</u>	<u>LB/GS</u>
<u>9.</u>	<u>Little Calfpasture</u>	<u>Total Maximum Daily Load Development to Address a Benthic Impairment in the Little Calfpasture River, Rockbridge County, Virginia</u>	<u>Rockbridge</u>	<u>132R</u>	<u>Sediment</u>	<u>30.4</u>	<u>T/YR</u>

¹ GS means growing season.

B. Stream segment classifications, effluent limitations including water quality based effluent limitations, and waste load allocations.

TABLE B1 - UPPER JAMES RIVER BASIN RECOMMENDED SEGMENT CLASSIFICATION				
Stream Name	Segment No.	Mile to Mile	Classification	Comments
Maury River	2-4	80.3-0.0	E.L.	Main & tributaries
James River	2-5	271.5-266.0	W.Q.	Main only
James River	2-6	266.0-115.0	E.L.	Main & tributaries except Tye & Rivanna River
Tye River	2-7	41.7-0.0	E.L.	Main & tributaries except Rutledge Creek
Rutledge Creek	2-8	3.0-0.0	W.Q.	Main only

Regulations

Piney River	2-9	20.6-0.0	E.L.	Main & tributaries
Rivanna River	2-10	20.0-0.0	E.L.	Main & tributaries
Rivanna River	2-11	38.1-20.0	W.Q.	Main only
Rivanna River	2-12	76.7-38.1	E.L.	Main & tributaries
S.F. Rivanna River	2-13	12.2-0.0	E.L.	Main & tributaries
Mechum River	2-14	23.1-0.0	E.L.	Main & tributaries
N.F. Rivanna River	2-15	17.0-0.0	E.L.	Main & tributaries except Standardsville Run
Standardsville Run	2-16	1.2-0.0	W.Q.	Main only
Appomattox River	2-17	156.2-27.7	E.L.	Main & tributaries except Buffalo Creek, Courthouse Branch, and Deep Creek
Buffalo Creek	2-18	20.9-0.0	E.L.	Main & tributaries except Unnamed Tributary @ R.M. 9.3
Unnamed Tributary of Buffalo Creek @ R.M. 9.3	2-19	1.3-0.0	W.Q.	Main only
Courthouse Branch	2-20	0.6-0.0	W.Q.	Main only
Deep Creek	2-21	29.5-0.0	E.L.	Main & tributaries except Unnamed Tributary @ R.M. 25.0
Unnamed Tributary of Deep Creek @ R.M. 25.0	2-22	2.2-0.0	W.Q.	Main only

TABLE B2 - UPPER JAMES RIVER BASIN LOAD ALLOCATIONS BASED ON EXISTING DISCHARGE POINT⁷

Stream Name	Segment Number	Classification	Mile to Mile	Significant Discharges	Total Assimilative Capacity of Stream BOD ₅ lbs/day	Wasteload Allocation BOD ₅ lbs/day ²	Reserve BOD ₅ lbs/day ⁵
Cedar Creek	2-3	E.L.	1.9-0.0	Natural Bridge, Inc. STP	35.0	28.0	7.0 (20%)
Elk Creek	2-3	E.L.	2.8-0.0	Natural Bridge Camp for Boys STP	7.0	3.3	3.7 (53%)
Little Calfpasture River	2-4	E.L.	10.9-4.0	Craigsville	12.0	9.6	2.4 (20%)
Cabin River	2-4	E.L.	1.7-0.0	Millboro	Self-sustaining	None	None
Maury River	2-4	E.L.	19.6-12.2	Lexington STP	380.0	380.0	None

Regulations

Maury River	2-4	E.L.	12.2-1.2	Georgia Bonded Fibers	760.0	102.0 ³	238.0 (31%)
				Buena Vista STP		420.0	
Maury River	2-4	E.L.	1.2-0.0	Lees Carpets	790.0	425.0 ³	290.0 (37%)
				Glasgow STP		75.0	
James River	2-5	W.Q.	271.5-266.0	Owens-Illinois	4,640.0	4,640.0 ³	None
James River	2-6	E.L.	257.5-231.0	Lynchburg STP	10,100.0	8,000.0	2,060.0 (20%)
				Babcock & Wilcox- NNFD		40.0 ³	
James River	2-6	E.L.	231.0-202.0	Virginia Fibre	3,500.0	3,500.0	None
Rutledge Creek	2-8	W.Q.	3.0-0.0	Amherst STP	46.0	37.0	9.0 (20%)
Town Creek	2-7	E.L.	2.1-0.0	Lovingsston STP	26.0	21.0	5.0 (20%)
Ivy Creek	2-6	E.L.	0.1-0.0	Schuyler	13.8	11.0	2.8 (20%)
James River	2-6	E.L.	186.0-179.0	Uniroyal, Inc.	1,400.0	19.3 ⁶	1,336.0 (95%)
				Scottsville STP		45.0	
North Creek	2-6	E.L.	3.1-0.0	Fork Union STP	31.0	25.0	6.0 (20%)
Howells Branch and Licking Hole Creek	2-14	E.L.	0.7-0.0	Morton Frozen Foods	20.0	20.0 ³	None
Standardsville Run	2-16	W.Q.	1.2-0.0	Standardsville STP	17.9	14.3	3.6 (20%)
Rivanna River	2-11	W.Q.	23.5-20.0	Lake Monticello STP	480.0	380.0	100.0 (20%)
Rivanna River	2-10	E.L.	15.0-0.0	Palmyra	250.0	4.0	158.0 (63%)
				Schwarzenbach Huber		88.0 ³	
Unnamed Tributary of Whispering Creek	2-6	E.L.	1.2-00	Dillwyn STP	38.0	30.0	8.0 (21%)

Regulations

South Fork Appomattox River	2-17	E.L.	5.5-0.0	Appomattox Lagoon	18.8	15.0	3.8 (20%)
Unnamed Tributary of Buffalo Creek	2-19	W.Q.	1.3-0.0	Hampden-Sydney Coll. STP	10.0	8.0	2.0 (20%)
Appomattox River	2-17	E.L.	106.1-88.0	Farmville STP	280.0	220.0	60.0 (21%)
Unnamed Tributary of Little Guinea Creek	2-17	E.L.	2.5-1.3	Cumberland H.S. Lagoon	0.6	0.5	0.1 (20%)
Unnamed Tributary of Tear Wallet Creek	2-17	E.L.	0.68-0.0	Cumberland Courthouse	8.8	7.0	1.8 (20%)
Courthouse Branch	2-22	W.Q.	2.2-0.0	Amelia STP	21.0	17.0	4.0 (20%)
Unnamed Tributary of Deep Creek	2-22	W.Q.	2.2-0.0	Crewe STP	50.3 ^{11,12}	50.1 ^{11, 12}	0.2 (0.4%) ^{11,12,13}

¹Recommended classification.

²Based on 2020 loads or stream assimilative capacity less 20%.

³Load allocation based on published NPDES permits.

⁴This assimilative capacity is based upon an ammonia loading no greater than 125.1 lbs/day.

⁵Percentages refer to reserve as percent of total assimilative capacity. Minimum reserve for future growth and modeling accuracy is 20% unless otherwise noted.

⁶No NPDES Permits published (BPT not established) allocation base on maximum value monitored.

⁷This table is for the existing discharge point. The recommended plan may involve relocation or elimination of stream discharge.

⁸Assimilative capacity will be determined upon completion of the ongoing study by Hydrosience, Inc.

⁹Discharges into Karnes Creek, a tributary to the Jackson River.

¹⁰Discharges into Wilson Creek, near its confluence with Jackson River.

¹¹Five-day Carbonaceous Biological Oxygen Demand (cBOD₅).

¹²Revision supersedes all subsequent Crewe STP stream capacity, allocation, and reserve references.

¹³0.4 percent reserve: determined by SWCB Piedmont Regional Office.

Source: Wiley & Wilson, Inc.

TABLE B3 - UPPER JAMES RIVER BASIN ADDITIONAL LOAD ALLOCATIONS
BASED ON RECOMMENDED DISCHARGE POINT

Stream Name	Segment Number	Classification ¹		Significant Discharges	Total Assimilative Capacity of Stream BOD ₅ lbs/day	Wasteload ² Allocation BOD ₅ lbs/day	Reserve ⁴ BOD ₅ lbs/day ⁵
Mill Creek	2-4	E.L.	5.5-0.0	Millboro	30.0	7.3	22.7 (76%)
Calfpasture River	2-4	E.L.	4.9-0.0	Goshen	65.0	12.0	53.0 (82%)
Maury River	2-4	E.L.	1.2-0.0	Lees Carpet	790.0	425.0 ³	235.0 (30%)
				Glasgow Regional S.T.P.		130.0	
Buffalo River	2-7	E.L.	9.6-0.0	Amherst S.T.P.	150.0	120.0	30.0 (20%)
Rockfish River	2-6	E.L.	9.5-0.0	Schuyler S.T.P.	110.0	25.0	85.0 (77%)
Standardsville Run		E.L.		Standardsville	Land Application Recommended		
South Fork Appomattox River		E.L.		Appomattox Lagoon	Connect to Recommended Facility in Roanoke River Basin		
Buffalo Creek	2-17	E.L.	9.3-7.7	Hampden-Sydney College	46.0	23.0	23.0 (50%)
Unnamed trib. of Tear Wallet Creek		E.L.		Cumberland Courthouse	Land Application Recommended		
Courthouse Branch		E.L.		Amelia	Land Application Recommended		
Deep Creek	2-17	E.L.	25.0-12.8	Crewe S.T.P.	69.0	55.0	14.0 (20%)

¹Recommended classification.

²Based on 2020 loads or stream assimilative capacity less 20%.

³Load allocation based on published NPDES permit.

⁴Percentages refer to reserve as percent of total assimilative capacity. Minimum reserve for future growth and modeling accuracy is 20% unless otherwise noted.

⁵Assimilative capacity will be determined upon completion of the ongoing study by Hydrosience, Inc.

Source: Wiley & Wilson, Inc.

TABLE B4 - SEGMENT CLASSIFICATION UPPER JAMES-JACKSON RIVER SUBAREA

Stream Name	Segment Number	Mile to Mile	Stream Classification	Comments
Back Creek	2-1	16.06-8.46	W.Q.	Main Only
Jackson River	2-1	95.70-24.90	E.L.	Main and Tributaries

Regulations

Jackson River	2-2	24.90-0.00	W.Q.	Main Only
Jackson River	2-2	24.90-0.00	E.L.	Tributaries Only
James River	2-3	349.50-308.50	E.L.	Main and Tributaries
James River	2-3	308.50-279.41	E.L.	Main and Tributaries

TABLE B5 - UPPER JAMES-JACKSON RIVER SUBAREA WASTELOAD ALLOCATIONS BASED ON EXISTING DISCHARGE POINT¹

MAP LOCATION	STREAM NAME	SEGMENT NUMBER	SEGMENT CLASSIFICATION STANDARDS	MILE to ² MILE	DISCHARGER	VPDES PERMIT NUMBER	VPDES PERMIT LIMITS BOD ₅ kg/day	303(e) ³ WASTELOAD ALLOCATION BOD ₅ kg/day
1	Jackson River	2-1	E.L.	93.05-	Virginia Trout	VA0071722	N/A	Secondary
B	Warm Springs Run	2-1	E.L.	3.62-0.00	Warm Springs STP	VA0028233	9.10	Secondary
3	Back Creek	2-1	W.Q.	16.06-8.46	VEPCO	VA0053317	11.50	11.50
C	X-trib to Jackson River	2-1	E.L.	0.40-0.0	Bacova	VA0024091	9.10	Secondary
D	Hot Springs Run	2-1	E.L.	5.30-0.00	Hot Springs Reg. STP	VA0066303	51.10	Secondary
E	X-trib to Cascades Creek	2-1	E.L.	3.00-0.00	Ashwood-Healing Springs STP	VA0023726	11.30	Secondary
F	Jackson River	2-1	E.L.	50.36-	U.S. Forest Service Bolar Mountain	VA0032123	1.98	Secondary
G	Jackson River	2-1	E.L.	43.55	U.S. Army COE Morris Hill Complex	VA0032115	1.70	Secondary
H	Jackson River	2-1	E.L.	29.84-	Alleghany County Clearwater Park	VA0027955	5.70	Secondary
4	Jackson River	2-1	E.L.	25.99	Covington City Water Treatment Plant	VA0058491	N/A	Secondary
5	Jackson River	2-2	W.Q.	24.64-19.03	Westvaco	VA0003646	4,195.00	4,195.00 ⁴
6					Covington City ⁵ Asphalt Plant	VA0054411	N/A	N/A
7					Hercules, Inc ⁶	VA0003450	94.00	94.00
J	Jackson River	2-2	W.Q.	19.03-10.5	Covington STP	VA0025542	341.00	341.00

Regulations

K	Jackson River			10.5-0.0	Low Moor STP ⁷	VA0027979	22.70	22.70
M					D.S. Lancaster CC ⁸	VA0028509	3.60	3.60
L					Selma STP ⁹	VA0028002	59.00	59.00
10					The Chessie System ¹⁰	VA0003344	N/A	N/A
N					Clifton Forge STP ¹¹	VA0002984	227.00	227.00
11					Lydall ¹²	VA0002984	6.00	6.00
P					Iron Gate STP ¹³	VA0020541	60.00	60.00
8	Paint Bank Branch	2-2	E.L.	1.52	VDGIF Paint Bank Hatchery	VA0098432	N/A	Secondary
I	Jerrys Run	2-2	E.L.	6.72-	VDOT 1-64 Rest Area	VA0023159	0.54	Secondary
AA	East Branch (Sulfer Spring)	2-2	E.L.	2.16	Norman F. Nicholas	VA0078403	0.05	Secondary
BB	East Branch (Sulfer Spring)	2-2	E.L.	1.91-	Daryl C. Clark	VA0067890	0.068	Secondary
9	Smith Creek	2-2	E.L.	3.44-	Clifton Forge Water Treatment Plant	VA0006076	N/A	Secondary
O	Wilson Creek	2-2	E.L.	0.20-0.0	Cliftondale ¹⁴ Park STP	VA0027987	24.00	Secondary
2	Pheasanty Run	2-3	E.L.	0.01-	Coursey Springs	VA0006491	434.90	Secondary
Q	Grannys Creek	2-3	E.L.	1.20-	Craig Spring Conference Grounds	VA0027952	3.40	Secondary
CC	X-trib to Big Creek	2-3	E.L.	1.10-	Homer Kelly Residence	VA0074926	0.05	Secondary
12	Mill Creek	2-3	E.L.	0.16-	Columbia Gas Transmission Corp.	VA0004839	N/A	Secondary
R	John Creek	2-3	E.L.	0.20-	New Castle STP(old)	VA0024139	21.00	Secondary
S	Craig Creek	2-3	E.L.	48.45-36.0	New Castle STP (new)	VA0064599	19.90	Secondary
T	Craig Creek	2-3	E.L.	46.98-	Craig County Schools McCleary E.S.	VA0027758	0.57	Secondary
DD	Eagle Rock Creek	2-3	E.L.	0.08-	Eagle Rock STP ¹⁵ (Proposed)	VA0076350	2.30	Secondary

Regulations

U	X-trib to Catawba Creek	2-3	E.L.	0.16	VDMH & R Catawba Hospital	VA0029475	13.60	Secondary
14	Catawba Creek	2-3	E.L.	23.84	Tarmac-Lonestar	VA0078393	0.80	Secondary
FF	Borden Creek	2-3	E.L.	2.00-	Shenandoah Baptist Church Camp	VA0075451	0.88	Secondary
EE	X-trib to Borden Creek	2-3	E.L.	0.36	David B. Pope	VA0076031	0.07	Secondary
V	X-trib to Catawba Creek	2-3	E.L.	3.21-	U.S. FHA Flatwood Acres	VA0068233	0.03	Secondary
W	Catawba Creek	2-3	E.L.	11.54-	Fincastle STP	VA0068233	8.50	Secondary
X	Looney Mill Creek	2-3	E.L.	1.83-	VDOT I-81 Rest Area	VA0023141	0.91	Secondary
Y	X-trib to Stony	2-3	E.L.	0.57	VDOC Field Unit No. 25 Battle Creek	VA0023523	1.10	Secondary
Z	James River	2-3	E.L.	308.5-286.0	Buchanan STP	VA0022225	27.00	Secondary

TABLE B5 - NOTES:

N/A Currently No BOD₅ limits or wasteload have been imposed by the VPDES permit. Should BOD₅ limits (wasteload) be imposed a WQMP amendment would be required for water quality limited segments only.

¹Secondary treatment levels are required in effluent limiting (E.L.) segments. In water quality limiting (W.Q.) segments quantities listed represent wasteload allocations.

²Ending river miles have not been determined for some Effluent Limited segments.

³These allocations represent current and original (1977 WQMP) modeling. Future revisions may be necessary based on Virginia State Water Control Board modeling.

⁴The total assimilative capacity at critical stream flow for this portion of Segment 2-2 has been modeled and verified by Hydroscience, Inc. (March 1977) to be 4,914 kg/day BOD₅.

⁵The discharge is to an unnamed tributary to the Jackson River at Jackson River mile 22.93.

⁶The discharge is at Jackson River mile 19.22.

⁷The discharge is to the mouth of Karnes Creek, a tributary to the Jackson River at Jackson River mile 5.44.

⁸The discharge is at Jackson River mile 6.67.

⁹The discharge is at Jackson River mile 5.14.

¹⁰The discharge is at Jackson River mile 4.72.

¹¹The discharge is at Jackson River mile 3.46.

¹²The discharge is at Jackson River mile 1.17

¹³The discharge is at Jackson River mile 0.76

¹⁴The discharge is to the mouth of Wilson Creek, a tributary to the Jackson River at Jackson River mile 2.44.

¹⁵The discharge is to the mouth of Eagle Rock Creek, a tributary to the Jackson River at Jackson River mile 330.35.

TABLE B6 - RICHMOND CRATER INTERIM WATER QUALITY MANAGEMENT PLAN STREAM CLASSIFICATIONS - JAMES RIVER BASIN

SEGMENT	SEGMENT NUMBER	MILE TO MILE	CLASSIFICATION
USGS HUC02080206 James River	2-19	115.0-60.5	W.Q.
USGS HUC02080207 Appomattox	2-23	30.1-0.0	W.Q.

TABLE B6 - *Note: A new stream segment classification for the Upper James Basin was adopted in 1981. The SWCB will renumber or realign these segments in the future to reflect these changes. This Plan covers only a portion of these segments.

TABLE B7 - RICHMOND CRATER INTERIM WATER QUALITY MANAGEMENT PLAN – CURRENT PERMITTED WASTE LOADS (March 1988)

	SUMMER (June-October)					WINTER (November-May)						
	FLOW (mgd)	BOD ₅		NH ₃ -N ¹		DO ² (mg/l)	FLOW (mgd)	BOD ₅		NH ₃ -N ¹		DO ² (mg/l)
		(lbs/d)	(mg/l)	(lbs/d)	(mg/l)			(lbs/d)	(mg/l)	(lbs/d)	(mg/l)	
City of Richmond STP ³	45.00	3002	8.0	-	-	-	45.00	5367	14.3	(lbs/d)	-	-
E.I. DuPont-Spruance	8.68	936	-	-	-	-	8.68	936	-	-	-	-
Falling Creek STP	9.00	1202	16.0	-	-	5.9	9.00	2253	30.0	-	-	5.9
Proctor's Creek STP	6.40	1601	30.0	-	-	5.9	11.80	2952	30.0	-	-	5.9
Reynolds Metals Company	0.39	138	-	7	-	-	0.39	138	-	-	-	-
Henrico STP	30.00	3005	12.0	-	-	5.9	30.00	7260	29.0	7	-	5.9
American Tobacco Company	1.94	715	-	-	-	-	1.94	716	-	-	-	-
ICI Americas, Inc.	0.20	152	-	-	-	-	0.20	152	-	-	-	-
Phillip Morris- Park 500	1.50	559	-	-	-	-	1.50	557	-	-	-	-
Allied (Chesterfield)	51.00	1207	-	-	-	-	51.00	1207	-	-	-	-
Allied (Hopewell)	150.00	2500	-	-	-	-	150.00	2500	-	-	-	-
Hopewell Regional WTF	34.08	12507	44.0	-	-	4.8	34.08	12507	44.0	-	-	4.8

Regulations

Petersburg STP	15.00	2804	22.4	-	-	5.0	15.00	2804	22.4	-	-	5.0
TOTAL	353.19	30328					358.59	39349		-		

¹NH₃-N values represent ammonia as nitrogen.

²Dissolved oxygen limits represent average minimum allowable levels.

³Richmond STP's BOD₅ is permitted as CBOD₅

TABLE B7 - WASTE LOAD ALLOCATIONS FOR THE YEAR 1990

	SUMMER (June-October)						WINTER (November-May)				
	FLOW (mgd)	CBOD ₅		NH ₃ -N ^{1,3}		DO ² (mg/l)	CBOD ₅		NH ₃ -N ¹		DO ² (mg/l)
		(lbs/d)	(mg/l)	(lbs/d)	(mg/l)		(lbs/d)	(mg/l)	(lbs/d)	(mg/l)	
City of Richmond STP	45.00	3002	8.0	2403	6.4	5.6	5367	14.3	5707	15.2	5.6
E.I. DuPont-Spruance	11.05	948		590		4.4	948		756		2.9
Falling Creek STP	10.10	1348	16.0	539	6.4	5.9	2023	24.0	1281	15.2	5.9
Proctor's Creek STP	12.00	1602	16.0	961	9.6	5.9	2403	24.0	1402	14.0	5.9
Reynolds Metals Co.	0.49	172		8		6.5	172		8		6.5
Henrico STP	30.00	3002	12.0	2403	9.6	5.6	4756	19.0	3504	44.0	5.6
American Tobacco Co.	2.70	715		113		5.8	715		113		5.8
ICI Americas, Inc.	0.20	167		8		5.8	167		8		3.1
Phillip Morris-Park 500	2.20	819		92		4.6	819		92		4.6
Allied (Chesterfield)	53.00	1255		442		5.7	1255		442		5.7
Allied (Hopewell)	165.00	2750		10326		6.1	2750		10326		6.1
Hopewell Regional WTF	34.07	12502	44.0	12091	36.2	4.8	12502	44.0	10291	36.2	4.8
Petersburg STP	15.00	2802	22.4	801	6.4	5.0	2802	22.4	2028	16.2	5.0
TOTAL	380.81	31084		28978			36679	35958			

¹NH₃-N values represent ammonia as nitrogen.

²Dissolved oxygen limits represent average minimum allowable levels.

³Allied (Hopewell) allocation may be redistributed to the Hopewell Regional WTF by VPDES permit.

TABLE B7 - WASTE LOAD ALLOCATION FOR THE YEAR 2000

	SUMMER (June-October)					WINTER (November-May)					
	FLOW (mgd)	CBOD ₅		NH ₃ -N ^{1,3}		DO ² (mg/l)	CBOD ₅		NH ₃ -N ¹		DO ² (mg/l)
		(lbs/d)	(mg/l)	(lbs/d)	(mg/l)		(lbs/d)	(mg/l)	(lbs/d)	(mg/l)	
City of Richmond STP	45.08	3002	8.0	2403	6.4	5.6	5367	14.3	5707	15.2	5.6
E.I. DuPont-Spruance	196.99	948		590		4.4	948		756		2.9
Falling Creek STP	10.10	1348	16.0	539	6.4	5.9	2023	24.0	1281	15.2	5.9
Proctor's Creek STP	16.80	1602	11.4	961	6.9	5.9	2403	17.1	1402	10.0	5.9
Reynolds Metals Co.	0.78	172		13		6.5	172		13		6.5
Henrico STP	32.80	3002	11.0	2403	8.8	5.6	4756	17.4	3504	12.8	5.6
American Tobacco Co.	3.00	715		113		5.8	715		113		5.8
ICI Americas, Inc.	0.20	167		8		5.8	167		8		3.1
Phillip Morris-Park 500	2.90	819		92		4.6	819		92		4.6
Allied (Chesterfield)	56.00	1255		442		5.7	1255		442		5.7
Allied (Hopewell)	170.00	2750		10326		6.1	2750		10326		6.1
Hopewell Regional WTF	36.78	12502	40.7	12091	33.5	4.8	12502	40.7	10291	33.5	4.8
Petersburg STP	15.00	2802	22.4	801	6.4	5.0	2802	22.4	2028	16.2	5.0
TOTAL	406.43	31084		28982			36679		35963		

¹NH₃-N values represent ammonia as nitrogen.

²Dissolved oxygen limits represent average minimum allowable levels.

³Allied (Hopewell) allocation may be redistributed to the Hopewell Regional WTF by VPDES permit.

TABLE B7 - WASTE LOAD ALLOCATIONS FOR THE YEAR 2010

	SUMMER (June-October)					WINTER (November-May)					
	FLOW (mgd)	CBOD ₅		NH ₃ -N ^{1,3}		DO ² (mg/l)	CBOD ₅		NH ₃ -N ¹		DO ² (mg/l)
		(lbs/d)	(mg/l)	(lbs/d)	(mg/l)		(lbs/d)	(mg/l)	(lbs/d)	(mg/l)	
City of Richmond STP	45.86	3002	7.8	2403	6.3	5.6	5367	14.0	5707	14.9	5.6
E.I. DuPont-Spruance	16.99	948		590		4.4	948		756		2.9

Regulations

Falling Creek STP	10.10	1348	16.0	539	6.4	5.9	2023	24.0	1281	15.2	5.9
Proctor's Creek STP	24.00	1602	8.0	961	4.8	5.9	2403	12.0	1402	7.0	5.9
Reynolds Metals Co.	0.78	172		13		6.5	172		13		6.5
Henrico STP	38.07	3002	9.5	2403	7.6	5.6	4756	15.0	3504	11.0	5.6
American Tobacco Co.	3.00	715		113		5.8	715		113		5.8
ICI Americas, Inc.	0.20	167		8		5.8	167		8		3.1
Phillip Morris-Park 500	2.90	819		92		4.6	819		92		4.6
Allied (Chesterfield)	56.00	1255		442		5.7	1255		442		5.7
Allied (Hopewell)	180.00	2750		10326		6.1	2750		10326		6.1
Hopewell Regional WTF	39.61	12502	37.8	10291	31.1	4.8	12502	37.8	10291	31.1	4.8
Petersburg STP	15.00	2802	22.4	801	6.4	5.0	2802	22.4	2028	16.2	5.0
TOTAL	432.1	31084		28982			36679		35963		

¹NH₃-N values represent ammonia as nitrogen.

²Dissolved oxygen limits represent average minimum allowable levels.

³Allied (Hopewell) allocation may be redistributed to the Hopewell Regional WTF by VPDES permit.

C. Nitrogen and phosphorus waste load allocations to restore the Chesapeake Bay and its tidal rivers.

The following table presents nitrogen and phosphorus waste load allocations for the identified significant dischargers and the total nitrogen and total phosphorus waste load allocations for the listed facilities.

Virginia Waterbody ID	Discharger Name	VPDES Permit No.	Total Nitrogen (TN) Waste Load Allocation (lbs/yr)	Total Phosphorus (TP) Waste Load Allocation (lbs/yr)
I37R	Buena Vista STP	VA0020991	41,115	3,426
I09R	Clifton Forge STP	VA0022772	36,547	3,046
I09R	Covington STP	VA0025542	54,820	4,568
H02R	Georgia Pacific	VA0003026	122,489	49,658
I37R	Lees Carpets	VA0004677	30,456	12,182
I35R	Lexington-Rockbridge WQCF	VA0088161	54,820	4,568
I09R	Low Moor STP	VA0027979	9,137	761
I09R	Lower Jackson River STP	VA0090671	27,410	2,284
I04R	MeadWestvaco	VA0003646	394,400	159,892
H12R	Amherst STP	VA0031321	10,964	914

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H05R	BWX Technologies Inc.	VA0003697	187,000	1,523
H05R	Greif Inc.	VA0006408	73,246	29,694
H31R	Lake Monticello STP	VA0024945	18,182	1,515
H05R	Lynchburg STP (1)	VA0024970	536,019	33,501
H28R	Moore's Creek Regional STP	VA0025518	274,100	22,842
H38R	Powhatan CC STP	VA0020699	8,588	716
J11R	Crewe WWTP	VA0020303	9,137	761
J01R	Farmville WWTP	VA0083135	43,856	3,655
G02E	R. J. Reynolds	VA0002780	25,583	1,919
G01E	E I du Pont - Spruance	VA0004669	201,080	7,816
G01E	Falling Creek WWTP	VA0024996	153,801	15,380
G01E	Henrico County WWTP	VA0063690	1,142,085	114,209
G03E	Honeywell – Hopewell	VA0005291	1,090,798	51,592
G03R	Hopewell WWTP	VA0066630	1,827,336	76,139
G15E	HRSD – Boat Harbor STP	VA0081256	740,000	76,139
G11E	HRSD – James River STP	VA0081272	1,250,000	60,911
G10E	HRSD – Williamsburg STP	VA0081302	800,000	68,525
G02E	Philip Morris – Park 500	VA0026557	139,724	2,650
G01E	Proctors Creek WWTP	VA0060194	411,151	41,115
G01E	Richmond WWTP (1)	VA0063177	1,096,402	68,525
G02E	Dominion-Chesterfield (2)	VA0004146	352,036	210
J15R	South Central WW Authority	VA0025437	350,239	35,024
G07R	Chickahominy WWTP	VA0088480	6,167	123
G05R	Tyson Foods – Glen Allen	VA0004031	19,552	409
G11E	HRSD – Nansemond STP	VA0081299	750,000	91,367
G15E	HRSD – Army Base STP	VA0081230	610,000	54,820
G15E	HRSD – VIP WWTP	VA0081281	750,000	121,822
G15E	JH Miles & Company	VA0003263	153,500	21,500
C07E	HRSD – Ches.-Elizabeth STP	VA0081264	1,100,000	108,674
	TOTALS		14,901,739	1,354,375

NOTES: (1) Waste load allocations for localities served by combined sewers are based on dry weather design flow capacity. During wet weather flow events the discharge shall achieve a TN concentration of 8.0 mg/l and a TP concentration of 1.0 mg/l.

(2) Waste load allocations are "net" loads, based on the portion of the nutrient discharge introduced by the facility's process waste streams, and not originating in raw water intake.

9VAC25-720-80. Roanoke River Basin.

A. Total Maximum Daily Load (TMDLs).

Regulations

TMDL #	Stream Name	TMDL Title	City/County	WBID	Pollutant	WLA	Units
1.	Ash Camp Creek	Total Maximum Daily Load Development for Ash Camp Creek	Charlotte	L39R	Sediment	20.7	T/YR
2.	North Fork Blackwater River	Total Maximum Daily Load (TMDL) Development for the Upper Blackwater River Watershed	Franklin	L08R	Sediment	0	T/YR
3.	North Fork Blackwater River	Total Maximum Daily Load (TMDL) Development for the Upper Blackwater River Watershed	Franklin	L08R	Phosphorus	0	T/YR
4.	Upper Blackwater River	Total Maximum Daily Load (TMDL) Development for the Upper Blackwater River Watershed	Franklin	L08R	Sediment	0.526	T/YR
5.	Flat Creek	Benthic TMDL for Flat Creek Watershed, Virginia	Mecklenburg	L79R	Sediment	76.2	T/YR
6.	Twitty's Creek	Benthic TMDL for Twittys Creek Watershed, Virginia	Charlotte	L39R	Sediment	20.4	T/YR
7.	Roanoke River	Benthic TMDL Development for the Roanoke River, Virginia	Roanoke, Montgomery, Floyd, Botetout, Salem, Roanoke	L04R	Sediment	5,189	T/YR
<u>8.</u>	<u>North Fork Roanoke River</u>	<u>Roanoke River PCB TMDL Development</u>	<u>Montgomery</u>	<u>L02R</u>	<u>tPCB</u>	<u>28.2</u>	<u>MG/YR</u>
<u>9.</u>	<u>South Fork Roanoke River</u>	<u>Roanoke River PCB TMDL Development</u>	<u>Montgomery</u>	<u>L01R</u>	<u>tPCB</u>	<u>230.2</u>	<u>MG/YR</u>
<u>10.</u>	<u>Masons Creek</u>	<u>Roanoke River PCB TMDL Development</u>	<u>Roanoke</u>	<u>L03R, L04R</u>	<u>tPCB</u>	<u>9.1</u>	<u>MG/YR</u>
<u>11.</u>	<u>Peters Creek</u>	<u>Roanoke River PCB TMDL Development</u>	<u>Botetourt, Roanoke</u>	<u>L04R</u>	<u>tPCB</u>	<u>65.4</u>	<u>MG/YR</u>
<u>12.</u>	<u>Tinker Creek</u>	<u>Roanoke River PCB TMDL Development</u>	<u>Botetourt, Roanoke</u>	<u>L05R</u>	<u>tPCB</u>	<u>103.9</u>	<u>MG/YR</u>
<u>13.</u>	<u>Wolf Creek</u>	<u>Roanoke River PCB TMDL Development</u>	<u>Bedford</u>	<u>L21R</u>	<u>tPCB</u>	<u>10.0</u>	<u>MG/YR</u>
<u>14.</u>	<u>UT to Roanoke River</u>	<u>Roanoke River PCB TMDL Development</u>	<u>Bedford</u>	<u>L21R</u>	<u>tPCB</u>	<u>0.5</u>	<u>MG/YR</u>

Regulations

<u>15.</u>	<u>Roanoke River (upper)</u>	<u>Roanoke River PCB TMDL Development</u>	<u>Montgomery, Botetourt, Roanoke</u>	<u>L03R, L04R, L12L</u>	<u>tPCB</u>	<u>28,157.7</u>	<u>MG/YR</u>
<u>16.</u>	<u>Goose Creek</u>	<u>Roanoke River PCB TMDL Development</u>	<u>Bedford, Campbell, Pittsylvania</u>	<u>L20R, L21R, L22R</u>	<u>tPCB</u>	<u>0.1</u>	<u>MG/YR</u>
<u>17.</u>	<u>Sycamore Creek</u>	<u>Roanoke River PCB TMDL Development</u>	<u>Pittsylvania</u>	<u>L19R</u>	<u>tPCB</u>	<u>1.4</u>	<u>MG/YR</u>
<u>18.</u>	<u>Lynch Creek</u>	<u>Roanoke River PCB TMDL Development</u>	<u>Campbell</u>	<u>L19R</u>	<u>tPCB</u>	<u>0.1</u>	<u>MG/YR</u>
<u>19.</u>	<u>Reed Creek</u>	<u>Roanoke River PCB TMDL Development</u>	<u>Pittsylvania</u>	<u>L19R</u>	<u>tPCB</u>	<u>0.0</u>	<u>MG/YR</u>
<u>20.</u>	<u>X-Trib</u>	<u>Roanoke River PCB TMDL Development</u>	<u>Campbell</u>	<u>L19R</u>	<u>tPCB</u>	<u>0.1</u>	<u>MG/YR</u>
<u>21.</u>	<u>UT to Roanoke River</u>	<u>Roanoke River PCB TMDL Development</u>	<u>Campbell</u>	<u>L19R</u>	<u>tPCB</u>	<u>0.1</u>	<u>MG/YR</u>
<u>22.</u>	<u>Little Otter River</u>	<u>Roanoke River PCB TMDL Development</u>	<u>Bedford, Campbell</u>	<u>L26R</u>	<u>tPCB</u>	<u>0.0</u>	<u>MG/YR</u>
<u>23.</u>	<u>Big Otter River</u>	<u>Roanoke River PCB TMDL Development</u>	<u>Bedford, Campbell</u>	<u>L23R</u>	<u>tPCB</u>	<u>0.0</u>	<u>MG/YR</u>
<u>24.</u>	<u>Straightstone Creek</u>	<u>Roanoke River PCB TMDL Development</u>	<u>Pittsylvania</u>	<u>L30R</u>	<u>tPCB</u>	<u>0.0</u>	<u>MG/YR</u>
<u>25.</u>	<u>Seneca Creek</u>	<u>Roanoke River PCB TMDL Development</u>	<u>Campbell</u>	<u>L31R</u>	<u>tPCB</u>	<u>0.0</u>	<u>MG/YR</u>
<u>26.</u>	<u>Whipping Creek</u>	<u>Roanoke River PCB TMDL Development</u>	<u>Campbell</u>	<u>L30R</u>	<u>tPCB</u>	<u>0.0</u>	<u>MG/YR</u>
<u>27.</u>	<u>Falling River</u>	<u>Roanoke River PCB TMDL Development</u>	<u>Appomattox, Campbell</u>	<u>L32R</u>	<u>tPCB</u>	<u>0.0</u>	<u>MG/YR</u>
<u>28.</u>	<u>Childrey Creek</u>	<u>Roanoke River PCB TMDL Development</u>	<u>Halifax</u>	<u>L30R</u>	<u>tPCB</u>	<u>0.0</u>	<u>MG/YR</u>
<u>29.</u>	<u>Catawba Creek</u>	<u>Roanoke River PCB TMDL Development</u>	<u>Halifax</u>	<u>L36R</u>	<u>tPCB</u>	<u>0.0</u>	<u>MG/YR</u>
<u>30.</u>	<u>Turnip Creek</u>	<u>Roanoke River PCB TMDL Development</u>	<u>Charlotte</u>	<u>L36R</u>	<u>tPCB</u>	<u>0.0</u>	<u>MG/YR</u>
<u>31.</u>	<u>Hunting Creek</u>	<u>Roanoke River PCB TMDL Development</u>	<u>Halifax</u>	<u>L38R</u>	<u>tPCB</u>	<u>0.0</u>	<u>MG/YR</u>
<u>32.</u>	<u>Cub Creek</u>	<u>Roanoke River PCB TMDL Development</u>	<u>Appomattox, Charlotte</u>	<u>L37R</u>	<u>tPCB</u>	<u>0.0</u>	<u>MG/YR</u>
<u>33.</u>	<u>Black Walnut Creek</u>	<u>Roanoke River PCB TMDL Development</u>	<u>Halifax</u>	<u>L38R</u>	<u>tPCB</u>	<u>0.8</u>	<u>MG/YR</u>
<u>34.</u>	<u>Roanoke Creek</u>	<u>Roanoke River PCB TMDL Development</u>	<u>Charlotte</u>	<u>L39R</u>	<u>tPCB</u>	<u>0.0</u>	<u>MG/YR</u>
<u>35.</u>	<u>Difficult Creek</u>	<u>Roanoke River PCB TMDL Development</u>	<u>Halifax</u>	<u>L41R</u>	<u>tPCB</u>	<u>0.0</u>	<u>MG/YR</u>

Regulations

36.	<u>Roanoke River</u>	<u>Roanoke River PCB TMDL Development</u>	<u>Appomattox, Campbell, Charlotte, Pittsylvania, Halifax</u>	<u>L19R</u>	<u>tPCB</u>	<u>1,931.8</u>	<u>MG/YR</u>
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B. Non-TMDL waste load allocations.

Water Body	Permit No.	Facility Name	Outfall No.	Receiving Stream	River Mile	Parameter Description	WLA	Units WLA
VAW-L04R	VA0072389	Oak Ridge Mobile Home Park	001	Falling Creek UT	0.32	BOD ₅	0.85	KG/D
VAW-L04R	VA0025020	Roanoke City Regional Water Pollution Control Plant	001	Roanoke River	201.81	BOD ₅	1173	KG/D
						TKN, APR-SEP	318	KG/D
						TKN, OCT-MAR	636	KG/D
			001	Roanoke River	201.81	BOD ₅	1173	KG/D
						TKN, APR-SEP	416	KG/D
						TKN, OCT-MAR	832	KG/D
			001	Roanoke River	201.81	BOD ₅	1173	KG/D
						TKN, APR-SEP	469	KG/D
						TKN, OCT-MAR	939	KG/D
VAW-L04R	VA0077895	Roanoke Moose Lodge	001	Mason Creek	7.79	BOD ₅ , JUN-SEP	0.24	KG/D
						TKN, JUN-SEP	0.09	KG/D
VAW-L07R	VA0020842	Bedford County School Board-Stewartsville Elementary School	001	Nat Branch, UT	0.59	BOD ₅	0.5	KG/D
VAW-L14R	VA0029254	Ferrum Water and Sewage Auth. - Ferrum Sewage Treatment Plant	001	Storey Creek	9.78	BOD ₅	14.2	KG/D
VAW-L14R	VA0085952	Rocky Mount Town Sewage Treatment Plant	001	Pigg River	52	BOD ₅	133	KG/D
VAW-L14R	VA0076015	Ronile Incorporated	001	Pigg River	57.24	BOD ₅	14.8	KG/D
VAW-L21R	VA0063738	Bedford County School Board - Staunton River High School	001	Shoulder Run, UT	0.95	BOD ₅	1.8	KG/D

Regulations

VAW-L21R	VA0020869	Bedford County School Board - Thaxton Elementary School	001	Wolf Creek, UT	0.35	BOD ₅	0.31	KG/D
VAW-L22R	VA0023515	Blue Ridge Regional Jail Auth. - Moneta Adult Detention Facility STP	001	Mattox Creek, UT	3.76	BOD ₅	1.66	KG/D
VAW-L25R	VA0020851	Bedford County School Board - Otter River Elementary School	001	Big Otter River, UT	1.15	BOD ₅	0.4	KG/D
VAW-L26R	VA0022390	Bedford City - Sewage Treatment Plant	001	Little Otter River	14.36	BOD ₅	52.8	KG/D
VAW-L26R	VA0020818	Bedford County School Board - Body Camp Elementary	001	Wells Creek, UT	2.22	BOD ₅	0.4	KG/D
VAW-L27R	VA0020826	Bedford County School Board - New London Academy	001	Buffalo Creek, UT	0.67	BOD ₅	0.39	KG/D
VAC-L29R	VA0031194	Briarwood Village Mobile Home Park STP	001	Smith Branch, UT	2.82	BOD ₅	1.3	KG/D
VAC-L35R	VA0023965	Campbell Co Util & Serv Auth. - Rustburg	001	Mollys Creek	17.81	BOD ₅	8.13	KG/D
VAC-L39R	VA0084433	Drakes Branch WWTP	001	Twitty's Creek	6.04	BOD ₅	6.4	KG/D
VAC-L39R	VA0024058	Keysville WWTP	001	Ash Camp Creek	7.63	CBOD ₅ , MAY-NOV	32.1	KG/D
						TKN, MAY-NOV	7.57	KG/D
AC-L39R	VA0050822	Westpoint Stevens Inc Drakes Branch	001	Twittys Creek	7.22	BOD ₅	6.31	KG/D
VAW-L43R	VA0022985	Stuart Town - Sewage Treatment Plant	001	South Mayo River	30.78	BOD ₅	63.5	KG/D
VAW-L54R	VA0069345	Henry Co Public Service Auth. - Lower Smith River STP	001	Smith River	19.4	BOD ₅	257	KG/D

Regulations

VAW-L54R	VA0025305	Martinsville City Sewage Treatment Plant	001	Smith River	22.69	BOD ₅	681	KG/D
VAC-L60R	VA0060593	Danville City - Northside	001	Dan River	53.32	BOD ₅ , JUN-OCT	1907	KG/D
						TKN, JUN-OCT	1817	KG/D
VAC-L66R	VA0020524	Town of Chatham STP	001	Cherrystone Creek	2.49	CBOD ₅	64.8	KG/D
						TKN	38.9	KG/D
VAC-L75L	VA0020168	Clarksville WWTP	001	Blue Creek/John H. Kerr Reservoir	0.1	BOD ₅	59.5	KG/D
VAC-L77R	VA0076881	Chase City Regional WWTP	001	Little Bluestone Creek	13.67	CBOD ₅ , MAY-NOV	29.5	KG/D
						TKN, MAY-NOV	9.5	KG/D
VAC-L78R	VA0026247	Boydton WWTP	001	Coleman Creek	3.79	CBOD ₅ , MAY-NOV	17.7	KG/D
						TKN, MAY-NOV	4.1	KG/D
VAC-L79R	VA0069337	South Hill WWTP	001	Flat Creek	8.95	CBOD ₅ , APR-NOV	60.6	KG/D

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

A. Total Maximum Daily Load (TMDLs).

TMDL #	Stream Name	TMDL Title	City/County	WBID	Pollutant	WLA	Units
1.	Guest River	Guest River Total Maximum Load Report	Wise	P11R	Sediment	317.92	LB/YR
2.	Cedar Creek	Total Maximum Daily Load (TMDL) Development for Cedar Creek, Hall/Byers Creek and Hutton Creek	Washington	O05R	Sediment	1,789.93	LB/YR
3.	Hall/Byers Creek	Total Maximum Daily Load (TMDL) Development for Cedar Creek, Hall/Byers Creek and Hutton Creek	Washington	O05R	Sediment	57,533.49	LB/YR
4.	Hutton Creek	Total Maximum Daily Load (TMDL) Development for Cedar Creek, Hall/Byers Creek and Hutton Creek	Washington	O05R	Sediment	91.32	LB/YR
5.	Clinch River	Total Maximum Daily Load Development for the Upper Clinch River Watershed	Tazewell	P01R	Sediment	206,636	LB/YR
6.	Lewis Creek	Total Maximum Daily Load Development for the Lewis Creek Watershed	Russell	P04R	Sediment	40,008	LB/YR

Regulations

7.	Black Creek	General Standard Total Maximum Daily Load Development for Black Creek, Wise County, Virginia	Wise	P17R	Manganese	2,127	KG/YR
8.	Dumps Creek	General Standard Total Maximum Daily Load Development for Dumps Creek, Russell County, Virginia	Russell	P08R	Total Dissolved Solids	1,631,575	KG/YR
9.	Dumps Creek	General Standard Total Maximum Daily Load Development for Dumps Creek, Russell County, Virginia	Russell	P08R	Total Suspended Solids	316,523	KG/YR
10.	Beaver Creek	Total Maximum Daily Load Development for the Beaver Creek Watershed	Washington	O07R	Sediment	784,036	LB/YR
11.	Stock Creek	General Standard (Benthic) Total Maximum Daily Load Development for Stock Creek	Scott	P13R	Sediment	0	T/YR
12.	Lick Creek	Lick Creek TMDLs for Benthic Impairments-Dickenson, Russell and Wise Counties	Dickenson, Russell and Wise	P10R	Sediment	63	T/YR
13.	Cigarette Hollow	Lick Creek TMDLs for Benthic Impairments-Dickenson, Russell and Wise Counties	Dickenson, Russell and Wise	P10R	Sediment	0.4	T/YR
14.	Laurel Branch	Lick Creek TMDLs for Benthic Impairments-Dickenson, Russell and Wise Counties	Dickenson, Russell and Wise	P10R	Sediment	3.9	T/YR
15.	Right Fork	Lick Creek TMDLs for Benthic Impairments-Dickenson, Russell and Wise Counties	Dickenson, Russell and Wise	P10R	Sediment	1.3	T/YR
16.	<u>Middle Fork Holston River</u>	<u>Bacteria and Benthic Total Maximum Daily Load Development for Middle Fork Holston River</u>	<u>Washington, Smyth</u>	<u>O05R</u>	<u>Sediment</u>	<u>100.4</u>	<u>T/YR</u>
17.	<u>Wolf Creek</u>	<u>Bacteria and Benthic Total Maximum Daily Load Development for Wolf Creek</u>	<u>Washington</u>	<u>O06R</u>	<u>Sediment</u>	<u>301.6</u>	<u>T/YR</u>

B. Non-TMDL waste load allocations.

Water Body	Permit No.	Facility Name	Receiving Stream	River Mile	Outfall No.	Parameter Description	WLA	Units WLA
VAS-Q13R	VA0061913	Pound WWTP	Pound River	33.26	001	CBOD ₅ , JUN-NOV	28	KG/D

Regulations

						CBOD ₅ , DEC-MAY	47	KG/D
						TKN, JUN-NOV	28	KG/D
VAS-Q14R	VA0026565	Clintwood WWTP	Cranes Nest River	9.77	001	BOD ₅	30	KG/D
VAS-O06R	VA0026531	Wolf Creek Water Reclamation Facility	Wolf Creek	7.26	001	CBOD ₅	249.8	KG/D
VAS-P01R	VA0026298	Tazewell WWTP	Clinch River	346.26	001	CBOD ₅ , JUN-NOV	76	KG/D
VAS-P03R	VA0021199	Richlands Regional WWTF	Clinch River	317.45	001	BOD ₅ , JUN-NOV	273	KG/D
VAS-P06R	VA0020745	Lebanon WWTP	Big Cedar Creek	5.22	001	BOD ₅	91	KG/D
VAS-P11R	VA0077828	Coeburn Norton Wise Regional WWTP	Guest River	7.56	001	CBOD ₅ , JUN-NOV	303	KG/D
						CBOD ₅ , DEC-MAY	379	KG/D
VAS-P15R	VA0029564	Duffield Industrial Park WWTP	North Fork Clinch River	21.02	001	BOD ₅	36	KG/D
VAS-P17R	VA0020940	Big Stone Gap Regional WWTP	Powell River	177.38	001	CBOD ₅ , JUN-NOV	110	KG/D

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

A. Total maximum Daily Load (TMDLs).

TMDL #	Stream Name	TMDL Title	City/County	WBID	Pollutant	WLA	Units
1.	Parker Creek	Benthic Total Maximum Daily Load (TMDL) Development for Parker Creek, Virginia	Accomack	D03E	Total Phosphorus	664.2	Lbs/YR LB/YR
2.	<u>Pettit Branch</u>	<u>Benthic Total Maximum Daily Load (TMDL) Development for the Pettit Branch Watershed</u>	<u>Accomack</u>	<u>D02R</u>	<u>Total Phosphorus</u>	<u>0.01</u>	<u>LB/D</u>
3.	<u>Mill Creek</u>	<u>Total Maximum Daily Load for Dissolved Oxygen in Mill Creek, Northampton County, Virginia</u>	<u>Northampton</u>	<u>D06R</u>	<u>Organic Carbon as TC</u>	<u>30.53</u>	<u>LB/D</u>

4.	<u>Mill Creek</u>	<u>Total Maximum Daily Load for Dissolved Oxygen in Mill Creek, Northampton County, Virginia</u>	<u>Northampton</u>	<u>D06R</u>	<u>Nutrients as TN</u>	<u>10.07</u>	<u>LB/D</u>
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B. Stream segment classifications, effluent limitations including water quality based effluent limitations, and waste load allocations.

Small Coastal and Chesapeake Bay- TABLE B1—CURRENT STREAM SEGMENT CLASSIFICATION		
Segment No.	Name	Current State Class
7-12A	Pocomoke Sound	EL
7-12B	Messongo Creek	EL
7-12C	Beasley Bay	EL
7-12D	Chesconessex Creek	EL
7-13	Onancock Creek	WQ
7-14	Pungoteague	WQ
7-12E	Nandua Creek	EL
7-15	Ocohanock Creek	WQ
7-12F	Nassawadox Creek	EL
7-12G	Hungars Creek	EL
7-12H	Cherrystone Inlet	EL
7-12I	South Bay	EL
7-12J	Tangier Island	_____
7-11A	Chincoteague	EL
7-11B	Hog Bogue	EL
7-11C	Metomkim Bay	EL
7-11D	Machipongo River	EL
7-11E	South Ocean	EL

Small Coastal and Chesapeake Bay
TABLE B2 - EASTERN SHORE WASTELOAD ALLOCATIONS

		INTERIM WASTELOAD ALLOCATIONS ⁽¹⁾			FINAL WASTELOAD ALLOCATIONS		
		(Current Permit Limits)					
NAME	RECEIVING STREAM OR ESTUARY	BOD ₅ (lb/d)	SUSPENDED SOLIDS (lb/d)	OIL & GREASE (lb/d)	BOD ₅ (lb/d)	SUSPENDED SOLIDS (lb/d)	OIL & GREASE (lb/d)
Commonwealth of Va. Rest Area	Pitts Cr.	4.3	4.3	--	4.3	4.3	--
Edgewood Park	Bullbegger Cr.	0.80	0.80	--	0.80	0.80	--

Regulations

Holly Farms	Sandy Bottom Cr.	167 ⁽³⁾	167 ⁽³⁾	10 mg/l	Stream survey/model and determination of final wasteload allocations planned for the summer of 1980.		
Taylor Packing Company	Messongo Cr.	7006 ⁽³⁾	13010 ⁽³⁾	--	Stream survey/model was run previously. No change in permit anticipated.		
No. Accomack E.S.	Messongo Cr.	1.8	1.4	--	1.8	1.4	--
Messick & Wessels Nelsonia	Muddy Cr.	30mg/l ⁽⁴⁾	30mg/l ⁽⁴⁾	--	Interim wasteload allocations may be changed based on BAT guidance.		
Whispering Pines Motel	Deep Cr.	4.8	4.8	--	4.8	4.8	--
Town of Onancock	Onancock Cr.	21	21	--	21	21	--
Messick & Wessels	Onancock Cr.	30mg/l ⁽⁴⁾	30mg/l ⁽⁴⁾	--	Interim wasteload allocations may be changed based on guidance.		
So. Accomack E.S.	Pungoteague Cr.	1.8	1.4	--	1.8	1.4	--
A & P Exmore	Nassawadox Cr.	0.38	0.38	--	0.38	0.38	--
Norstrom Coin Laundry	Nassawadox Cr.	60mg/l ⁽⁴⁾ max.	60mg/l ⁽⁴⁾ max.	--	Interim wasteload allocation may be changed based on BAT guidance.		
NH-Acc. Memorial Hospital	Warehouse Cr.	12.5	12.5	--	21.5	12.5	--
Machipongo E.S. & H.H. Jr. High	Trib. To Oresbus Cr.	5.2	5.2	--	5.2	5.2	--
Town of Cape Charles	Cape Charles Harbor	62.6	62.6	--	62.6	62.6	--
America House	Chesapeake Bay	5	5	--	5	5	--
U.S. Coast Guard Chesapeake Bay	Chesapeake Bay	--	--	10/mg/l ⁽⁵⁾	--	--	10/mg/l ⁽⁵⁾
U.S. Government Cape Charles AFB	Magothy Bay	Currently No Discharge					
Exmore Foods (Process Water)	Trib. To Parting Cr.	200	100	--	Stream survey/model and determination of final wasteload allocations planned for the summer of 1980.		
Exmore Foods (Sanitary)	Trib. To Parting Cr.	30mg/l ⁽⁵⁾	30mg/l ⁽⁵⁾	--	30mg/l ⁽⁵⁾	30mg/l ⁽⁵⁾	--
Perdue Foods (process water)	Parker Cr.	May-Oct 275 367 Nov-Apr. 612 797	--	--	Interim Permit in process. Stream survey/models were run. No substantial change in permit anticipated.		
Perdue Foods (parking lot)	Parker Cr.	30mg/l ⁽⁵⁾	30mg/l ⁽⁵⁾	--	30mg/l ⁽⁵⁾	30mg/l ⁽⁵⁾	--
Accomack Nursing Home	Parker Cr.	2.7	2.6	--	2.7	2.6	--

Regulations

U.S. Gov't NASA Wallops Island	Mosquito Cr.	75	75	--	75	75	--
U.S. Gov't NASA Wallops Island	Cat Cr.	1.25	1.25	--	1.25	1.25	--
F & G Laundromat	Chincoteague Channel	10	4.8	--	Interim wasteload allocations may be changed based on BAT guidance.		
U.S. Coast Guard	Chincoteague Channel	--	--	15mg/l (max.)	--	--	15mg/l (max.)
Virginia- Carolina Seafood	Chincoteague Bay	342	264	5.5	342	264	5.5
Reginald Stubbs Seafood Co. (VA0005813)	Assateague Channel	--	20	95	--	20	95
Reginald Stubbs Seafood Co. (VA00056421)	Assateague Channel	--	20	98	--	20.4 ⁽²⁾	98
Shreaves	Chincoteague Bay	--	16 ⁽²⁾	1.4 ⁽²⁾	--	16 ⁽²⁾	1.4 ⁽²⁾
Chincoteague Seafood	Chincoteague Bay	342	264	5.5	342	264	5.5

TABLE B3 - EXISTING OR POTENTIAL SOURCES OF WATER POLLUTION

Location No.	Name	Receiving Estuary	Stream	Flow (MGD)	CBOD (mg/#D)	NBOD (mg/#D)	Total Suspended Solids (mg/#D)	D.O. (mg/l)	FC (MPN/100ml)	Treatment/ Operation
1	Comm. Va. Rest Area	Pocomoke Sound	Pitts Cr.	.003	7/0.18		10/0.3	7.5	1	Extended aeration. Sec. Holding pond, CL ₂
2	H.E. Kelley	Pocomoke Sound	Pitts Cr.							Currently no discharges. Out of business
3	Edgewood Park	Pocomoke Sound	Bullbagger Creek	.006 ⁽³⁾	16/0.8 ⁽²⁾		16/0.8 ⁽²⁾			PR1, CL ₂ . Holding Pond
4	Holly Farms	Pocomoke Sound	Sand Bottom Creek	0.18	6/40		15/100	8.0	100	Aerated Lagoons, CL ₂
5	J.W. Taylor	Messongo Creek	Trib. To Messongo	.001	60/50		150/125	8.0		Aerated Lagoons
6	No. Accomack E.S.	Messongo Creek	Trib. To Messongo	.005	22/0.9		30/1.3	9.0		Sec., Septic Tank, Sand Filter Holding Pond
7	Messick & Wessells-Nelsonia	Beasly Bay	Muddy Creek	.005	125/5.2		100/4.2			Sec., Extended Aeration

Regulations

8	Willetts Laundromat	Beasley Bay	Hunting Creek							Prl., Septic Tank
9	Byrd Food	Beasley Bay								No discharge industry
10	Whispering Pines Motel	Beasley Bay	Deep Creek	.009	25/1.9	30/2.3	6.0			Sec., Extended Aeration Holding Pond, CL ₂
11	Town of Onancock	Onancock Creek	North Fork	.19	2/3.2	3/4.8	7.5	3		Primary, Primary Settling Sludge Digestion, CL ₂
12	Messick & Wessels-Onley	Onancock Creek	Joynes Branch	.005	100/4.2	150/6.3				Sec., Extended Aeration
13	So. Accomack E.S.	Pungoteague	Trib. To Pungoteague		24/1.8 ⁽²⁾	19/1.4 ⁽²⁾				Sec., Septic Tank, Grease Trap, Sand Filter, Holding Pond. No discharge in 4 yrs.
14	Great Atlantic & Pacific Tea Company	Nassawadox	Nassawadox	.001	140/1.2	150/1.3		6.5		Sec., Extended Aeration CL ₂
15	Norstrom Coin Laundry	Nassawadox	Trib. To Nassawadox	.008						Sec., Extended Aeration, permit in process
17	N.H.-Acc. Memorial Hospital	Nassawadox	Warehouse Creek	.03	25/1.6	35/2.2	6.5	750		Secondary Aerated Lagoon, CL ₂ Holding pond Stab-Lagoon
18	Machipongo E.S. & N.H. Jr. High School	Hungars Creek	Trib. To Oresbus	0.3 ⁽¹⁾	30/5.2 ⁽²⁾	30/5.2 ⁽²⁾				Sec., Stab-Lagoon, Holding Pond no discharge in 4 yrs.
19	B & B Laundromat	Cherry Stone Inlet	Old Castle Creek							Prl. Septic Tank w/discharger
20	KMC Foods, Inc.	Cherry Stone Inlet								No-Discharge industry
21	Herbert West Laundromat	Cherry Stone Inlet	Kings Creek							Prl. Septic Tank w/Discharger

Regulations

22	Town of Cape Charles	Cape Charles Harbor	Cape Charles Harbor	.165 ⁽²⁾	290/400 ⁽³⁾		139/192 ⁽³⁾			Raw Sewage, Sewage Treatment to be completed by 1982
23	American House Inn	Chesapeake Bay	Chesapeake Bay		30/5 ⁽²⁾		30/5 ⁽²⁾			
24	U.S. Coast Guard	Chesapeake Bay	Chesapeake Bay	.001 ⁽²⁾	30/			5.0 ⁽²⁾	200 ⁽²⁾	Bilgewater
25	U.S. Gov't Cape Charles AFS	Magothy	Magothy	.001 ⁽²⁾				5.0 ⁽³⁾		Sec., CL ₂ , Aerated Lagoon, currently no-discharge
27	Exmore Frozen Foods	Machipongo	Trib. To Parting Cr.	.56	29/135		18/84	6.5		Grass Bays, Screening
28	Exmore Foods (Domestic)	Machipongo	Trib. To Parting Cr.	.02	5/0.8		9/1.5			Septic Tank, Sand Filter
30	Perdue Foods	Metomkin Bay	Parker Creek	1.7	11/156		15/213	6.5	150	Sec., Aerated Lagoon, Holding Pond, CL ₂
31	Perdue Foods	Metomkin Bay	Parker Cr.	.01 ⁽⁴⁾			15/1.3			
32	Accomack Co. Nursing Home	Metomkin Bay	Parker Cr. North Fork	.011	20/1.8		28/2.6	6.5	100	Sec., Extended Aeration, Holding Pond, CL ₂
33	U.S. Gov't NASA (Wallops Island)	Hog Creek	Cat Creek	.005	30/		30/			Sec., Stab., Pond, Holding Pond, CL ₂
34	Robo Automatic Car	Chincoteague Channel	Little Simoneaton							
35	U.S. Gov't NASA	Chincoteague Channel	Mosquito Creek	.105	10.6/9.3 ⁽³⁾	112/28	2.0/1.8			Sec., Tricking Filter
36	Trail's End Rec. Vehicle Dev.	Chincoteague Channel	Trib to Mosquito Cr.							Septic Tank and Drainfield
37	Coin-Op Laundromat	Chincoteague Channel	Chincoteague Channel							No discharge
38	F & G Laundromat	Chincoteague Channel	Chincoteague Channel	.005						
39	U.S. Coast Guard	Chincoteague Channel	Chincoteague Channel	.001 ⁽²⁾			30/0.2 ⁽²⁾		200 ⁽²⁾	Discharge-Bilgewater
40	Phillip Custis	Ramshorn Bay								Spray Irrigation, no Discharge
43	Boggs (Melfa)	Nickowampus Creek								Septic tank waste lagoons, no discharge

Regulations

44	Blake (Greenbush)	Deep Creek							Septic tank waste lagoon, no discharge
45	Cherrystone Campground	Kings Creek or Cherrystone Inlet							Stab-Lagoon, Holding pond, no discharge
46	Wallops Sanitary Landfill								Solid waste disposal site, no discharge
47	Chincoteague Dumpsite								Solid waste disposal site, no discharge
48	Bob Town Sanitary Landfill								Solid waste disposal site, no discharge
49	Northampton Sanitary Landfill								Solid waste site, no discharge
52	Dorsey's Seafood Market	Chincoteague							Oysters ⁽⁵⁾
54	Va-Carolina Seafood Company, Inc.	Hog-Bogue					1152 ⁽²⁾ Clams		Surf Clams, Oysters, Scallops
							68 ⁽²⁾ Oysters		
							7.0 ⁽²⁾ Scallops		
55	Chincoteague Island Oyster Farm	Chincoteague							(Oyster-Boat Operation (grows oysters & clams from larvae) ⁽⁶⁾
	Reginald Stubbs Seafood Company	Assateague Channel		.002 ⁽⁴⁾	4.2		2.8		Oyster
58	Shreaves Bros.	Chincoteague		.002 ⁽⁴⁾	2.07		8.0		Oyster
60	Chincoteague Seafood Co.	Chincoteague		.063 ⁽⁴⁾	972		79.9		Surf-Clam
61	Ralph E. Watson Oyster Co.	Chincoteague		.003 ⁽⁴⁾	57		53		Oyster
62	McCready Bros. Inc.	Chincoteague							Oyster, no discharge
63	Wm. C. Bunting	Chincoteague		.001 ⁽⁴⁾	12		4.8		Oyster
64	Carpenters Seafood	Chincoteague		.001 ⁽⁴⁾	4.1		2.1		Oyster
64a	Burtons Seafood, Inc.	Chincoteague		.006 ⁽⁴⁾	10.3		.35		Oyster shell stock deal no discharge
69	Jones Bros. Seafood	Chincoteague	Sheepshead Cr.						Oyster & Clams

Regulations

70	W.E. Jones Seafood	Chincoteague	Sheepshead Creek				46.4 ⁽²⁾			Oyster & Clams
71	Conner & McGee Seafood	Chincoteague	Sheepshead Creek							Oyster & Clams ⁽⁶⁾
72	Hills Oyster Farm	Chincoteague								Oyster & Clams ⁽⁵⁾
73	Thomas E. Reed Seafood	Chincoteague	Deep Hole Creek							Oyster & Clams ⁽⁶⁾
74	Mears & Powell	Metomkin								Oyster-Building, also used to clean fish ⁽⁵⁾
75	Wachapreague Seafood Company	Metomkin	Finney Creek	.036 ⁽⁴⁾			144			Sea Clam
76	George D. Spence and Son	Machipongo								Crab Shedding ⁽⁶⁾
77	George D. Spence and Son	Machipongo								Crab Picking, no discharge
78	George T. Bell	Machipongo								No Discharge, Oyster
79	George D. Spence and Son	Machipongo	Upshur Bay							Oyster ⁽⁶⁾
80	Peters Seafood	Machipongo								Oyster ⁽⁶⁾
81	J.E. Hamblin	Machipongo								Oyster, No discharge
83	Nathan Bell Seafood	Machipongo								Clams, Hard ⁽⁵⁾
84	John L. Marshall Seafood	Machipongo								Clams ⁽⁵⁾
85	American Original Foods, Inc.	Machipongo	Parting Creek	.151 ⁽⁴⁾	2632		1337			
86	Harvey & Robert Bowen	Machipongo	Parting Creek	.0006 ⁽⁴⁾	6.2		1.7			Oyster
87	H.M. Terry	Machipongo	Parting Creek	.0004 ⁽⁴⁾	3.3		.62			Oyster
89	Webb's Island Seafood	South Ocean Area								Clams ⁽⁶⁾
90	Cliff's Seafood	South Ocean Area	Mockhorn Bay							Oyster & Clam ⁽⁶⁾
92	H. Allen Smith	South Ocean Area		.037 ⁽⁴⁾	213		522			Sea Clam
94	C & D Seafood, Inc.	South Ocean Area	Oyster Harbor	.04 ⁽⁴⁾	427		204 sea clam			Sea Clam, Oyster
							34 ⁽²⁾ oyster			
95	B.L. Bell & Sons	South Ocean Area	Oyster Harbor	.001 ⁽⁴⁾	12		.9			Oyster

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98	Lance Fisher Seafood Co.	Pocomoke		.02 ⁽⁴⁾	38		12.8			Oyster and Clam
99	Fisher & Williams/Lester Fisher	Messongo								Building used to shed soft crabs ⁽⁵⁾
100	Grady Rhodes Seafood	Messongo								Sold business, Building used to shed soft crabs ⁽⁵⁾
101	Bonowell Bros.	Messongo	Pocomoke Sound	.001 ⁽⁴⁾	12		2.5			Oyster
102	John H. Lewis & Co.	Messongo	Starling Creek							Oyster SS only, no discharge
103	Eastern Shore Seafood	Beasly								Crab, no discharge
106	Ashton's Seafood, Inc.	Pungoteague								Shell stock dealer-no discharge
107	Nandua Seafood Co.	Nandua		.0001 ⁽⁴⁾	.2		.9			Crab
108	A.M. Acuff	Cherrystone								Building used for storage, no discharge
110	D.L. Edgerton Co.	Cherrystone	Mud Creek							Conch. In operation. Retort drains overboard & fish wash-down ⁽⁶⁾
111 & 112	Tangier Island Seafood, Inc.	Tangier								Crab ⁽⁵⁾
113	Tangier	Chesapeake Bay								1000 KW Power Station
114	Chincoteague	Chincoteague Channel								2100 KW Power Station
115	Parksley									2400 KW Power Station
116	Tasley									1400 KW Power Station
117	Bayview									10,000 KW Power Station
118	Cape Charles	Cape Charles Harbor								1200 KW Power Station
119	Burdick Well & Pump Company									Holding Pond, no discharge
120	Marshall & Son Crab Company	Messongo Cr.								Crab Shedding ⁽⁶⁾
	Linton & Lewis Crab Co.	Pocomoke Sound								Crab Shedding ⁽⁶⁾

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122	D.L. Edgerton	Chincoteague							Fish Washdown ⁽⁶⁾
123	Evans Bros. Seafood Co.	Pocomoke Sound							Crab Shedding ⁽⁶⁾
124	Stanley F. Linton	Messongo	Starling Cr.						Crab Shedding ⁽⁶⁾
125	H. V. Drewer & Son	Messongo	Starling Cr.	.035 ⁽⁴⁾	349		736-clam		Oyster & Clam
				.018 ⁽⁴⁾	180		198-oyster		
126	Chincoteague Fish Co., Inc.	Chincoteague Channel							Fish Washdown ⁽⁶⁾
127	Chincoteague Crab Company	Assateague Channel			.18 ⁽²⁾		.54 ⁽²⁾		Crab & Crab Shedding
128	Aldon Miles & Sons	Pocomoke Sound							Crab Shedding ⁽⁶⁾
129	Saxis Crab Co.	Messongo	Starling Cr.						Crab Shedding ⁽⁶⁾
	Paul Watkinson SFD	Pocomoke Sound							Crab Shedding ⁽⁶⁾
131	Russell Fish Co., Inc	Chincoteague Channel							Fish ⁽⁶⁾
132	Mason Seafood Co.	Chincoteague Channel		.002 ⁽⁴⁾	7.7		13.7		Oysters

NOTE: ⁽¹⁾Water quality data taken from Discharge Monitoring Reports or special studies unless indicated.

⁽²⁾NPDES Permit limits given since the permit is new and discharge monitoring reports not yet available.

⁽³⁾Data from Accomack-Northampton Co. Water Quality Management Plan.

⁽⁴⁾Estimated.

⁽⁵⁾May need a permit--either company has not responded to SWCB letter or operation has just started up.

⁽⁶⁾No limits -- has an NPDES permit, but is not required to monitor.

C. Nitrogen and phosphorus waste load allocations to restore the Chesapeake Bay and its tidal rivers. The following table presents nitrogen and phosphorus waste load allocations for the identified significant dischargers and the total nitrogen and total phosphorus waste load allocations for the listed facilities.

Virginia Waterbody ID	Discharger Name	VPDES Permit No.	Total Nitrogen (TN) Waste Load Allocation (lbs/yr)	Total Phosphorus (TP) Waste Load Allocation (lbs/yr)
C16E	Cape Charles Town WWTP ⁽¹⁾	VA0021288	6,091	457
C11E	Onancock WWTP ⁽²⁾	VA0021253	9,137	685
C13E	Shore Memorial Hospital	VA0027537	1,218	91
C10E	Tangier WWTP	VA0067423	1,218	91
C10R	Tyson Foods – Temperanceville	VA0004049	22,842	1,142
	TOTALS:		40,506	2,467

NOTE: ⁽¹⁾Cape Charles STP: waste load allocations (WLAs) based on a design flow capacity of 0.5 million gallons per day (MGD). If plant is not certified to operate at 0.5 MGD design flow capacity by December 31, 2010, the WLAs will decrease to TN = 3,046 lbs/yr; TP = 228 lbs/yr, based on a design flow capacity of 0.25 MGD.

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⁽²⁾Onancock STP: waste load allocations (WLAs) based on a design flow capacity of 0.75 million gallons per day (MGD). If plant is not certified to operate at 0.75 MGD design flow capacity by December 31, 2011, the WLAs will decrease to TN = 3,046 lbs/yr; TP = 228 lbs/yr, based on a design flow capacity of 0.25 MGD.

VA.R. Doc. No. R11-2715; Filed January 10, 2011; 3:04 p.m.

TITLE 12. HEALTH

BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Proposed Regulation

Title of Regulation: 12VAC35-115. Rules and Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded, or Operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services (amending 12VAC35-115-10, 12VAC35-115-30, 12VAC35-115-50, 12VAC35-115-80).

Statutory Authority: §§ 37.2-203 and 37.2-400 of the Code of Virginia.

Public Hearing Information:

March 15, 2011 - 1:30 p.m. - Department of Behavioral Health and Developmental Services, Jefferson Bldg., 1220 Bank Street, 13th Floor Conference Room, Richmond, VA

Public Comment Deadline: April 15, 2011.

Agency Contact: Margaret Walsh, Director, Office of Human Rights, Department of Behavioral Health and Developmental Services, Jefferson Bldg., 1220 Bank St., 13th Floor, Richmond, VA 23219, telephone (804) 786-2008, FAX (804) 371-2308, or email margaret.walsh@dbhds.virginia.gov.

Basis: The Board of Behavioral Health and Developmental Services has the authority to adopt regulations under §§ 37.2-203 and 37.2-400 of the Code of Virginia. Section 37.2-203 of the Code of Virginia authorizes the board to adopt regulations that may be necessary to carry out the provisions of Title 37.2 of the Code of Virginia and other laws of the Commonwealth administered by the Commissioner of Behavioral Health and Developmental Services or the Department of Behavioral Health and Developmental Services. Section 37.2-400 of the Code of Virginia requires the board to adopt regulations for rights of consumers.

The revisions are required under Chapters 111 and 517 of the 2009 Acts of Assembly. The legal authority for the department's name change is provided in Chapter 813 of the 2009 Acts of Assembly.

Purpose: Chapters 111 and 517 of the 2009 Acts of Assembly require the board to adopt regulations to ensure that a consumer in a mental health facility shall have the opportunity to have an individual of his choosing notified of

his general condition, location, and transfer to another facility. The amendments to the regulation promote the health, safety, and welfare of persons who are receiving services by ensuring these individuals are afforded the opportunity to notify loved ones of their general condition and whereabouts. This notification should enable family members and others to provide support to a loved one who is receiving services.

Substance: This proposed amendment clarifies that any individual receiving services has the right and opportunity to notify a person of his choice of his (i) location, (ii) general condition, and (iii) transfer to another facility. Proposed amendments also change the department's name to the Department of Behavioral Health and Developmental Services.

Issues: This regulatory action poses an advantage to the public, particularly consumers and family members as well as providers, by ensuring that providers have the affirmative duty to notify someone of the individual's choosing of that individual's location and general well-being. It clarifies the authority for providers to make such a notification. Consumers and family members prompted the change to the Code of Virginia that resulted in this regulatory action.

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

Summary of the Proposed Amendments to Regulation. Pursuant to Chapters 813 and 111 of the 2009 Virginia Acts of the Assembly respectively, the State Board of Behavioral Health and Developmental Services (Board) proposes to amend these regulations to 1) reflect the change in name of the agency from the Department of Mental Health, Mental Retardation and Substance Abuse Services to the Department of Behavioral Health and Developmental Services (Department), and 2) clarify that each person admitted to a hospital, training center, other facility, or program operated, funded, or licensed by the Department "be afforded the opportunity to have an individual of his choice notified of his general condition, location, and transfer to another facility."

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

Estimated Economic Impact. The change in name of the agency and the express right of each person admitted to a hospital, training center, other facility, or program operated, funded, or licensed by the Department to "be afforded the opportunity to have an individual of his choice notified of his general condition, location, and transfer to another facility" both were added to the Code of Virginia as part of the 2009 Virginia Acts of the Assembly. The Board's proposed

amendments to these regulations merely reflect these additions to the Code and do not produce any additional requirements. Thus, the proposed amendments produce a net benefit in that there is no associated cost and the clarification they provide may reduce confusion.

Businesses and Entities Affected. The proposed amendments potentially affect the 612 providers of services licensed by the Department, individuals receiving services at these facilities, and other individuals these service recipients may wish to contact.

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

Projected Impact on Employment. The proposal amendments are unlikely to significantly affect employment.

Effects on the Use and Value of Private Property. The proposed amendments are unlikely to significantly affect the use and value of private property.

Small Businesses: Costs and Other Effects. The proposed amendments are unlikely to significantly affect small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed amendments are unlikely to significantly affect small businesses.

Real Estate Development Costs. The proposed amendments are unlikely to significantly affect real estate development costs.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 107 (09). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of

the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

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

Summary:

The proposed amendments, made pursuant to Chapters 111, 517, and 813 of the 2009 Acts of the Assembly (i) change the name of the agency from the Department of Mental Health, Mental Retardation and Substance Abuse Services to the Department of Behavioral Health and Developmental Services and (ii) clarify that each person admitted to a hospital, training center, other facility, or program operated, funded, or licensed by the department has the right and opportunity to have an individual of his choice notified of his general condition, location, and transfer to another facility.

CHAPTER 115

~~RULES AND REGULATIONS TO ASSURE THE RIGHTS OF INDIVIDUALS RECEIVING SERVICES FROM PROVIDERS LICENSED, FUNDED, OR OPERATED BY THE DEPARTMENT OF MENTAL HEALTH, MENTAL RETARDATION BEHAVIORAL HEALTH AND SUBSTANCE ABUSE DEVELOPMENTAL SERVICES~~

Part I
General Provisions

12VAC35-115-10. Authority and applicability.

A. The Code of Virginia authorizes these regulations to further define and protect the rights of individuals receiving services from providers of mental health, mental retardation, or substance abuse services in Virginia. The regulations require providers of services to take specific actions to protect the rights of each individual. The regulations establish remedies when rights are violated or in dispute, and provide a structure for support of these rights.

B. Providers subject to these regulations include:

1. Facilities operated by the department under Chapters 3 (§ 37.2-300 et seq.) and 7 (§ 37.2-700 et seq.) of Title 37.2 of the Code of Virginia;
2. Sexually violent predator programs established under § 37.2-909 of the Code of Virginia;
3. Community services boards that provide services under Chapter 5 (§ 37.2-500 et seq.) of Title 37.2 of the Code of Virginia;
4. Behavioral health authorities that provide services under Chapter 6 (§ 37.2-600 et seq.) of Title 37.2 of the Code of Virginia;
5. Public or private providers that operate programs or facilities licensed by the department under Article 2

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(§ 37.2-403 et seq.) of Chapter 4 of Title 37.2 of the Code of Virginia except those operated by the Department of Corrections; and

6. Any other providers receiving funding from the department. Providers of services under Part C of the Individuals with Disabilities Education Act (IDEA), 20 USC §§ 1431-1444, that are subject to these regulations solely by receipt of Part C funds from or through the department shall comply with all applicable IDEA regulations found in 34 CFR Part 303 in lieu of these regulations.

C. Unless another law takes precedence, these regulations apply to all individuals who are receiving services from a public or private provider of services operated, licensed or funded by the Department of ~~Mental Health, Mental Retardation, Behavioral Health and Substance Abuse Developmental~~ Services, except those operated by the Department of Corrections.

D. These regulations apply to individuals under forensic status and individuals committed to the custody of the department as sexually violent predators, except to the extent that the commissioner may determine these regulations are not applicable to them. The exemption must be in writing and based solely on the need to protect individuals receiving services, employees, or the general public. The commissioner shall give the State Human Rights Committee (SHRC) chairperson prior notice of all exemptions and provide the written exemption to the SHRC for its information. These exemptions shall be time limited and services shall not be compromised.

12VAC35-115-30. Definitions.

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

"Abuse" means any act or failure to act by an employee or other person responsible for the care of an individual in a facility or program operated, licensed, or funded by the department, excluding those operated by the Department of Corrections, that was performed or was failed to be performed knowingly, recklessly, or intentionally, and that caused or might have caused physical or psychological harm, injury, or death to a person receiving care or treatment for mental illness, mental retardation, or substance abuse. Examples of abuse include acts such as:

1. Rape, sexual assault, or other criminal sexual behavior;
2. Assault or battery;
3. Use of language that demeans, threatens, intimidates or humiliates the person;
4. Misuse or misappropriation of the person's assets, goods or property;

5. Use of excessive force when placing a person in physical or mechanical restraint;

6. Use of physical or mechanical restraints on a person that is not in compliance with federal and state laws, regulations, and policies, professionally accepted standards of practice, or the person's individualized services plan; and

7. Use of more restrictive or intensive services or denial of services to punish the person or that is not consistent with his individualized services plan. See § 37.2-100 of the Code of Virginia.

"Advance directive" means a document voluntarily executed in accordance with § 54.1-2983 of the Code of Virginia or the laws of another state where executed (§ 54.1-2993 of the Code of Virginia). This may include a wellness recovery action plan (WRAP) or similar document as long as it is executed in accordance with § 54.1-2983 of the Code of Virginia or the laws of another state. A WRAP or similar document may identify the health care agent who is authorized to act as the individual's substitute decision maker.

"Authorization" means a document signed by the individual receiving services or that individual's authorized representative that authorizes the provider to disclose identifying information about the individual. An authorization must be voluntary. To be voluntary, the authorization must be given by the individual receiving services or his authorized representative freely and without undue inducement, any element of force, fraud, deceit, or duress, or any form of constraint or coercion.

"Authorized representative" means a person permitted by law or these regulations to authorize the disclosure of information or to consent to treatment and services or participation in human research. The decision-making authority of an authorized representative recognized or designated under these regulations is limited to decisions pertaining to the designating provider. Legal guardians, attorneys-in-fact, or health care agents appointed pursuant to § 54.1-2983 of the Code of Virginia may have decision-making authority beyond such provider.

"Behavior intervention" means those principles and methods employed by a provider to help an individual to achieve a positive outcome and to address challenging behavior in a constructive and safe manner. Behavior management principles and methods must be employed in accordance with the individualized services plan and written policies and procedures governing service expectations, treatment goals, safety, and security.

"Behavioral treatment plan, functional plan, or behavioral support plan" means any set of documented procedures that are an integral part of the individualized services plan and are developed on the basis of a systematic data collection, such as

a functional assessment, for the purpose of assisting an individual to achieve the following:

1. Improved behavioral functioning and effectiveness;
2. Alleviation of symptoms of psychopathology; or
3. Reduction of challenging behaviors.

"Board" means the ~~State Mental Health, Mental Retardation~~ Board of Behavioral Health and ~~Substance Abuse~~ Developmental Services Board.

"Caregiver" means an employee or contractor who provides care and support services; medical services; or other treatment, rehabilitation, or habilitation services.

"Commissioner" means the Commissioner of the Department of ~~Mental Health, Mental Retardation~~ Behavioral Health and ~~Substance Abuse~~ Developmental Services.

"Community services board" or "CSB" means the public body established pursuant to § 37.2-501 of the Code of Virginia that provides mental health, mental retardation, and substance abuse services to individuals within each city and county that established it. For the purpose of these regulations, community services board also includes a behavioral health authority established pursuant to § 37.2-602 of the Code of Virginia.

"Complaint" means an allegation of a violation of these regulations or a provider's policies and procedures related to these regulations.

"Consent" means the voluntary agreement of an individual or that individual's authorized representative to specific services.

Consent must be given freely and without undue inducement, any element of force, fraud, deceit, or duress, or any form of constraint or coercion. Consent may be expressed through any means appropriate for the individual, including verbally, through physical gestures or behaviors, in Braille or American Sign Language, in writing, or through other methods.

"Department" means the Department of ~~Mental Health, Mental Retardation~~ Behavioral Health and ~~Substance Abuse~~ Developmental Services.

"Director" means the chief executive officer of any provider delivering services. In organizations that also include services not covered by these regulations, the director is the chief executive officer of the services or services licensed, funded, or operated by the department.

"Discharge plan" means the written plan that establishes the criteria for an individual's discharge from a service and identifies and coordinates delivery of any services needed after discharge.

"Disclosure" means the release by a provider of information identifying an individual.

"Emergency" means a situation that requires a person to take immediate action to avoid harm, injury, or death to an individual or to others.

"Exploitation" means the misuse or misappropriation of the individual's assets, goods, or property. Exploitation is a type of abuse. (See § 37.2-100 of the Code of Virginia.) Exploitation also includes the use of a position of authority to extract personal gain from an individual. Exploitation includes violations of 12VAC35-115-120 (Work) and 12VAC35-115-130 (Research). Exploitation does not include the billing of an individual's third party payer for services. Exploitation also does not include instances of use or appropriation of an individual's assets, goods or property when permission is given by the individual or his authorized representative:

1. With full knowledge of the consequences;
2. With no inducements; and
3. Without force, misrepresentation, fraud, deceit, duress of any form, constraint, or coercion.

"Governing body of the provider" means the person or group of persons with final authority to establish policy. For the purpose of these regulations, the governing body of a CSB means the public body established according to Chapter 5 (§ 37.2-500 et seq.) or Chapter 6 (§ 37.2-600 et seq.) of Title 37.2 of the Code of Virginia, and shall include administrative policy community services boards, operating community services boards, local government departments with policy-advisory boards, and the board of a behavioral health authority.

"Habilitation" means the provision of individualized services conforming to current acceptable professional practice that enhance the strengths of, teach functional skills to, or reduce or eliminate challenging behaviors of an individual. These services occur in an environment that suits the individual's needs, responds to his preferences, and promotes social interaction and adaptive behaviors.

"Health care operations" means any activities of the provider to the extent that the activities are related to its provision of health care services. Examples include:

1. Conducting quality assessment and improvement activities, case management and care coordination, contacting of health care providers and patients with information about treatment alternatives, and related functions that do not include treatment;
2. Reviewing the competence or qualifications of health care professionals, evaluating practitioner and provider performance, and training, licensing or credentialing activities;

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3. Conducting or arranging for medical review, legal services, and auditing functions, including fraud and abuse detection and compliance programs; and

4. Other activities contained within the definition of health care operations in the Standards for Privacy of Individually Identifiable Health Information, 45 CFR 164.501.

"Health plan" means an individual or group plan that provides or pays the cost of medical care, including any entity that meets the definition of "health plan" in the Standards for Privacy of Individually Identifiable Health Information, 45 CFR 160.103.

"Historical research" means the review of information that identifies individuals receiving services for the purpose of evaluating or otherwise collecting data of general historical significance. See 12VAC35-115-80 B (Confidentiality).

"Human research" means any systematic investigation, including research development, testing, and evaluation, utilizing human subjects, that is designed to develop or contribute to generalized knowledge. Human research shall not include research exempt from federal research regulations pursuant to 45 CFR 46.101(b).

"Human rights advocate" means a person employed by the commissioner upon recommendation of the State Human Rights Director to help individuals receiving services exercise their rights under this chapter. See 12VAC35-115-250 C.

"Individual" means a person who is receiving services. This term includes the terms "consumer," "patient," "resident," "recipient," and "client."

"Individualized services plan" or "ISP" means a comprehensive and regularly updated written plan that describes the individual's needs, the measurable goals and objectives to address those needs, and strategies to reach the individual's goals. An ISP is person-centered, empowers the individual, and is designed to meet the needs and preferences of the individual. The ISP is developed through a partnership between the individual and the provider and includes an individual's treatment plan, habilitation plan, person-centered plan, or plan of care.

"Informed consent" means the voluntary written agreement of an individual, or that individual's authorized representative to surgery, electroconvulsive treatment, use of psychotropic medications, or any other treatment or service that poses a risk of harm greater than that ordinarily encountered in daily life or for participation in human research. To be voluntary, informed consent must be given freely and without undue inducement, any element of force, fraud, deceit, or duress, or any form of constraint or coercion.

"Inspector general" means a person appointed by the Governor to provide oversight by inspecting, monitoring, and reviewing the quality of services that providers deliver.

"Investigating authority" means any person or entity that is approved by the provider to conduct investigations of abuse and neglect.

"Licensed professional" means a physician, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker, licensed or certified substance abuse treatment practitioner, or certified psychiatric nurse specialist.

"Local Human Rights Committee" or "LHRC" means a group of at least five people appointed by the State Human Rights Committee. See 12VAC35-115-250 D for membership and duties.

"Neglect" means failure by a person, program, or facility operated, licensed, or funded by the department, excluding those operated by the Department of Corrections, responsible for providing services to do so, including nourishment, treatment, care, goods, or services necessary to the health, safety, or welfare of a person receiving care or treatment for mental illness, mental retardation, or substance abuse. See § 37.2-100 of the Code of Virginia.

"Next friend" means a person designated in accordance with 12VAC35-115-146 B to serve as the authorized representative of an individual who has been determined to lack capacity to consent or authorize the disclosure of identifying information, when required under these regulations.

"Peer-on-peer aggression" means a physical act, verbal threat or demeaning expression by an individual against or to another individual that causes physical or emotional harm to that individual. Examples include hitting, kicking, scratching, and other threatening behavior. Such instances may constitute potential neglect.

"Person centered" means focusing on the needs and preferences of the individual, empowering and supporting the individual in defining the direction for his life, and promoting self-determination, community involvement, and recovery.

"Program rules" means the operational rules and expectations that providers establish to promote the general safety and well-being of all individuals in the program and to set standards for how individuals will interact with one another in the program. Program rules include any expectation that produces a consequence for the individual within the program. Program rules may be included in a handbook or policies and shall be available to the individual.

"Protection and advocacy agency" means the state agency designated under the federal Protection and Advocacy for Individuals with Mental Illness (PAIMI) Act and the Developmental Disabilities (DD) Act. The protection and advocacy agency is the Virginia Office for Protection and Advocacy.

"Provider" means any person, entity, or organization offering services that is licensed, funded, or operated by the department.

"Psychotherapy notes" means comments recorded in any medium by a health care provider who is a mental health professional documenting and analyzing an individual or a group, joint, or family counseling session that are separated from the rest of the individual's health record. Psychotherapy notes shall not include annotations relating to medication and prescription monitoring, counseling session start and stop times, treatment modalities and frequencies, clinical test results, or any summary of any symptoms, diagnosis, prognosis, functional status, treatment plan, or the individual's progress to date.

"Research review committee" or "institutional review board" means a committee of professionals that provides complete and adequate review of research activities. The committee shall be sufficiently qualified through maturity, experience, and diversity of its members, including consideration of race, gender, and cultural background, to promote respect for its advice and counsel in safeguarding the rights and welfare of participants in human research. (See § 37.2-402 of the Code of Virginia and 12VAC35-180.)

"Restraint" means the use of a mechanical device, medication, physical intervention, or hands-on hold to prevent an individual from moving his body to engage in a behavior that places him or others at imminent risk. There are three kinds of restraints:

1. Mechanical restraint means the use of a mechanical device that cannot be removed by the individual to restrict the freedom of movement or functioning of a limb or a portion of an individual's body when that behavior places him or others at imminent risk.
2. Pharmacological restraint means the use of a medication that is administered involuntarily for the emergency control of an individual's behavior when that individual's behavior places him or others at imminent risk and the administered medication is not a standard treatment for the individual's medical or psychiatric condition.
3. Physical restraint, also referred to as manual hold, means the use of a physical intervention or hands-on hold to prevent an individual from moving his body when that individual's behavior places him or others at imminent risk.

"Restraints for behavioral purposes" means using a physical hold, medication, or a mechanical device to control behavior or involuntarily restrict the freedom of movement of an individual in an instance when all of the following conditions are met: (i) there is an emergency, (ii) nonphysical interventions are not viable, and (iii) safety issues require an immediate response.

"Restraints for medical purposes" means using a physical hold, medication, or mechanical device to limit the mobility of an individual for medical, diagnostic, or surgical purposes, such as routine dental care or radiological procedures and related postprocedure care processes, when use of the restraint is not the accepted clinical practice for treating the individual's condition.

"Restraints for protective purposes" means using a mechanical device to compensate for a physical or cognitive deficit when the individual does not have the option to remove the device. The device may limit an individual's movement, for example, bed rails or a gerichair, and prevent possible harm to the individual or it may create a passive barrier, such as a helmet to protect the individual.

"Restriction" means anything that limits or prevents an individual from freely exercising his rights and privileges.

"Seclusion" means the involuntary placement of an individual alone in an area secured by a door that is locked or held shut by a staff person, by physically blocking the door, or by any other physical or verbal means, so that the individual cannot leave it.

"Serious injury" means any injury resulting in bodily hurt, damage, harm, or loss that requires medical attention by a licensed physician.

"Services" means care, treatment, training, habilitation, interventions, or other supports, including medical care, delivered by a provider licensed, operated or funded by the department.

"Services record" means all written and electronic information that a provider keeps about an individual who receives services.

"State Human Rights Committee" or "SHRC" means a committee of nine members appointed by the board that is accountable for the duties prescribed in 12VAC35-115-250 E. See 12VAC35-115-250 E for membership and duties.

"State Human Rights Director" means the person employed by and reporting to the commissioner who is responsible for carrying out the functions prescribed in 12VAC35-115-250 F.

"Time out" means the involuntary removal of an individual by a staff person from a source of reinforcement to a different, open location for a specified period of time or until the problem behavior has subsided to discontinue or reduce the frequency of problematic behavior.

"Treatment" means the individually planned, sound, and therapeutic interventions that are intended to improve or maintain functioning of an individual receiving services delivered by providers licensed, funded, or operated by the department. In order to be considered sound and therapeutic, the treatment must conform to current acceptable professional practice.

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Part III

Explanation of Individual Rights and Provider Duties

12VAC35-115-50. Dignity.

A. Each individual has a right to exercise his legal, civil, and human rights, including constitutional rights, statutory rights, and the rights contained in these regulations, except as specifically limited herein. Each individual has a right to have services that he receives respond to his needs and preferences and be person-centered. Each individual also has the right to be protected, respected, and supported in exercising these rights. Providers shall not partially or totally take away or limit these rights solely because an individual has a mental illness, mental retardation, or substance use disorder and is receiving services for these conditions or has any physical or sensory condition that may pose a barrier to communication or mobility.

B. In receiving all services, each individual has the right to:

1. Use his preferred or legal name. The use of an individual's preferred name may be limited when a licensed professional makes the determination that the use of the name will result in demonstrable harm or have significant negative impact on the program itself or the individual's treatment, progress, and recovery. The director or his designee shall discuss the issue with the individual and inform the human rights advocate of the reasons for any restriction prior to implementation and the reasons for the restriction shall be documented in the individual's services record. The need for the restriction shall be reviewed by the team every month and documented in the services record.
2. Be protected from harm including abuse, neglect, and exploitation.
3. Have help in learning about, applying for, and fully using any public service or benefit to which he may be entitled. These services and benefits include educational or vocational services, housing assistance, services or benefits under Titles II, XVI, XVIII, and XIX of the Social Security Act, United States Veterans Benefits, and services from legal and advocacy agencies.
4. Have opportunities to communicate in private with lawyers, judges, legislators, clergy, licensed health care practitioners, authorized representatives, advocates, the inspector general, and employees of the protection and advocacy agency.
5. Be provided with general information about program services, policies, and rules in writing and in the manner, format and language easily understood by the individual.
6. Be afforded the opportunity to have an individual of his choice notified of his general condition, location, and transfer to another facility.

C. In services provided in residential and inpatient settings, each individual has the right to:

1. Have sufficient and suitable clothing for his exclusive use.
2. Receive nutritionally adequate, varied, and appetizing meals that are prepared and served under sanitary conditions, are served at appropriate times and temperatures, and are consistent with any individualized diet program.
3. Live in a humane, safe, sanitary environment that gives each individual, at a minimum:
 - a. Reasonable privacy and private storage space;
 - b. An adequate number of private, operating toilets, sinks, showers, and tubs that are designed to accommodate individuals' physical needs;
 - c. Direct outside air provided by a window that opens or by an air conditioner;
 - d. Windows or skylights in all major areas used by individuals;
 - e. Clean air, free of bad odors; and
 - f. Room temperatures that are comfortable year round and compatible with health requirements.
4. Practice a religion and participate in religious services subject to their availability, provided that such services are not dangerous to the individual or others and do not infringe on the freedom of others.
 - a. Religious services or practices that present a danger of bodily injury to any individual or interfere with another individual's religious beliefs or practices may be limited. The director or his designee shall discuss the issue with the individual and inform the human rights advocate of the reasons for any restriction prior to implementation. The reasons for the restriction shall be documented in the individual's services record.
 - b. Participation in religious services or practices may be reasonably limited by the provider in accordance with other general rules limiting privileges or times or places of activities.
5. Have paper, pencil and stamps provided free of charge for at least one letter every day upon request. However, if an individual has funds to buy paper, pencils, and stamps to send a letter every day, the provider does not have to pay for them.
6. Communicate privately with any person by mail and have help in writing or reading mail as needed.
 - a. An individual's access to mail may be limited only if the provider has reasonable cause to believe that the mail contains illegal material or anything dangerous. If so, the

director or his designee may open the mail, but not read it, in the presence of the individual.

b. An individual's ability to communicate by mail may be limited if, in the judgment of a licensed professional, the individual's communication with another person or persons will result in demonstrable harm to the individual's mental health.

c. The director or his designee shall discuss the issue with the individual and inform the human rights advocate of the reasons for any restriction prior to implementation and the reasons for the restriction shall be documented in the individual's services record. The need for the restriction shall be reviewed by the team every month and documented in the services record.

7. Communicate privately with any person by telephone and have help in doing so. Use of the telephone may be limited to certain times and places to make sure that other individuals have equal access to the telephone and that they can eat, sleep, or participate in an activity without being disturbed.

a. An individual's access to the telephone may be limited only if, in the judgment of a licensed professional, communication with another person or persons will result in demonstrable harm to the individual or significantly affect his treatment.

b. The director or his designee shall discuss the issue with the individual and inform the human rights advocate of the reasons for any restriction prior to implementation and the reasons for the restriction shall be documented in the individual's services record. The need for the restriction shall be reviewed by the team every month and documented in the individual's services record.

c. Residential substance abuse services providers that are not inpatient hospital settings or crisis stabilization programs may develop policies and procedures that limit the use of the telephone during the initial phase of treatment when sound therapeutic practice requires restriction, subject to the following conditions:

(1) Prior to implementation and when it proposes any changes or revisions, the provider shall submit policies and procedures, program handbooks, or program rules to the LHRC and the human rights advocate for review and approval.

(2) When an individual applies for admission, the provider shall notify him of these restrictions.

8. Have or refuse visitors.

a. An individual's access to visitors may be limited or supervised only when, in the judgment of a licensed professional, the visits result in demonstrable harm to the individual or significantly affect the individual's

treatment or when the visitors are suspected of bringing contraband or threatening harm to the individual in any other way.

b. The director or his designee shall discuss the issue with the individual and inform the human rights advocate of the reasons for any restriction prior to implementation and the restriction shall be documented in the individual's services record. The need for the restriction shall be reviewed by the team every month and documented in the individual's services record.

c. Residential substance abuse service providers that are not inpatient hospital settings or crisis stabilization programs may develop policies and procedures that limit visitors during the initial phase of treatment when sound therapeutic practice requires the restriction, subject to the following conditions:

(1) Prior to implementation and when proposing any changes or revisions, the provider shall submit policies and procedures, program handbooks, or program rules to the LHRC and the human rights advocate for review and approval.

(2) The provider shall notify individuals who apply for admission of these restrictions.

9. Nothing in these provisions shall prohibit a provider from stopping, reporting, or intervening to prevent any criminal act.

D. The provider's duties.

1. Providers shall recognize, respect, support, and protect the dignity rights of each individual at all times. In the case of a minor, providers shall take into consideration the expressed preferences of the minor and the parent or guardian.

2. Providers shall develop, carry out, and regularly monitor policies and procedures that assure the protection of each individual's rights.

3. Providers shall assure the following relative to abuse, neglect, and exploitation:

a. Policies and procedures governing harm, abuse, neglect, and exploitation of individuals receiving their services shall require that, as a condition of employment or volunteering, any employee, volunteer, consultant, or student who knows of or has reason to believe that an individual may have been abused, neglected, or exploited at any location covered by these regulations, shall immediately report this information directly to the director.

b. The director shall immediately take necessary steps to protect the individual until an investigation is complete. This may include the following actions:

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(1) Direct the employee or employees involved to have no further contact with the individual. In the case of incidents of peer-on-peer aggression, protect the individuals from the aggressor in accordance with sound therapeutic practice and these regulations.

(2) Temporarily reassign or transfer the employee or employees involved to a position that has no direct contact with individuals receiving services.

(3) Temporarily suspend the involved employee or employees pending completion of an investigation.

c. The director shall immediately notify the human rights advocate and the individual's authorized representative. In no case shall notification be later than 24 hours after the receipt of the initial allegation of abuse, neglect, or exploitation.

d. In no case shall the director punish or retaliate against an employee, volunteer, consultant, or student for reporting an allegation of abuse, neglect, or exploitation to an outside entity.

e. The director shall initiate an impartial investigation within 24 hours of receiving a report of potential abuse or neglect. The investigation shall be conducted by a person trained to do investigations and who is not involved in the issues under investigation.

(1) The investigator shall make a final report to the director or the investigating authority and to the human rights advocate within 10 working days of appointment. Exceptions to this timeframe may be requested and approved by the department if submitted prior to the close of the sixth day.

(2) The director or investigating authority shall, based on the investigator's report and any other available information, decide whether the abuse, neglect or exploitation occurred. Unless otherwise provided by law, the standard for deciding whether abuse, neglect, or exploitation has occurred is preponderance of the evidence.

(3) If abuse, neglect or exploitation occurred, the director shall take any action required to protect the individual and other individuals. All actions must be documented and reported as required by 12VAC35-115-230.

(4) In all cases, the director shall provide his written decision, including actions taken as a result of the investigation, within seven working days following the completion of the investigation to the individual or the individual's authorized representative, the human rights advocate, the investigating authority, and the involved employee or employees. The decision shall be in writing and in the manner, format, and language that is most easily understood by the individual.

(5) If the individual affected by the alleged abuse, neglect, or exploitation or his authorized representative is not satisfied with the director's actions, he or his authorized representative, or anyone acting on his behalf, may file a petition for an LHRC hearing under 12VAC35-115-180.

f. The director shall cooperate with any external investigation, including those conducted by the inspector general, the protection and advocacy agency, or other regulatory or enforcement agencies.

g. If at any time the director has reason to suspect that an individual may have been abused or neglected, the director shall immediately report this information to the appropriate local Department of Social Services (see §§ 63.2-1509 and 63.2-1606 of the Code of Virginia) and cooperate fully with any investigation that results.

h. If at any time the director has reason to suspect that the abusive, neglectful or exploitive act is a crime, the director or his designee shall immediately contact the appropriate law-enforcement authorities and cooperate fully with any investigation that results.

4. Providers shall notify a person the individual chooses of his general condition, location, and transfer to another facility.

12VAC35-115-80. Confidentiality.

A. Each individual is entitled to have all identifying information that a provider maintains or knows about him remain confidential. Each individual has a right to give his authorization before the provider shares identifying information about him or his care unless another state law or regulation, or these regulations specifically require or permit the provider to disclose certain specific information.

B. The provider's duties.

1. Providers shall maintain the confidentiality of any information that identifies an individual. If an individual's services record pertains in whole or in part to referral, diagnosis or treatment of substance use disorders, providers shall disclose information only according to applicable federal regulations (see 42 CFR Part 2, Confidentiality of Alcohol and Drug Abuse Patient Records).

2. Providers shall obtain and document in the individual's services record the individual's authorization or that of the authorized representative prior to disclosing any identifying information about him. The authorization must contain the following elements:

a. The name of the organization and the name or other specific identification of the person or persons or class of persons to whom disclosure is made;

- b. A description of the nature of the information to be disclosed, the purpose of the disclosure, and an indication whether the authorization extends to the information placed in the individual's record after the authorization was given but before it expires;
 - c. An indication of the effective date of the authorization and the date the authorization will expire, or the event or condition upon which it will expire; and
 - d. The signature of the individual and the date. If the authorization is signed by an authorized representative, a description of the authorized representative's authority to act.
3. Providers shall tell each individual and his authorized representative about the individual's confidentiality rights. This shall include how information can be disclosed and how others might get information about the individual without his authorization. If a disclosure is not required by law, the provider shall give strong consideration to any objections from the individual or his authorized representative in making the decision to disclose information.
4. Providers shall prevent unauthorized disclosures of information from services records and shall maintain and disclose information in a secure manner.
5. In the case of a minor, the authorization of the custodial parent or other person authorized to consent to the minor's treatment under § 54.1-2969 is required, except as provided below:
- a. Section 54.1-2969 E of the Code of Virginia permits a minor to authorize the disclosure of information related to medical or health services for a sexually transmitted or contagious disease, family planning or pregnancy, and outpatient care, treatment or rehabilitation for substance use disorders, mental illness, or emotional disturbance.
 - b. The concurrent authorization of the minor and custodial parent is required to disclose inpatient substance abuse records.
 - c. The minor and the custodial parent shall authorize the disclosure of identifying information related to the minor's inpatient psychiatric hospitalization when the minor is 14 years of age or older and has consented to the admission.
6. When providers disclose identifying information, they shall attach a statement that informs the person receiving the information that it must not be disclosed to anyone else unless the individual authorizes the disclosure or unless state law or regulation allows or requires further disclosure without authorization.
7. Providers may encourage individuals to name family members, friends, and others who may be told of their

presence in the program and general condition or well-being. Providers shall notify a person of the individual's choice of the individual's general condition, location, and transfer to another facility upon the individual's oral or written request. Except for information governed by 42 CFR Part 2, providers may disclose to a family member, other relative, a close personal friend, or any other person identified by the individual, information that is directly relevant to that person's involvement with the individual's care or payment for his health care, if (i) the provider obtains the individual's agreement, (ii) the provider provides the individual with the opportunity to object to the disclosure, and (iii) the individual does not object or the provider reasonably infers for the circumstances, based on the exercise of professional judgment, that the individual does not object to the disclosure. If the opportunity to agree or object cannot be provided because of the individual's incapacity or an emergency circumstance, the provider may, in the exercise of professional judgment, determine whether the disclosure is in the best interest of the individual and, if so, disclose only the information that is directly relevant to the person's involvement with the individual's health care.

8. Providers may disclose the following identifying information without authorization or violation of the individual's confidentiality, but only under the conditions specified in the following subdivisions of this subsection. Providers should always consult 42 CFR Part 2, Confidentiality of Alcohol and Drug Abuse Patient Records, if applicable, because these federal regulations may prohibit some of the disclosures addressed in this section.

- a. Emergencies: Providers may disclose information in an emergency to any person who needs that particular information for the purpose of preventing injury to or death of an individual or other person. The provider shall not disclose any information that is not needed for this specific purpose.
- b. Providers or health plans: Providers may permit any full- or part-time employee, consultant, agent, or contractor of the provider to use identifying information or disclose to another provider, a health plan, the department, or a CSB, information required to give services to the individual or to get payment for the services.
- c. Court proceedings: If the individual or someone acting for him introduces any aspect of his mental condition or services as an issue before a court, administrative agency, or medical malpractice review panel, the provider may disclose any information relevant to that issue. The provider may also disclose any records if they are properly subpoenaed, if a court orders them to be

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produced, or if involuntary admission or certification for admission is being proposed.

d. Legal counsel: Providers may disclose information to their own legal counsel or to anyone working on behalf of their legal counsel in providing representation to the provider. Providers of state-operated services may disclose information to the Office of the Attorney General or to anyone appointed by or working on behalf of that office in providing representation to the Commonwealth of Virginia.

e. Human rights committees: Providers may disclose to the LHRC and the SHRC any information necessary for the conduct of their responsibilities under these regulations.

f. Others authorized or required by the commissioner, CSB, or private program director: Providers may disclose information to other persons if authorized or required for the following activities:

- (1) Licensing, human rights, or certification or accreditation reviews;
- (2) Hearings, reviews, appeals, or investigations under these regulations;
- (3) Evaluation of provider performance and individual outcomes (see §§ 37.2-508 and 37.2-608 of the Code of Virginia);
- (4) Statistical reporting;
- (5) Preauthorization, utilization reviews, financial and related administrative services reviews, and audits; or
- (6) Similar oversight and review activities.

g. Preadmission screening, services, and discharge planning: Providers may disclose to the department, the CSB, or to other providers information necessary to screen individuals for admission or to prepare and carry out a comprehensive individualized services or discharge plan (see § 37.2-505 of the Code of Virginia).

h. Protection and advocacy agency: Providers may disclose information to the protection and advocacy agency in accordance with that agency's legal authority under federal and state law.

i. Historical research: Providers may disclose information to persons engaging in bona fide historical research if all of the following conditions are met:

- (1) The request for historical research shall include, at a minimum, a summary of the scope and purpose of the research, a description of the product to result from the research and its expected date of completion, a rationale explaining the need to access otherwise private information, and the specific identification of the type and location of the records sought.

(2) The commissioner, CSB executive director, or private program director has authorized the research;

(3) The individual or individuals who are the subject of the disclosure are deceased;

(4) There are no known living persons permitted by law to authorize the disclosure; and

(5) The disclosure would in no way reveal the identity of any person who is not the subject of the historical research.

j. Protection of public safety: If an individual receiving services makes a specific threat to cause serious bodily injury or death to an identified or readily identifiable person and the provider reasonably believes that the individual has the intent and the ability to carry out the threat immediately or imminently, the provider may disclose those facts necessary to alleviate the potential threat.

k. Inspector General: Providers may disclose to the Inspector General any individual services records and other information relevant to the provider's delivery of services.

l. Virginia Patient Level Data System: Providers may disclose financial and services information to Virginia Health Information as required by law (see Chapter 7.2 (§ 32.1-276.2 et seq.) of Title 32.1 of the Code of Virginia).

m. Psychotherapy notes: Providers shall obtain an individual's authorization for any disclosure of psychotherapy notes, except when disclosure is made:

(1) For the provider's own training programs in which students, trainees, or practitioners in mental health are being taught under supervision to practice or improve their skills in group, joint, family or individual counseling;

(2) To defend the provider or its employees or staff against any accusation or wrongful conduct;

(3) In discharge of the provider's duty, in accordance with § 54.1-2400.1 B of the Code of Virginia, to take precautions to protect third parties from violent behavior or other serious harm;

(4) As required in the course of an investigation, audit, review, or proceeding regarding a provider's conduct by a duly authorized law-enforcement, licensure, accreditation, or professional review entity; or

(5) When otherwise required by law.

n. A law-enforcement official:

- (1) Pursuant to a search warrant or grand jury subpoena;

(2) In response to their request, for the purpose of identifying or locating a suspect, fugitive, an individual required to register pursuant to § 9.1-901 of the Sex Offender and Crimes Against Minors Registry Act, material witness, or missing person, provided that only the following information is disclosed:

- (a) Name and address of the individual;
- (b) Date and place of birth of the individual;
- (c) Social Security number of the individual;
- (d) Blood type of the individual;
- (e) Date and time of treatment received by the individual;
- (f) Date and time of death of the individual;
- (g) Description of distinguishing physical characteristics of the individual; and
- (h) Type of injury sustained by the individual.

(3) Regarding the death of an individual for the purpose of alerting law enforcement of the death if the health care entity has a suspicion that such death may have resulted from criminal conduct; or

(4) If the health care entity believes in good faith that the information disclosed constitutes evidence of a crime that occurred on its premises.

o. Other statutes or regulations: Providers may disclose information to the extent required or permitted by any other state or law or regulation. See also § 32.1-127.1:03 of the Code of Virginia for a list of circumstances in which records may be disclosed without authorization.

9. Upon request, the provider shall tell the individual or his authorized representative the sources of information contained in his services records and provide a written listing of disclosures of information made without authorization, except for disclosures:

- a. To employees of the department, CSB, the provider, or other providers;
- b. To carry out treatment, payment, or health care operations;
- c. That are incidental or unintentional disclosures that occur as a by-product of engaging in health care communications and practices that are already permitted or required;
- d. To an individual or his authorized representative;
- e. Pursuant to an authorization;
- f. For national security or intelligence purposes;
- g. To correctional institutions or law enforcement officials; or

h. That were made more than six years prior to the request.

10. The provider shall include the following information in the listing of disclosures of information provided to the individual or his authorized representative under subdivision 9 of this subsection:

- a. The name of the person or organization that received the information and the address if known;
- b. A brief description of the information disclosed; and
- c. A brief statement of the purpose of the disclosure or, in lieu of such a statement, a copy of the written request for disclosure.

11. If the provider makes multiple disclosures of information to the same person or entity for a single purpose, the provider shall include the following:

- a. The information required in subdivision 10 of this subsection for the first disclosure made during the requested period;
- b. The frequency, periodicity, or number of disclosures made during the period for which the individual is requesting information; and
- c. The date of the last disclosure during the time period.

12. If the provider makes a disclosure to a social service or protective services agency about an individual who the provider reasonably believes to be a victim of abuse or neglect, the provider is not required to inform the individual or his authorized representative of the disclosure if:

- a. The provider, in the exercise of professional judgment, believes that informing the individual would place the individual at risk of serious harm; or
- b. The provider would be informing the authorized representative, and the provider reasonably believes that the authorized representative is responsible for the abuse or neglect, and that informing such person would not be in the best interests of the individual.

VA.R. Doc. No. R09-2085; Filed January 26, 2011, 10:36 a.m.

Fast-Track Regulation

Title of Regulation: 12VAC35-220. Certification Requirements for Early Intervention Professionals and Early Intervention Specialists (adding 12VAC35-220-10 through 12VAC35-220-100).

Statutory Authority: § 2.2-5304 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: March 17, 2011.

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Effective Date: April 1, 2011.

Agency Contact: Karen Durst, Department of Behavioral Health and Developmental Services, 1220 Bank Street, P.O. Box 1797, Richmond, VA 23218-1797, telephone (804) 786-9844, FAX (804) 371-7959, or email karen.durst@dbhds.virginia.gov.

Basis: The department has the legal authority to promulgate these regulations under § 2.2-5304 of the Code of Virginia and Item 315#1c of Chapter 781 of the 2009 Acts of Assembly. This legal authority is mandatory under Item 315#1c of Chapter 781 of the 2009 Acts of Assembly.

Purpose: These regulations provide specific requirements for certification of practitioners as early intervention professionals and early intervention specialists under Virginia's early intervention services system, as required by Pub. L. No.108-446 635(9) and the standards established in 42 CFR 431.51. Section 2.2-5304 of the Code of Virginia designates the department as the state lead agency responsible for implementing Virginia's early intervention services system and ensuring compliance with the applicable federal requirements. The goal of these regulations is to ensure the competence of early intervention service providers under the authority granted to the lead agency to protect the health, safety, and welfare of citizens. The regulations are also intended to provide the basis for the department to certify qualified practitioners of early intervention services so they may be enrolled as service providers and receive reimbursement under the Medicaid State Plan. The department consulted with the Department of Medical Assistance Services in developing these regulations.

Rationale for Using Fast Track Process: The emergency regulations (effective November 3, 2009, to May 5, 2011) provide practitioners the opportunity to qualify for Medicaid reimbursement and reflect federal and state requirements. More than 850 individuals have been certified under the emergency regulations. Only one issue with the emergency regulations has been identified and has been corrected in the proposed regulations. The Virginia Interagency Coordinating Council supports the proposed regulations. The influx of new graduates anticipated in the spring makes it imperative that permanent certification regulations be in place as soon as possible to allow these newly-qualified individuals to become certified as early intervention professionals.

Use of the fast track process will remove a potential barrier to the recruitment of newly qualified individuals who will be graduating from occupational therapy and physical therapy programs this spring and who might seek other employment opportunities. Because these critical healthcare positions are in short supply in Virginia and nationally, providers have a very difficult time recruiting qualified individuals.

Adoption of the proposed regulations will permit early intervention practitioners to continue their certification for

reimbursement for services performed and will allow certain professionals qualified to practice in Virginia, but who cannot be certified under the emergency regulations, to qualify for certification.

Substance: The substantive provisions of this new regulation include:

- A definition of early intervention services and a requirement for specified providers of this service under the Medicaid State Plan to be certified by the department;
- Specific criteria for practitioners in various disciplines to be certified as early intervention professionals or early intervention specialists;
- Requirements for early intervention professionals who provide supervision to other early intervention personnel;
- Application process requirements for initial certification, recertification, and the restoration of an expired certification; and
- Processes for practitioners to seek reconsideration of a decision to deny certification.

Issues: This action poses no disadvantages to the public or the Commonwealth. These regulations establish a certification process for early intervention practitioners that ensures that individuals completing the certification process are appropriately and adequately prepared and trained to treat infant and toddlers with disabilities. The regulations establish the criteria for maintenance of the certification that allows practitioners to seek reimbursement for services rendered.

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

Summary of the Proposed Amendments to Regulation. The proposed regulations permanently establish certification requirements for Part C early intervention service providers which have been in effect since November 2009 under emergency regulations.

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

Estimated Economic Impact. The proposed regulations permanently establish certification requirements for Part C early intervention service providers which have been in effect since November 2009 under emergency regulations.

The Department of Behavioral Health and Developmental Services (DBHDS) oversees the provision of early intervention services through Part C of the Individuals with Disabilities Education Act. DBHDS contracts with local lead agencies to facilitate implementation of early intervention services statewide. The majority of local lead agencies are under the auspices of Community Services Boards, along with several universities, public health districts, local governments, and local education agencies.

Prior to these regulations, there was no verification process in place to assure that early intervention services were provided by rehabilitation therapists such as physical therapists, psychologists, speech-language pathologists etc. who had the specialized knowledge and experience required to provide these services. In ensuring that rehabilitation therapists are equipped with specialized knowledge related to infants and toddlers, birth to three, who have disabilities and/or developmental delays such as problems with walking or talking, the proposed regulations are expected to help better address the needs of these children. According to DBHDS, approximately 5,000 children are receiving early intervention services at any given month. In a given year, approximately 11,000 different individuals are estimated to receive these services.

One of the main economic effects of the proposed changes will be on the providers wishing to be certified as early intervention therapists. The proposed regulations require licensed traditional rehabilitation therapists to complete a training module covering early intervention principles and practices, including infant and toddler development, family-centered practice and multidisciplinary team practice for certification.

Initial training and testing for certification can be fulfilled by completing online modules that are free. Depending on the practitioner's early intervention knowledge, the training and testing may take up to 10 hours to complete. After initial certification, providers are required to take 30 hours of continuing education classes every three years for renewal of their certification. Thus, the traditional rehabilitation therapists wishing to continue to be certified as early intervention providers will have to absorb costs in terms of their time required to complete initial training and continuing education credits. Some of these costs may be offset by required continuing education for their professional licensure or certification. Additionally, DBHDS believes that most providers may be able to take the training and continuing education at no or minimal charge through courses offered by their professional associations, their employers' staff development program, or through training provided by DBHDS. Since November 2009, approximately 850 early intervention providers are certified under the emergency regulations.

Finally, the proposed regulations will create some administrative costs for the Part C program. According to DBHDS, \$250,000 was paid to a contractor to develop an early intervention certification training module. In addition, one full time position is devoted to administering the certification activities.

Businesses and Entities Affected. The proposed regulations are expected to affect traditional rehabilitation therapists wishing to be certified as an early intervention services provider and children and families who are receiving these

services. Currently, there are approximately 850 certified early intervention providers. There are also approximately 5,000 children receiving early intervention services at any given month and approximately 11,000 different individuals are estimated to receive these services in a given year.

Localities Particularly Affected. The proposed regulations apply throughout the Commonwealth.

Projected Impact on Employment. Most if not all of the current providers are expected to obtain certification under the current regulations. Thus, no significant change in employment is expected.

Also, a contract to develop an early intervention certification training module and one full time position to administer the certification activities should be considered a positive impact on employment.

Effects on the Use and Value of Private Property. The proposed regulations do not have a direct effect on the use and value of private property. While compliance costs for certification may have had a negative impact on the asset value of providers, it is not expected to be significant. Also, the contract to develop an early intervention certification training module may have had a positive impact on the asset value of the contractor.

Small Businesses: Costs and Other Effects. Most of the early intervention services providers may be considered as small businesses. Thus, all of the costs and other effects discussed above apply to them.

Small Businesses: Alternative Method that Minimizes Adverse Impact. There is no known alternative method that minimizes the adverse impact.

Real Estate Development Costs. The proposed regulations do not have any effect on real estate development costs.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 107 (09). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation,

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including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

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

Summary:

The proposed regulations permanently establish certification requirements, in effect since November 2009 as emergency regulations, for early intervention providers who may provide early intervention services and supports to children and their families under the federal Part C program of the Individuals with Disabilities Education Act of 2004. These changes were mandated by Item 315#1c of Chapter 781 of the 2009 Acts of Assembly to comply with the payor of last resort requirements of the Part C program. The proposed regulation allows professionals who are authorized to practice in Virginia while awaiting licensure to be certified as early intervention professionals.

CHAPTER 220

CERTIFICATION REQUIREMENTS FOR EARLY INTERVENTION PROFESSIONALS AND EARLY INTERVENTION SPECIALISTS

12VAC35-220-10. Authority and applicability.

A. Pursuant to § 2.2-5304 of the Code of Virginia, the Governor has designated the Department of Behavioral Health and Developmental Services as the state lead agency responsible for implementing the Virginia early intervention services system and ensuring compliance with federal requirements. These regulations are necessary to ensure the competence for early intervention services system practitioners under the authority granted to the lead agency.

B. Individual providers of early intervention services under the Medicaid State Plan must be certified by the Department of Behavioral Health and Developmental Services as qualified early intervention professionals or early intervention specialists. These regulations provide certification requirements for early intervention professionals and early intervention specialists.

12VAC35-220-20. Definitions.

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

"Commissioner" means the Commissioner of the Department of Behavioral Health and Developmental Services.

"Department" means the Department of Behavioral Health and Developmental Services. The Governor has designated the department as the state lead agency for Virginia's early intervention services system pursuant to § 2.2-5304 of the Code of Virginia.

"Discipline" or "profession" means a specific occupational category that may provide early intervention supports and services to eligible children under Part C of the Individuals with Disabilities Education Act and their families.

"Early intervention services" means services provided through Part C of the Individuals with Disabilities Education Act (20 USC § 1431 et seq.), as amended, designed to meet the developmental needs of each child and the needs of the family related to enhancing the child's development and provided to children from birth to age three who have (i) a 25% developmental delay in one or more areas of development, (ii) atypical development, or (iii) a diagnosed physical or mental condition that has a high probability of resulting in a developmental delay.

12VAC35-220-30. Certification required for the provision of early intervention services.

A. Individual practitioners of early intervention services, with the exception of physicians, audiologists, and registered dietitians, shall be certified by the department as early intervention professionals or early intervention specialists.

B. Certified early intervention professionals shall have expertise in a discipline trained to enhance the development of children with a disability, as evidenced by state licensure, including application for state licensure if the discipline authorizes practice in Virginia while the application is pending and the individual practitioner meets all applicable requirements for such practice; state endorsement; or certification by a national professional organization. Qualified personnel in the following disciplines may seek certification from the department as early intervention professionals:

1. Counselors:

- a. Licensed professional counselors licensed by the Virginia Board of Counseling; and
- b. School counselors (Pre K - 12) endorsed by the Virginia Board of Education;

2. Educators:

- a. Educators licensed by the Virginia Board of Education with endorsement in Special Education - Early Childhood (Birth - 5);
- b. Educators licensed by the Virginia Board of Education with endorsement in Early/Primary Education (Pre K - 3);

- c. Educators licensed by the Virginia Board of Education with endorsement in Career and Technical Education - Family and Consumer Services;
 - d. Educators licensed by the Virginia Board of Education with endorsement in Special Education - Hearing Impairments (Pre K - 12);
 - e. Educators licensed by the Virginia Board of Education with endorsement in Special Education - Visual Impairments (Pre K - 12); and
 - f. Educators with a technical professional license issued by the Virginia Board of Education in Career and Technical Education - Family and Consumer Sciences;
 - 3. Family and consumer science professionals certified through the American Association of Family and Consumer Sciences (AAFCS). Individuals certified by the AAFCS after June 30, 2009, shall meet certification requirements in family and consumer sciences - human development and family studies;
 - 4. Marriage and family therapists licensed by the Virginia Board of Counseling;
 - 5. Music therapists certified by the Certification Board for Music Therapists (CBMT);
 - 6. Nurses:
 - a. Nurse practitioners licensed by the Virginia Board of Nursing; and
 - b. Registered nurses licensed by the Virginia Board of Nursing;
 - 7. Occupational therapists licensed by the Virginia Board of Medicine;
 - 8. Orientation and mobility specialists certified by the National Blindness Professional Certification Board as a National Orientation and Mobility Certificant (NOMC) or certified by the Academy for Certification of Vision Rehabilitation and Education Professionals (ACVREP) as a Certified Orientation and Mobility Specialist (COMS);
 - 9. Physical therapists licensed by the Virginia Board of Physical Therapy;
 - 10. Psychologists:
 - a. Applied psychologists licensed by the Virginia Board of Psychology;
 - b. Clinical psychologists licensed by the Virginia Board of Psychology; and
 - c. School psychologists licensed by the Virginia State Board of Education with an endorsement in school psychology;
 - 11. Social workers:
 - a. Licensed clinical social workers licensed by the Virginia Board of Social Work; and
 - b. School social workers licensed by the Virginia State Board of Education with an endorsement as a school social worker;
 - 12. Speech-language pathologists licensed by the Virginia Board of Audiology and Speech-Language Pathology; and
 - 13. Therapeutic recreation specialists certified by the National Council on Therapeutic Recreation.
- C. Certified early intervention specialists shall hold a minimum of a high school diploma or general equivalency diploma. Qualified personnel in the following disciplines may seek certification from the department as early intervention specialists:
- 1. Early intervention assistants whose qualifications have been approved by the Department of Behavioral Health and Developmental Services;
 - 2. Licensed social workers licensed by the Virginia Board of Social Work;
 - 3. Nurses:
 - a. Certified nurse aides certified by the Virginia Board of Nursing; and
 - b. Licensed practical nurses licensed by the Virginia Board of Nursing;
 - 4. Occupational therapy assistants licensed by the Virginia Board of Medicine; and
 - 5. Physical therapy assistants licensed by the Virginia Board of Physical Therapy.
- D. Certified early intervention professionals and certified early intervention specialists shall demonstrate knowledge of early intervention principles and practices, including infant and toddler development, family-centered practice and multidisciplinary team practice, by successful completion of the early intervention principles and practices online training modules administered by the department. A score of at least 80% accuracy on each module's competency test shall be required for successful completion.
- 12VAC35-220-40. Supervision requirements.**
- A. Certified early intervention professionals providing supervision to other early intervention personnel shall complete the supervision training administered by the department. A score of at least 80% accuracy on the competency test shall be required for successful completion.
 - B. Certified early intervention specialists shall work under the supervision of a certified early intervention professional who has completed the required supervision training.

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12VAC35-220-50. Initial certification and recertification processes.

A. Initial certification. To apply for initial certification as an early intervention professional or early intervention specialist, practitioners shall:

1. Obtain the designated early intervention certification application package from the department; and
2. Submit a completed and signed application package to the department with:
 - a. A signed assurance that the practitioner will comply with all federal and state early intervention requirements;
 - b. Documentation of the practitioner's professional certification, licensing, endorsement, or other qualification for the practice of his profession in the Commonwealth of Virginia; and
 - c. Documentation of the practitioner's successful completion of the early intervention principles and practices training administered by the department.

Any initial certification granted to individuals who have made application for state licensure and are awaiting licensure shall be valid only as long as that individual meets the requirements of their discipline to practice in Virginia.

B. Three-year recertification. At least 30 days prior to the expiration of the practitioner's certification period, certified early intervention professionals and certified early intervention specialists shall submit an application for recertification to the department. This application shall include:

1. Documentation of the practitioner's continuing professional certification, licensing, endorsement, or other qualification for the practice of his profession in the Commonwealth of Virginia, and
2. Documentation that the practitioner has successfully completed at least 30 hours of continuing learning activities during the three-year certification period. The continuing learning activities shall address one or more of the following: (i) evidenced-based practices in early intervention services; (ii) changes in federal or state law, regulations, or practice requirements; (iii) topics identified on a personal development plan; and (iv) training needed for new responsibilities relating to early intervention services. For each continuing learning activity, documentation shall include a description of the activity and sponsoring organization, if applicable; the date or dates of training; the number of hours; and a copy of a certificate or verification of attendance, if applicable.

12VAC35-220-60. Notice of decision on application for certification or recertification.

The department shall provide written notice of the decision on the application for certification or recertification within 30 days of the receipt of a completed application and required documentation.

12VAC35-220-70. Early intervention practitioner database.

Practitioners meeting the requirements for certification shall be included in the Infant and Toddler Connection of Virginia practitioner database maintained by the department. Practitioners are responsible for notifying the department of any change that may affect their certification status or their participation in Virginia's early intervention services system.

12VAC35-220-80. Restoration of expired certifications.

A. The department shall notify practitioners in writing of the date their certification as an early intervention professional or early intervention specialist expired and that the practitioner has been placed on inactive status in the practitioner database maintained by the department.

B. Practitioners whose certification as early intervention professionals or early intervention specialists has expired may apply to the department for restoration of their certifications.

C. The department may restore certification for practitioners as early intervention professionals or early intervention specialists under the following conditions:

1. The individual's certification has been lapsed for a period of less than one year; and
2. The certification:
 - a. Has lapsed because the practitioner failed to complete the three-year recertification requirements and the individual provides documentation to the department demonstrating (i) he is currently qualified for the practice of his discipline or profession in the Commonwealth of Virginia, and (ii) he has completed at least 30 hours of training addressing one or more of the topics specified in 12VAC35-220-50 B 2; or
 - b. Has lapsed because the practitioner's discipline or profession-specific qualification expired and the practitioner documents that he now holds a current license, certification, endorsement, or other qualification for the practice of his discipline or profession in the Commonwealth of Virginia.

D. The department shall provide written notice of the decision on reinstatement of the practitioner's certification within 30 days of the receipt of a completed request and required documentation.

E. Upon restoration of the practitioner's certification as an early intervention professional or early intervention specialist,

the department shall reinstate the individual's active status in the practitioner database maintained by the department.

12VAC35-220-90. Termination of early intervention professional or early intervention specialist certification.

A. The department shall terminate a practitioner's certification as an early intervention professional or early intervention specialist under the following circumstances:

1. The practitioner's discipline-specific license, certification, or endorsement has been suspended or terminated;
2. The practitioner, after a year, fails to comply with the recertification requirements set forth in these regulations;
or
3. The practitioner fails to comply with his signed assurance that he will comply with all federal and state early intervention requirements.

B. The department shall notify the practitioner in writing of the date of and reason for termination and that the practitioner has been removed from the practitioner database maintained by the department.

12VAC35-220-100. Reconsideration or decision to deny or terminate certification.

A. In the event that the practitioner disagrees with the determination to deny or terminate certification, he may request reconsideration from the commissioner. The request shall be made in writing within 30 days of the date of the written notice of denial or termination and may include relevant additional information or documentation to support the request.

B. The commissioner shall review the request for reconsideration and information presented and issue a decision in writing within 30 business days following receipt of the request. The decision of the commissioner shall be a final case decision that may be appealed under the Virginia Administrative Process Act.

VA.R. Doc. No. R10-1928; Filed January 26, 2011, 10:35 a.m.



TITLE 13. HOUSING

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

Final Regulation

REGISTRAR'S NOTICE: The following regulations of the Board of Housing and Community Development are exempt from the Administrative Act pursuant to § 2.2-4006 A 12 of the Code of Virginia; however, the regulations are subject to the provisions of § 2.2-4007.06 concerning public petitions.

The regulations were (i) published as final regulations in 27:2 VA.R. 183-217 September 27, 2010; (ii) suspended pursuant to § 2.2-4007.06 in 27:6 VA.R. 661-662 November 22, 2010; and (iii) readopted as final regulations with the changes shown in brackets below.

Title of Regulation: **13VAC5-51. Virginia Statewide Fire Prevention Code (amending 13VAC5-51-81, 13VAC5-51-131, 13VAC5-51-133, 13VAC5-51-133.5.**

Statutory Authority: § 27-97 of the Code of Virginia.

Effective Date: March 1, 2011.

Agency Contact: Stephen W. Calhoun, Regulatory Coordinator, Department of Housing and Community Development, Main Street Center, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 371-7000, FAX (804) 371-7090, TTY (804) 371-7089, or email steve.calhoun@dhcd.virginia.gov.

Summary:

The Virginia Statewide Fire Prevention Code (SFPC) governs the maintenance of fire safety features in existing buildings and structures and fire-safety related operations on property. The SFPC incorporates by reference the International Fire Code, a nationally recognized model code produced by the International Code Council as a companion code to that used under the Virginia Uniform Statewide Building Code (USBC). Every three years, a new edition of the model code becomes available. At that time, the Board of Housing and Community Development initiates a regulatory action to incorporate the newer edition of the model code into the regulation.

Those affected by the regulation then review the proposed regulation to assure that the newest model code and its referenced standards reflect the minimum standards necessary for the fire safety of existing buildings and property. After the publishing of the proposed regulation, the board establishes a comment period for the acceptance of code change proposals to modify the model code or standards or any provisions of the entire regulation. Code change proposals are assimilated into a compilation document containing a staff evaluation of each proposal and the compilation document is reviewed by client groups during a second comment period and additional comment on each proposal is accepted. A public hearing is also held. The board then considers all comments on all proposals and develops a final regulation to complete the regulatory process.

Final regulations for the SFPC were published in Volume 27, Issue 2 of the Virginia Register of Regulations on September 27, 2010 (27:2 VA.R. 187-217 September 27, 2010), initiating a 30-day comment period. During the comment period, a number of petitions were received concerning substantive changes between the proposed and

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final regulations. The board suspended the regulatory process on certain provisions (refer to 27:6 V.A.R. 661-662 November 22, 2010) and established an additional 30-day comment period for the submittal of additional public comments on the petitioned provisions.

On January 24, 2011, the Board of Housing and Community Development considered the public comment on the petitioned provisions. The board readopted 13VAC5-51-81 P 5 and 13VAC5-51-133 C, H, and J as the final regulations were published and readopted 13VAC5-51-131 E and F and 13VAC5-51-133.5 D with the following changes from the final regulations:

13VAC5-51-131 E and F. Sections 315.1 and 315.2 of the International Fire Code were amended to return to the language published in the proposed regulation which permits combustible storage to be in accordance with the provisions in the 2009 edition of the International Fire Code.

13VAC5-51-133.5 D. Section 609.3.3.2 of the International Fire Code was amended to return to the language published in the proposed regulation which permits the inspection and cleaning of commercial kitchen exhaust hoods to be in accordance with the provisions of the 2009 edition of the International Fire Code.

13VAC5-51-81. Section 107.0. Permits and fees.

5. Child day centers, assisted living facilities and adult day care centers licensed by the Virginia Department of Social Services based on licensed capacity as follows:

- 5.1. \$50 for 1 to 8.
- 5.2. \$75 for 9 to 20.
- 5.3. \$100 for 21 to 50.
- 5.4. \$200 for 51 to 100.
- 5.5. \$400 for 101 or more.

13VAC5-51-131. IFC Chapter 3. Precautions Against Fire.

E. [Change Section 315.1 to read:

315.1. General. Storage shall be in accordance with this section.

F. [Change Section 315.2 to read:

315.2. Storage in buildings. Storage of materials in buildings shall be orderly and stable. Storage of combustible materials shall be separated from heaters or

heating devices by distance or shielding so that ignition cannot occur.

G.] ***

[F. H.] ***

13VAC5-51-133. IFC Chapter 5. Fire Service Features.

C. Add exception to Section 503.2.1 to read:

Exception: Fire apparatus access roads exclusively serving single family dwelling or townhouse developments that are fully sprinklered as provided for in Sections R313.1 or R313.2 of the International Residential Code shall have an unobstructed width of not less than 18 feet (5486 mm), exclusive of shoulders.

H. Add Sections 507.3.1 and 507.3.2 to read:

507.3.1. Fire flow requirements for fully sprinklered residential developments. Notwithstanding Section 103.1.2, the fire flow requirements in Table B105.1 of Appendix B of the IFC, as modified by Section 507.3.2, shall be permitted to be used for determining fire flow in single family dwelling and townhouse developments which are fully sprinklered as provided for in Sections R313.1 or R313.2 of the International Residential Code.

507.3.2. Modifications to Table B105.1. The first six rows of columns five and six of Table B105.1 of Appendix B of the IFC shall be modified as shown below for the use of Table B105.1 in Section 507.3.1.

<u>Type 5-B</u>	<u>Fire-flow (gallons per minute)</u>
<u>0-5000</u>	<u>1000</u>
<u>5001-7200</u>	<u>1250</u>
<u>7201-8200</u>	<u>1500</u>
<u>8201-9500</u>	<u>1750</u>
<u>9501-11300</u>	<u>2000</u>
<u>11301-13000</u>	<u>2250</u>

J. Add Section 507.5.1.1 to read:

507.5.1.1. Fire hydrant requirements for fully sprinklered residential developments. Notwithstanding Section 103.1.2, the number and distribution of fire hydrants in Table C105.1 of Appendix C of the IFC shall be permitted to be used in single family dwelling and townhouse developments which are fully sprinklered as provided for in Sections R313.1 or R313.2 of the International

Residential Code, with the spacing and distances of fire hydrants indicated in Table C105.1 increased by 100%.

13VAC51-133.5. IFC Chapter 6. Building Services and Systems.

[D. Change Section 609.3.3.2 to read:

~~609.3.3.2. Cleaning. Hoods, grease removal devices, fans, ducts and other appurtenances shall be cleaned at intervals necessary to prevent the accumulation of grease based upon a written and posted cleaning schedule that shall be established and maintained on the premises by the owner or operator of the ventilation system. The schedule shall be originated by the owner or operator of the ventilation system based upon criteria particular to the cooking operation. Cleanings shall be recorded and the records shall state the extent, time and date of cleaning.]~~

VA.R. Doc. No. R09-1893; Filed January 25, 2011, 2:42 p.m.

Final Regulation

REGISTRAR'S NOTICE: The following regulations of the Board of Housing and Community Development are exempt from the Administrative Act pursuant to § 2.2-4006 A 12 of the Code of Virginia; however, the regulations are subject to the provisions of § 2.2-4007.06 concerning public petitions. The regulations were (i) published as final regulations in 27:2 VA.R. 217-342 September 27, 2010, (ii) suspended pursuant to § 2.2-4007.06 in 27:6 VA.R. 663-664 November 22, 2010; and (iii) readopted as final regulations with the changes shown in brackets below.

Title of Regulation: 13VAC5-63. Virginia Uniform Statewide Building Code (amending 13VAC5-63-210, 13VAC5-63-240, 13VAC5-63-245.

Statutory Authority: § 36-98 of the Code of Virginia.

Effective Date: March 1, 2011.

Agency Contact: Stephen W. Calhoun, Regulatory Coordinator, Department of Housing and Community Development, Main Street Center, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 371-7000, FAX (804) 371-7090, TTY (804) 371-7089, or email steve.calhoun@dhdcd.virginia.gov.

Summary:

The Virginia Uniform Statewide Building Code (USBC) governs the construction, maintenance, and rehabilitation of new and existing building and structures. The USBC uses nationally recognized model building codes and standards produced by the International Code Council and other standard-writing groups as the basis for the technical provisions of the regulation. Every three years,

new editions of the model codes become available. At that time, the Board of Housing and Community Development initiates a regulatory action to incorporate the newest editions of the model codes into the regulation. Those affected by the regulation then review the proposed regulation to assure that the newest model code and its referenced standards reflect the minimum standards necessary for the safety of existing buildings and property. After the publishing of the proposed regulation, the board establishes a comment period for the acceptance of code change proposals to modify the model code or standards or any provisions of the entire regulation. Code change proposals are assimilated into a compilation document containing a staff evaluation of each proposal and the compilation document is reviewed by client groups during a second comment period and additional comment on each proposal is accepted. A public hearing is also held. The board then considers all comments on all proposals and develops a final regulation to complete the regulatory process.

Final regulations for the USBC were published in Volume 27, Issue 2 of the Virginia Register of Regulations on September 27, 2010 (27:2 VA.R. 217-342 September 27, 2010), initiating a 30-day comment period. During the comment period, a number of petitions were received concerning substantive changes between the proposed and final regulations. The board suspended the regulatory process on certain provisions (refer to 27:6 VA.R. 663-664 November 22, 2010) and established an additional 30-day comment period for the submittal of additional public comments on the petitioned provisions.

On January 24, 2011, the Board of Housing and Community Development considered the public comment on the petitioned provisions. The board readopted 13VAC5-63-210 M 68 and M 69, 13VAC5-63-240 E and Q, and 13VAC5-63-245 B as the final regulations were published; and readopted 13VAC5-63-240 L with the following changes from the final regulations:

13VAC-63-240 L. Item 1 of Section 906.1 of the International Building Code was amended to return to the language published in the proposed regulation that permits fire extinguishers to be omitted in the common areas of buildings of Groups A, B, and E that are equipped throughout with quick response sprinklers. This language is consistent with the language in the 2009 edition of the International Building Code.

13VAC5-63-210. Chapter 3 Use and occupancy classification.

68. Change Section E3802.4 to read:

E3802.4 In unfinished basements. Where type SE or NM cable is run at angles with joists in unfinished basements,

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cable assemblies containing two or more conductors of sizes 6 AWG and larger and assemblies containing three or more conductors of sizes 8 AWG and larger shall not require additional protection where attached directly to the bottom of the joists. Smaller cables shall be run either through bored holes in joists or on running boards. NM cable installed on the wall of an unfinished basement shall be permitted to be installed in a listed conduit or tubing or shall be protected in accordance with Table E3802.1. Conduit or tubing shall be provided with a suitable insulating bushing or adapter at the point the where cable enters the raceway. The NM or SE cable sheath shall extend through the conduit or tubing and into the outlet or device box not less than 1/4 inch (6.4 mm). The cable shall be secured within 12 inches (305 mm) of the point where the cable enters the conduit or tubing. Metal conduit, tubing, and metal outlet boxes shall be connected to an equipment grounding conductor.

69. Change Section E3902.11 to read:

E3902.11 Arc-fault protection of bedroom outlets. All branch circuits that supply 120-volt, single phase, 15-ampere and 20-ampere outlets installed in bedrooms shall be protected by a combination type arc-fault circuit interrupter installed to provide protection of the branch circuit.

Exceptions:

1. Where a combination AFCI is installed at the first outlet to provide protection for the remaining portion of the branch circuit, the portion of the branch circuit between the branch-circuit overcurrent device and such outlet shall be wired with metal outlet and junction boxes and RMC, IMC, EMT or steel armored cable, Type AC meeting the requirements of Section E3908.8.

2. AFCI protection is not required for a branch circuit supplying only a fire alarm system where the branch circuit is wired with metal outlet and junction boxes and RMC, IMC, EMT or steel armored cable Type AC meeting the requirements of Section E3908.8.

13VAC5-63-240. Chapter 9 Fire protection systems.

E. Change Section 903.2.3 of the IBC to read:

903.2.3 Group E. An automatic sprinkler system shall be provided for Group E occupancies as follows:

1. Throughout all Group E fire areas greater than 20,000 square feet (1858 m²) in area.

2. Throughout every portion of educational buildings below the lowest level of exit discharge serving that portion of the building.

Exception: An automatic sprinkler system is not required in any area below the lowest level of exit discharge serving that area where every classroom throughout the building has at least one exterior exit door at ground level.

L. Change Item 1 of Section 906.1 of the IBC to read:

906.1 General. Portable fire extinguishers shall be provided in occupancies and locations as required by the International Fire Code.

1. In Group A, B, E, F, H, I, M, R-1, R-4, and S occupancies.

[Exceptions ~~Exception~~]:

[1.] ~~Group R-2 occupancies~~ [In Group A, B, and E occupancies equipped throughout with quick response sprinklers, portable fire extinguishers shall be required only in locations specified in Items 2 through 6.

2.] In Group I-3 occupancies, portable fire extinguishers shall be permitted to be located at staff locations and the access to such extinguishers shall be permitted to be locked.

Q. Change Section 911.1.3 of the IBC to read:

911.1.3 Size. The fire command center shall be a minimum of 96 square feet (9 m²) in area with a minimum dimension of eight feet (2438 mm).

Exception: Where it is determined by the building official, after consultation with the fire chief, that specific building characteristics require a larger fire command center, the building official may increase the minimum required size of the fire command center up to 200 square feet (19 m²) in area with a minimum dimension of up to 10 feet (3048 mm).

13VAC5-63-245. Chapter 10 Means of egress.

B. Change Section 1005.1 of the IBC to read:

1005.1 Minimum required egress width. The means of egress width shall not be less than required by this section. The total width of means of egress in inches (mm) shall not be less than the total occupant load served by the means of egress multiplied by 0.3 inches (7.62 mm) per occupant for stairways and by 0.2 inches (5.08 mm) per occupant for other egress components. The width shall not be less than specified elsewhere in this code. Multiple means of egress shall be sized such that the loss of any one means of egress shall not reduce the available capacity to less than 50% of the required capacity. The maximum capacity required

from any story of a building shall be maintained to the termination of the means of egress.

Exceptions:

1. Means of egress complying with Section 1028.
2. For occupancies other than Groups H-1, H-2, H-3, H-4 and I-2, in buildings equipped with an automatic sprinkler system installed in accordance with Section 903.3.1.1 or 903.3.1.2, the total width of means of egress in inches (mm) shall not be less than the total occupant load served by the means of egress multiplied by 0.2 inches (5.08 mm) per occupant for stairways and by 0.15 inches (3.81 mm) per occupant for other egress components.

VA.R. Doc. No. R09-1894; Filed January 25, 2011, 2:44 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD FOR BRANCH PILOTS

Proposed Regulation

Title of Regulation: **18VAC45-20. Board for Branch Pilots Regulations (amending 18VAC45-20-5, 18VAC45-20-10, 18VAC45-20-20, 18VAC45-20-40, 18VAC45-20-50).**

Statutory Authority: § 54.1-902 of the Code of Virginia.

Public Hearing Information:

March 2, 2011 - 2 p.m. - Department of Professional and Occupational Regulation, 9960 Mayland Drive, Board Room 2, Richmond, VA

Public Comment Deadline: April 15, 2011.

Agency Contact: Kathleen R. Nosbisch, Executive Director, Board for Branch Pilots, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8514, FAX (804) 527-4294, or email branchpilots@dpor.virginia.gov.

Basis: Section 54.1-902 of the Code of Virginia authorizes the board to promulgate regulations necessary for the proper government and regulation of branch pilots.

Purpose: At its meeting in February 2009, the Board for Branch Pilots authorized staff to file a Notice of Intended Regulatory Action (NOIRA) for a general review of the board's regulations including but not limited to review of the chemical testing regulations. The proposed changes further ensure regulants are competent for duty as pilots and thereby protects the health, safety, and welfare of the public.

Substance: The proposed amendments (i) update the physical examination requirements to include chemical testing for initial and renewal licensing requirements; (ii) modify the grounds for denial of initial licensure, licensure renewal, or discipline; (iii) reduce the amount of time a licensee has to report certain information to the board to seven days; (iii) require the medical review officer to report any delay or refusal by a licensee to report to a test or being tested; and (iv) add marijuana to the definitions of "chemical test" and "illegal drugs."

Issues: The proposed changes further ensure regulants are competent for duty as branch pilots. The advantage to the public and the Commonwealth is the further protection of the health, safety, and welfare of the public by making sure that qualified, competent pilots are piloting cargo vessels on Virginia waters. There is no disadvantage to the public and there are no primary disadvantages to the agency or the Commonwealth.

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

Summary of the Proposed Amendments to Regulation. The Virginia Board for Branch Pilots (Board) proposes to: 1) require that a chemical test be conducted for license renewal if the branch pilot had not been subject to random chemical testing during the prior 24 months, 2) amend the time a branch pilot has to inform the board that he has been found guilty of an offense involving moral turpitude, alcohol, or drugs from 30 to 7 days, and 3) add clarifying language.

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

Estimated Economic Impact. Under the current regulations licensed branch pilots are subject to random chemical testing at an annual selection rate of not less than 30% and not more than 100% of total licensees. Chemical tests are tests for the presence of alcohol, controlled substances listed in Schedules I V of the Control Act (§ 54.1-3400 et seq. of the Code of Virginia) or marijuana. The Board proposes to also require testing for license renewal if the branch pilot had not been subject to random chemical testing during the prior 24 months. The regulations state that "Licensees shall be responsible for all costs associated with random chemical testing;" but according to the Department of Professional and Occupational Regulation, in practice the Virginia Pilot Association pays for all of the testing. All licensed branch pilots are members of the Virginia Pilot Association and share equally in its costs.¹ The Virginia Pilot Association anticipates approximately 15 additional chemical tests at an approximate cost of \$50 per test. Given approximately 50 members in the association, the proposal will therefore increase costs by about \$15 per year per licensee/association member.

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The purpose of testing for drugs and alcohol is to determine whether licensees are impaired, and thus more likely to cause or be involved in an accident while piloting a ship. The cost of major accidents can be in the millions of dollars for both property and environmental damage. In addition to substantial damage to ships and the environment, accidents can also limit the conduct of commerce on particular bodies of water, causing significant delays and increased costs to businesses and citizens. There is also the potential for loss of life. The board may suspend a license or deny renewal of licensure if the test results indicate impairment or if the licensee refuses to take the test.

Chemically impaired (drugs or alcohol) automobile and truck drivers are more likely to be involved in accidents than sober drivers are. It seems reasonable to speculate that the same is true for branch pilots. Thus, it seems likely that the proposal to require chemical testing for license renewal if the branch pilot had not been subject to random chemical testing during the prior 24 months could decrease the chance of an accident occurring at a given time. The decrease in likelihood of accidents is not known, but given the potential for property and environmental damage, as well as injury, it seems likely the benefit of reduced risk exceeds the approximate annual \$15 cost per licensee.

The proposal to amend the time a branch pilot has to inform the Board that he has been found guilty of an offense involving moral turpitude, alcohol, or drugs from 30 to 7 days should provide a net benefit. Given modern communication technology, providing brief information within 7 days is quite simple and involves negligible cost. Receiving this information sooner may enable the Board to remove an unsafe pilot from service sooner, thus improving public safety.

Businesses and Entities Affected. The proposed amendments affect the 48 licensed branch pilots and limited branch pilots in Virginia and the Virginia Pilot Association.²

Localities Particularly Affected. All on-duty licensed branch pilots await duty assignments in Virginia Beach.

Projected Impact on Employment. The proposal amendments will not significantly affect employment.

Effects on the Use and Value of Private Property. The proposed increase in chemical testing may moderately reduce the likelihood of accidents and their associated property damage.

Small Businesses: Costs and Other Effects. The proposed amendments will increase costs for the Virginia Pilot Association by about \$750 annually. Members and their small businesses will have increased costs of about \$15 annually per pilot. The proposed increase in chemical testing may moderately reduce the likelihood of accidents and their associated property damage.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The increased cost for small businesses is moderate and cannot be significantly minimized while still achieving the intended potential increase in public safety.

Real Estate Development Costs. The proposed amendment will not significantly affect real estate development costs.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 107 (09). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

¹ Source: Department of Professional and Occupational Regulation and The Virginia Pilot Association

² Data source: Department of Professional and Occupational Regulation

Agency's Response to Economic Impact Analysis: Concur with the approval.

Summary:

The proposed amendments (i) update the physical examination requirements to include chemical testing for initial and renewal licensing requirements; (ii) modify the grounds for denial of initial licensure, licensure renewal, or discipline; (iii) reduce the amount of time a licensee has to report certain information to the board to seven days; (iii) require the medical review officer to report any delay or refusal by a licensee to report to a test or being tested; and (iv) add marijuana to the definitions of "chemical test" and "illegal drugs."

18VAC45-20-5. Definitions.

The words and terms used in this chapter have the following meanings, unless the context requires a different meaning:

"Attempting to perform" means any time when a licensee has accepted an assignment to perform any of the duties of his office or job.

"Chemical test," except when applied to testing for the presence of alcohol, means any scientifically recognized test and analyses of an individual's breath, blood, urine, saliva, bodily fluids, hair or tissues for evidence of controlled substances listed in Schedules I - V of the Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia) or marijuana. The words "chemical test" as used in this chapter in connection with the testing for the presence of alcohol refers to a scientifically recognized test involving saliva or breath.

"Illegal drugs" includes (i) any controlled substance as that term is defined in the Drug Control Act at § 54.1-3401 of the Code of Virginia listed in Schedule I; (§ 54.1-3446 of the Code of Virginia ~~or~~); (ii) those controlled substances illegally acquired listed from Schedules II - V; ~~or~~ (§§ 54.1-3448, 54.1-3450, 54.1-3452 and 54.1-3454 of the Code of Virginia, respectively); or marijuana. It is the intent of these regulations that in the event the contents of Schedules I - V of the Drug Control Act are changed, that these regulations incorporate such changes at the time those controlled substances are made a part of the Drug Control Act in Virginia.

"Medical review officer" or "MRO" means a Virginia licensed physician with a current valid certification from the American College of Occupational and Environmental Medicine or the American Association of Medical Review Officers whose duties, authorities and responsibilities are delineated by these organizations.

"On duty" means the period of time the licensee is available to receive orders for an assignment.

18VAC45-20-10. Initial licensing.

A. Any person wishing to obtain a license as a limited branch pilot shall meet the following qualifications:

1. Satisfactorily complete a two-year apprenticeship in a program approved by the board;
2. Satisfactorily complete a comprehensive examination which shall be approved by the board and administered by the examining committee of the board. The examination shall be in two parts:
 - a. Written; and
 - b. Practical oral examination;
3. Comply with the board's regulations and Chapter 9 (§ 54.1-900 et seq.) of Title 54.1 of the Code of Virginia;

4. Furnish to the board evidence of a satisfactory physical examination conducted within the immediately preceding 60 days. This examination shall include the chemical tests referred to in 18VAC45-20-5;

5. Notify the board of any chronic or acute physical or mental condition; and

6. Pay a licensing fee of \$60. Each check or money order shall be made payable to the Treasurer of Virginia. All fees shall be nonrefundable.

B. Any limited branch pilot wishing to obtain a full branch pilot license shall meet the following qualifications:

1. Satisfactorily complete a five-year apprenticeship in a program approved by the board;

2. Hold a limited branch pilot license in good standing;

3. Pass a practical examination approved by the board and administered by the board's examining committee;

4. Possess a valid unlimited Federal Inland Masters License with First Class Pilot endorsement issued by the United States Coast Guard for the same waters as his branch. Any such federal license acquired after January 1994 shall include an Automated Radar Plotting Aids (ARPA) radar certificate. A copy of this license shall be filed with the clerk of the board immediately;

5. Furnish to the board evidence of a satisfactory physical examination conducted within the immediately preceding 60 days. This examination shall include the chemical tests referred to in 18VAC45-20-50;

6. Qualify in accordance with § 54.1-905 of the Code of Virginia; and

7. Pay a licensing fee of \$60. Each check or money order is to be made payable to the Treasurer of Virginia. All fees shall be nonrefundable.

18VAC45-20-20. License renewal.

A. Each pilot seeking renewal of his license shall complete a renewal application, comply with the provisions of this section, and appear before the board or its License Renewal Committee which shall determine if he possesses the qualifications to be renewed.

B. Any limited branch pilot seeking to renew his license shall meet the following standards:

1. Furnish to the board evidence of a satisfactory physical examination conducted within the immediately preceding 60 days. If the branch pilot has not been subject to random chemical testing during the preceding 24 months, then this examination shall include the chemical tests referred to in 18VAC45-20-50;

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2. Furnish to the board evidence that he has transited the waters embraced by his license during the preceding 12 months;

3. After three years of licensure as a limited branch pilot, possess a valid First Class Pilot License issued by the United States Coast Guard for the same waters as his limited branch. Any such federal license acquired after January 1994 shall include an Automated Radar Plotting Aids (ARPA) radar certificate; and

4. Pay a license renewal fee of \$60. Each check or money order is to be made payable to the Treasurer of Virginia. All fees shall be nonrefundable.

C. Any full branch pilot seeking to renew his license shall meet the following standards:

1. Possess a valid unlimited Federal Inland Masters License with First Class Pilot endorsement issued by the United States Coast Guard for the same waters as his branch; any such federal license renewed or acquired after January 1994 shall include an Automated Radar Plotting Aids (ARPA) radar certificate;

2. Furnish to the board evidence of a satisfactory physical examination conducted within the immediately preceding 60 days. If the branch pilot has not been subject to random chemical testing during the preceding 24 months, then this examination shall include the chemical tests referred to in 18VAC45-20-50;

3. Furnish to the board evidence that he has transited the waters embraced by his license during the preceding 12 months, and that he has piloted 12 or more ships during that time, at least six trips as a pilot within the first six months of the calendar year and six trips as a pilot within the last six months of the calendar year. Upon the showing of good cause, the board may waive the requirements of this subdivision when in its judgment the pilot is otherwise qualified;

4. Qualify in accordance with § 54.1-906 of the Code of Virginia; and

5. Pay a license renewal fee of \$60. Each check or money order is to be made payable to the Treasurer of Virginia. All fees shall be nonrefundable.

18VAC45-20-40. Grounds for denial of licensure, denial of renewal, or discipline.

The board shall have the authority to deny initial licensure, deny an extension of license, or deny renewal as well as to discipline existing licensees, whether limited or not, for the following reasons:

1. (i) Having been convicted or found guilty regardless of adjudication in any jurisdiction of the United States of any felony or a misdemeanor involving moral turpitude or any

alcohol- or drug-related offense there being no appeal pending, therefrom or the time for appeal having elapsed.

(ii) Having been convicted or found guilty regardless of adjudication in any jurisdiction of the United States of any felony or a misdemeanor resulting from an arrest for any alcohol- or drug-related offense, there being no appeal pending therefrom or the time for appeal having elapsed.

Any plea of nolo contendere shall be considered a conviction for the purposes of this subdivision. The record of a conviction certified or authenticated in such form as to be admissible in evidence of the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such conviction;

2. Failing to inform the board in writing within ~~30~~ seven calendar days of pleading guilty or nolo contendere or being convicted or found guilty of any felony or of a misdemeanor involving moral turpitude or any alcohol- or drug-related offense;

3. Failing to report to the board in writing any reports of the National Transportation Safety Board involving the licensee, or the results of any disciplinary action taken by the United States Coast Guard against the licensee within ~~30~~ seven calendar days of that report or action;

4. Refusing or in any other way failing to carry out an order from the pilot officers for reasons other than the public's health, safety, or welfare;

5. Negligence or misconduct in the performance of duties;

6. Violating or cooperating with others in violating any provision of Chapter 9 (§ 54.1-900 et seq.) of the Title 54.1 of the Code of Virginia or any regulation of the board;

7. Failing to, as soon as possible under the circumstances, report to the pilot officers his finishing time and other required information relating to the particulars of the ship;

8. Failing to file immediately with the president or vice president of the board with a copy to the board administrator a complete written account of any violation of the statutes of Virginia or of the United States relating to pilotage or failing to report in writing to the president or vice president of the board with a copy to the board administrator an account of all collisions, groundings, or other maritime mishaps of any description that may occur during the discharge of the pilot's duties. This report shall be received no later than seven days after such an incident;

9. Failing to report to the board any physical or mental condition which may affect his ability to perform the duties of a pilot. Such reports shall be provided within ~~30~~ seven calendar days of the onset of the condition;

10. Refusing to comply with the board's requirement for a chemical test. Such test is required immediately and no later than 12 hours after involvement in a collision,

grounding, or other incident resulting in personal injury, death, environmental hazard, or property damage in excess of \$100,000. Refusing to comply with this requirement may result in summary suspension of the pilot's license in accordance with § 54.1-902 of the Code of Virginia;

11. Refusing to comply with any board requirement for chemical tests in any instance in which the board has cause to believe a test is necessary to protect the public health, safety, or welfare. Refusing to comply with this requirement may result in summary suspension of the pilot's license in accordance with § 54.1-902 of the Code of Virginia;

12. Failing to send proof of any test required by subdivision 10 or 11 of this section to the president or vice president of the board with a copy to the board administrator within 48 hours of the administration of the test;

13. A positive finding as a result of, or on, any substance abuse or chemical test as a result of which the board believes there is a threat to the public health, safety, or welfare. Such a finding may result in summary suspension of the pilot's license in accordance with § 54.1-902 of the Code of Virginia;

14. Evidence of impaired performance in any instance in which the board believes there is a threat to the public health, safety, or welfare. Such a finding may result in summary suspension of the pilot's license in accordance with § 54.1-902 of the Code of Virginia;

15. Performing or attempting to perform any of the duties of his office or job while under the influence of illegal drugs;

16. Performing or attempting to perform any of the duties of his office or job while under the influence of alcohol or any medication (controlled substance or otherwise) to the extent that he was unfit for the performance of the duties of his office or job; and

17. Failing to comply with any of the provisions of 18VAC45-20-50.

18VAC45-20-50. Random chemical testing.

A. All Virginia licensed branch pilots shall be subject to the random chemical testing as set forth in this chapter. Random chemical testing shall be conducted at an annual selection rate of not less than 30% and not more than 100% of total licensees. Licensees shall be responsible for all costs associated with random chemical testing. The chemical test shall be a comprehensive drug screen acceptable to the board that includes testing for controlled substances in Schedules I - V of Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1 of the Code of Virginia.

Only licensees on duty may be selected for random testing. A licensee selected for random chemical testing shall report for testing within two hours of notification. Failure to take a random chemical test is considered refusal to take the test.

B. Duties of licensee.

1. All licensees of this board shall enroll and participate in a random chemical testing program that meets the criteria of this chapter.

2. An on-duty licensee selected for random chemical testing shall report for testing within two hours of notification that he has been selected.

3. Licensees who receive a prescription for any medication from any health care provider shall have the following duties:

a. Give the health care provider a copy of the licensee's job description as a Virginia pilot;

b. Give the health care provider a complete list of medications used within the 30 days preceding the current visit;

c. Obtain a written statement from the health care provider stating if the new prescription is for a controlled substance (Schedules II - V of the Drug Control Act) and obtain a written statement from the health care provider as to the licensee's fitness to safely perform the duties found in the job description; and

d. If prescribed any medication containing a Schedule II - V controlled substance that is to be used within 12 hours of being on duty, make certain the MRO received by hand delivery or telefax each prescription written by any health care provider at the time such prescription is written along with a complete list of medications used by the licensee within the preceding 30 days.

C. The medical review officer shall:

1. Be completely familiar with all duties of a Virginia pilot.

2. Receive, evaluate and maintain records of all medications given to him by or on behalf of each Virginia pilot.

3. Receive, evaluate and maintain a record of each random chemical test taken by a Virginia pilot.

4. Any time the MRO finds the presence of a drug or alcohol that may impair the safe discharge of any duty of a Virginia pilot such that he is unfit to perform those duties, report his written findings to the licensee and president or vice president of the board and to the board's administrator.

5. Report in writing to the licensee, president or vice-president of the board, and the board's administrator of any delay or refusal by a licensee in reporting to testing or being tested.

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5. 6. To the extent consistent with state and federal law, protect the confidentiality of all licensee records.

6. 7. Judge fitness to safely perform duties in the context of the licensee's prescription medications and the licensee's available medical history. Any time the MRO finds evidence that the Virginia pilot may be impaired in the safe discharge of any of his duties such that he may be unfit to perform those duties, his written finding shall be reported to the licensee and president or vice president of the board and to the board's administrator.

NOTICE: The following forms used in administering the above regulation were filed by the agency. Amended or new forms are listed and are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name to access a form. The forms are also available through the agency contact or at the Office of Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, VA 23219

FORMS (18VAC45-20)

Branch Pilot License Renewal Application Form (rev. 3/07).

Limited Branch Pilot License Renewal Application Form (rev. 3/07).

[Authorization and Consent for Drug & Alcohol Testing and Release of Test Results \(rev. 12/09\).](#)

VA.R. Doc. No. R09-1843; Filed January 25, 2011, 2:00 p.m.

BOARD FOR GEOLOGY

Fast-Track Regulation

Title of Regulation: 18VAC70-20. Rules and Regulations for the Virginia Board for Geology (amending 18VAC70-20-30).

Statutory Authority: §§ 54.1-201 and 54.1-1402 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: March 16, 2011.

Effective Date: April 1, 2011.

Agency Contact: David Dick, Executive Director, Board for Geology, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8588, FAX (804) 527-4297, or email geology@dpor.virginia.gov.

Basis: Section 2.2-3704 F of the Code of Virginia states, in part, that a public body may make reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying, or searching for the requested records. Section 2.2-3704 A of the Code of Virginia provides that public records must be open to inspection and copying by citizens of the Commonwealth.

Subdivision 5 of § 54.1-201 of the Code of Virginia provides that the board has the power and duty to promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) necessary to assure continued competency, to prevent deceptive or misleading practices by practitioners, and to effectively administer the regulatory system administered by the regulatory board.

Section 54.1-1402 of the Code of Virginia requires the Board for Geology to establish regulations necessary for the reasonable administration of Chapter 14 (§ 54.1-1400 et seq.) of Title 54.1 of the Code of Virginia.

Purpose: The purpose of amending the regulation is to remove language regarding the fee for duplicate wall certificates so that the cost will be set by the department in compliance with § 2.2-3704 F of the Virginia Freedom of Information Act (FOIA). Section 2.2-3704 F provides that the department may make reasonable charges not to exceed its actual costs incurred for assessing, duplicating, supplying or searching for requested records. The goal of the proposed regulatory action is to remove from the regulations a fee that must be determined in compliance with FOIA.

Rationale for Using Fast-Track Rulemaking Process: The fast-track rulemaking process is being used to remove language regarding the fee for duplicate wall certificates from the regulations. The proposed regulatory action will result in the fee being set in compliance with FOIA. There is no substantive change in the existing regulations.

Substance: No substantive change is proposed. The substance of the regulation remains the same.

Issues: The primary advantage to the public is compliance with FOIA and the removal of a fee controlled by FOIA from the regulations.

The primary advantage to the Commonwealth is continued implementation of the fee as provided for by FOIA.

There are no other pertinent matters of interest or any disadvantages to the public or Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Virginia Board for Geology (Board) proposes to repeal the text in this regulation that specifies: The fee for duplicate wall certificates shall be \$25.

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

Estimated Economic Impact. Certified geologists are not required to display or otherwise possess their physical certificate. Possessing and displaying a wall certificate is optional. The Board proposes to repeal the current language in these regulations that the fee for duplicate wall certificates shall be \$25. The Department of Professional and

Occupational Regulation (Department) has indicated that the fee for requested duplicate wall certificates would be set in accordance with Code of Virginia 2.2-3704.F: A public body may make reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying, or searching for the requested records.

The Department has also indicated that initially at least, the fee would remain at \$25 after the text is repealed. Thus, the cost to certified geologists would not change at all, at least initially. If the cost of providing the duplicate certificate some time in the future exceeds \$25, the Board could raise the fee to match that cost. If the fee is below the true cost of accessing, duplicating, supplying, searching and providing the duplicate certificate, then presumably the excess cost would be paid for in higher certification fees for all geologists, including those not requesting duplicate certificates. It is beneficial to have those who request an optional service to pay for the true cost of that service, rather than have it subsidized by those not requesting the optional service. If it were to be subsidized, then requests would be encouraged producing additional costs to those who do not benefit from the service.

Businesses and Entities Affected. The proposed amendment potentially affects the 854 certified professional geologists in Virginia.

Localities Particularly Affected. The proposed amendment does not disproportionately affect particular localities.

Projected Impact on Employment. The proposal amendment will not significantly affect employment.

Effects on the Use and Value of Private Property. The proposed amendment will not significantly affect the use and value of private property.

Small Businesses: Costs and Other Effects. The proposed amendment is unlikely to significantly affect small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed amendment is unlikely to significantly affect small businesses.

Real Estate Development Costs. The proposed amendment will not significantly affect real estate development costs.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 107 (09). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to

implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPBs best estimate of these economic impacts.

Agency Response to Economic Impact Analysis: Concur with the approval.

Summary:

The amendment removes the set fee for issuing a duplicate wall certificate from the regulation as fees for providing public records are addressed in the Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia). Specifically, § 2.2-3704 F of the Act provides that an agency may make reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying, or searching for requested records.

18VAC70-20-30. Fees.

All fees for application, examination, renewal, and reinstatement shall be established by the board pursuant to § 54.1-201 of the Code of Virginia. All fees are nonrefundable and shall not be prorated.

1. The application fee for certification shall be \$40.
2. The fee for renewal of certification shall be \$35.
3. The fee for examination or reexamination is subject to contracted charges to the department by an outside vendor. These contracts are competitively negotiated and bargained for in compliance with the Virginia Public Procurement Act (§ 2.2-4300 et seq. of the Code of Virginia). Fees may be adjusted and charged to the candidate in accordance with this contract.
4. The penalty fee for late renewal shall be \$25 in addition to the renewal fee.
5. The reinstatement fee shall be \$40.
- ~~6. The fee for duplicate wall certificates shall be \$25.~~

VA.R. Doc. No. R11-2271; Filed January 21, 2011, 9:15 a.m.

Regulations

BOARD OF MEDICINE

Proposed Regulation

Title of Regulation: 18VAC85-20. Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry, and Chiropractic (amending 18VAC85-20-22, 18VAC85-20-120, 18VAC85-20-121, 18VAC85-20-131, 18VAC85-20-140, 18VAC85-20-220, 18VAC85-20-235, 18VAC85-20-290, 18VAC85-20-400).

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

Public Hearing Information:

February 17, 2011 - 8:30 a.m. - Perimeter Center, 9960 Mayland Drive, Suite 201, Richmond, VA

Public Comment Deadline: April 15, 2011.

Agency Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4621, FAX (804) 527-4429, or email william.harp@dhp.virginia.gov.

Basis: Section 54.1-2400 of the Code of Virginia provides the Board of Medicine the authority to promulgate regulations to administer the regulatory system. Specific regulatory authority for the Board of Medicine is found in Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1 of the Code of Virginia.

Purpose: On September 19, 2008, the Legislative Committee of the Board of Medicine reviewed 18VAC85-20 to determine whether regulations are necessary to interpret the law or to protect the public health, safety, or welfare of the public. The committee determined that continuation of 18VAC85-20 is essential in order to set criteria for licensure and renewal of licensure for doctors of medicine, osteopathic medicine, podiatry, and chiropractic as required by law. Additionally, regulations governing office-based anesthesia; mixing, diluting, and reconstituting of drugs; and other standards of practice are both responsive to statutory provisions and necessary to protect the public health and safety.

Amendments will update or clarify the regulations for ease of compliance. An amendment to the requirements for mixing, diluting, or reconstituting drugs by doctors or persons under their supervision is necessary to comply with standards for sterile compounding to ensure that drugs mixed in fat emulsions that are highly susceptible to microbial growth are free from contaminants and safe for administration.

Substance: The Legislative Committee of the Board of Medicine served as the workgroup to conduct the periodic review. The following recommendations were adopted by the board:

18VAC85-20-22. Fees: The board did not recommend an increase in any fees charged to applicants or regulants but restated the reinstatement fee to clarify that the total fee includes the application and late fees.

18VAC85-20-120. Prerequisites to licensure: The requirement for applicants discharged from the military to submit discharge papers is eliminated.

18VAC85-20-220. Temporary licenses to interns and residents: Subsection C limits the renewal of an intern or resident license to five annual renewals. Since the license can only be renewed upon recommendation of the chief or director of graduate medical education of the program, the limitation is unnecessary.

18VAC85-20-235. Continued competency requirements for renewal of an active license: The board changed the word "indicate" to "attest to" completion of at least 60 hours of continuing learning activities within the past two years. The board has also eliminated the requirement for completion of the Continued Competency Activity and Assessment Form.

18VAC85-20-400. Requirements for immediate use sterile mixing, diluting, or reconstituting: The board considered inclusion of revised USP Chapter 797 standards but chose to leave the definition of immediate use at administration within 10 hours with an exception for fat emulsion drugs.

Issues: The only issue that generated discussion and had a potential impact on medical practice was the proposed change in immediate use for compounding sterile drug products. Since the draft proposal of a four-hour limitation on immediate use was not adopted by the board, the issue was resolved satisfactorily. A one-hour limitation on fat emulsion drugs will provide greater protection for vulnerable patients from infections resulting from intravenous administration. There are no disadvantages to the public, who continue to be reasonably protected by the rules for mixing, diluting, or reconstituting sterile drug products.

There are no quantitative advantages or disadvantages to the Commonwealth or the agency. Clarification of some requirements may result in fewer requests for interpretation or resubmission of required information.

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

Summary of the Proposed Amendments to Regulation. As a result of the periodic review process, the Board Medicine (Board) proposes to amend its Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry and Chiropractic to make several clarifying and substantive changes. Specifically, the Board proposes to:

- Clarify that the cost for reinstatement of licensure includes both the reinstatement application fee and a late fee by combining the fees,
- Remove a restriction that only allows interns and residents to renew licensure five times,

- Remove the requirement that individuals who are renewing their licenses also fill out a form that lists their continuing education activities, and
- Create an exception to the 10 hour definition of immediate use so that drugs that include a fat emulsion must be used within one hour of being mixed, diluted or reconstituted.

Result of Analysis. The benefits likely exceed the costs for most proposed changes. There is insufficient information to ascertain whether benefits will outweigh costs for one proposed change. Benefits and costs for all changes are discussed below.

Estimated Economic Impact. Current regulations list reinstatement application fees and late fees separately even though individuals who are reinstating a license would have to pay both fees. The Board proposes to amend the fee structure in these regulations so that these fees are added together in one place. No entity will incur any new costs on account of this proposed change. To the extent that the old fee structure may have led to confusion for individuals seeking to reinstate their licenses, this proposed change will bring the benefit of clarity.

Current regulations allow individuals who are completing an internship or residency to be licensed and to renew their licenses up to five times with the recommendation of the director of their intern or residency program. The Board proposes to eliminate the restriction on the number of times that an intern or resident may renew his or her license because the recommendation of a director is considered sufficient to ensure that interns and residents are working toward being fully licensed in as timely a manner as possible. No entity is likely to incur costs on account of this proposed change. Interns and residents are likely to benefit from the added flexibility to manage their internships and residencies that removing the restriction on license renewal will give them.

Current regulations require individuals who are renewing their licenses to both attest that they have completed required continuing education (by checking a box on their renewal form) and to fill out a form listing the continuing education completed. In the distant past, the Continued Competency Activity and Assessment form was used to help licensees plan out their future continuing education. This form no longer serves this purpose and is duplicative of the attestation on the renewal form. The Board now proposes to eliminate the requirement that licensees complete this form. Because the Board will retain the ability to audit licensees' continuing education by requiring them to produce certificates of successful completion, no entity is likely to be worse off on account of the elimination of this form. Licensees will save the time and expense it would have taken them to complete the form and deliver it to Board staff.

Current regulations require that sterile drugs that are mixed, diluted or reconstituted for use in doctors' offices be administered within 10 hours of the completion time of preparation. This allows doctors' offices that administer, for example, chemotherapy drugs to mix larger batches that will treat multiple patients. The Board now proposes one exception to the 10 hour rule. Under these proposed regulations, drugs that include a fat emulsion will have to be used within one hour of being mixed, diluted or reconstituted. Board staff report that this change is proposed because drugs that include a fat emulsion are more prone to microbial contamination that may cause infections in patients to whom they are administered. Doctors who administer drugs that include fat emulsions will incur increased costs on account of this proposed change because they will potentially have to prepare these drugs several times a day rather than preparing one, larger, batch. These addition costs will likely, however, be small because the percentage of drugs covered by the 10 hour rule that include a fat emulsion is small. Because Board staff reports that there have been no specific complaints that would indicate that patients have actually suffered harm from immediate use drugs that include a fat emulsion, there is insufficient information to decide whether benefits will outweigh costs.

Businesses and Entities Affected. The Department of Health Professions (DHP) reports that the Board currently licenses 27,191 doctors of medicine and 1,145 doctors of osteopathic medicine. These individuals plus future licensees will be affected by these proposed regulations.

Localities Particularly Affected. No locality will be particularly affected by this proposed regulatory action.

Projected Impact on Employment. This regulatory action will likely have no impact on employment in the Commonwealth.

Effects on the Use and Value of Private Property. This regulatory action will likely have no effect on the use or value of private property in the Commonwealth.

Small Businesses: Costs and Other Effects. Small business medical practices in the Commonwealth may incur some additional costs on account of the new requirement for using immediate use drugs that include a fat emulsion within one hour of them being mixed, diluted or reconstituted. These costs are likely to be very small because the vast majority of drugs that are mixed, diluted or reconstituted for immediate use in doctors' offices do not contain a fat emulsion.

Small Businesses: Alternative Method that Minimizes Adverse Impact. There are likely no alternate methods that the Board could have employed in writing the requirement for immediate use drugs that would have both accomplished the Board's goal of decreasing the chance of patient harm and further minimized any adverse impact on small businesses.

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Real Estate Development Costs. This regulatory action will likely have no effect on real estate development costs in the Commonwealth.

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

Agency's Response to Economic Impact Analysis: The Board of Medicine concurs with the analysis of the Department of Planning and Budget for 18VAC85-20, Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry, and Chiropractic, relating to a periodic review of regulations.

Summary:

The proposed amendments (i) clarify that the cost for reinstatement of licensure includes both the reinstatement application fee and a late fee by combining the fees; (ii) eliminate the requirement for applicants discharged from the military to submit discharge papers; (iii) remove a restriction that only allows interns and residents to renew licensure five times; (iv) remove the requirement that individuals who are renewing their licenses also fill out a form that lists their continuing education activities; and (v) create an exception to the 10-hour definition of immediate use so that drugs that include a fat emulsion must be used within one hour of being mixed, diluted, or reconstituted.

18VAC85-20-22. Required fees.

A. Unless otherwise provided, fees established by the board shall not be refundable.

B. All examination fees shall be determined by and made payable as designated by the board.

C. The application fee for licensure in medicine, osteopathic medicine, and podiatry shall be \$302, and the fee for licensure in chiropractic shall be \$277.

D. The fee for a temporary authorization to practice medicine pursuant to § 54.1-2927 B (i) and (ii) of the Code of Virginia shall be \$25.

E. The application fee for a limited professorial or fellow license issued pursuant to 18VAC85-20-210 shall be \$55. The annual renewal fee shall be \$35. An additional fee for late renewal of licensure shall be \$15.

F. The application fee for a limited license to interns and residents pursuant to 18VAC85-20-220 shall be \$55. The annual renewal fee shall be \$35. An additional fee for late renewal of licensure shall be \$15.

G. The fee for a duplicate wall certificate shall be \$15; the fee for a duplicate license shall be \$5.

H. The fee for biennial renewal shall be \$337 for licensure in medicine, osteopathic medicine, and podiatry and \$312 for licensure in chiropractic, due in each even-numbered year in the licensee's birth month. An additional fee for processing a late renewal application within one renewal cycle shall be \$115 for licensure in medicine, osteopathic medicine, and podiatry and \$105 for licensure in chiropractic.

I. The fee for requesting reinstatement of licensure or certification pursuant to § 54.1-2408.2 of the Code of Virginia or for requesting reinstatement after any petition to reinstate the certificate or license of any person has been denied shall be \$2,000.

J. The fee for reinstatement of a license issued by the Board of Medicine pursuant to § 54.1-2904 of the Code of Virginia that has expired for a period of two years or more shall be ~~\$382~~ \$497 for licensure in medicine, osteopathic medicine, and podiatry (\$382 for reinstatement application in addition to the late fee of \$115) and ~~\$367~~ \$472 for licensure in chiropractic (\$367 for reinstatement application in addition to the late fee of \$105). The fee shall be submitted with an application for licensure reinstatement.

K. The fee for a letter of verification of licensure ~~to another jurisdiction~~ shall be \$10, and the fee for certification of grades to another jurisdiction by the board shall be \$25. Fees shall be due and payable upon submitting a request for verification or certification to the board.

L. The fee for biennial renewal of an inactive license shall be \$168, due in the licensee's birth month. An additional fee for late renewal of licensure shall be \$55 for each renewal cycle.

M. The fee for an application or for the biennial renewal of a restricted volunteer license shall be \$75, due in the licensee's

birth month. An additional fee for late renewal of licensure shall be \$25 for each renewal cycle.

N. The fee for a returned check shall be \$35.

Part III

Licensure: General and Educational Requirements

18VAC85-20-120. Prerequisites to licensure.

~~A.~~ Every applicant for licensure shall:

1. Meet the educational requirements specified in 18VAC85-20-121 or 18VAC85-20-122 and the examination requirements as specified for each profession in 18VAC85-20-140;

2. File the complete application and appropriate fee as specified in 18VAC85-20-22 with the executive director of the board; and

3. File the required credentials with the executive director ~~by a date established by the board and~~ as specified below:

a. Graduates of an approved institution shall file:

(1) Documentary evidence that he received a degree from the institution; and

(2) A complete chronological record of all professional activities since graduation from professional school, giving location, dates, and types of services performed.

b. Graduates of an institution not approved by an accrediting agency recognized by the board shall file:

(1) Documentary evidence of education as required by 18VAC85-20-122;

(2) A translation made and endorsed by a consul or by a professional translating service of all such documents not in the English language; and

(3) A complete chronological record of all professional activities since graduation from professional school, giving location, dates, and types of services performed.

~~B. Every applicant discharged from the United States military service within the last five years shall in addition file with his application a notarized copy of his discharge papers.~~

18VAC85-20-121. Educational requirements: Graduates of approved institutions.

A. Such an applicant shall be a graduate of an institution that meets the criteria appropriate to the profession in which he seeks to be licensed, which are as follows:

1. For licensure in medicine. The institution shall be approved or accredited by the Liaison Committee on Medical Education or other official accrediting body recognized by the American Medical Association, or by the Committee for the Accreditation of Canadian Medical

Schools or its appropriate subsidiary agencies or any other organization approved by the board.

2. For licensure in osteopathic medicine. The institution shall be approved or accredited by the Bureau of Professional Education of the American Osteopathic Association or any other organization approved by the board.

3. For licensure in podiatry. The institution shall be approved and recommended by the Council on ~~Podiatry~~ Podiatric Medical Education of the American ~~Podiatry~~ Podiatric Medical Association or any other organization approved by the board.

B. Such an applicant for licensure in medicine, osteopathic medicine, or podiatry shall provide evidence of having completed one year of satisfactory postgraduate training as an intern or resident in a hospital or health care facility offering approved internship and residency training programs when such a program is approved by an accrediting agency recognized by the board for internship and residency training.

C. For licensure in chiropractic.

1. If the applicant matriculated in a chiropractic college on or after July 1, 1975, he shall be a graduate of a chiropractic college accredited by the Commission on Accreditation of the Council of Chiropractic Education or any other organization approved by the board.

2. If the applicant matriculated in a chiropractic college prior to July 1, 1975, he shall be a graduate of a chiropractic college accredited by the American Chiropractic Association or the International Chiropractic Association or any other organization approved by the board.

18VAC85-20-131. Requirements to practice acupuncture.

A. To be qualified to practice acupuncture, licensed doctors of medicine, osteopathic medicine, podiatry, and chiropractic shall first have obtained at least 200 hours of instruction in general and basic aspects of the practice of acupuncture, specific uses and techniques of acupuncture, and indications and contraindications for acupuncture administration. ~~After December 5, 2001, at~~ At least 50 hours of the 200 hours of instruction shall be clinical experience supervised by a person legally authorized to practice acupuncture in any jurisdiction of the United States. Persons who held a license as a physician acupuncturist prior to July 1, 2000, shall not be required to obtain the 50 hours of clinical experience.

B. The use of acupuncture as a treatment modality shall be appropriate to the doctor's scope of practice as defined in § 54.1-2900 of the Code of Virginia.

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Part IV

Licensure: Examination Requirements

18VAC85-20-140. Examinations, general.

A. The Executive Director of the Board of Medicine or his designee shall review each application for licensure and in no case shall an applicant be licensed unless there is evidence that the applicant has passed an examination equivalent to the Virginia Board of Medicine examination required at the time he was examined and meets all requirements of Part III (18VAC85-20-120 et seq.) of this chapter. If the executive director or his designee is not fully satisfied that the applicant meets all applicable requirements of Part III of this chapter and this part, he shall refer the application to the Credentials Committee for a determination on licensure.

B. A Doctor of Medicine or Osteopathic Medicine who has passed the examination of the National Board of Medical Examiners or of the National Board of Osteopathic Medical Examiners, ~~FLEX Federation Licensing Examination~~, or the United States Medical Licensing Examination, or the examination of the Licensing Medical Council of Canada or other such examinations as prescribed in § 54.1-2913.1 of the Code of Virginia may be accepted for licensure.

C. A Doctor of Podiatry who has passed the National Board of Podiatric Medical Examiners examination and has passed a clinical competence examination ~~equivalent to the Virginia Board of Medicine examination~~ acceptable to the board may be accepted for licensure.

D. A Doctor of Chiropractic who has met the requirements of one of the following may be accepted for licensure:

1. An applicant who graduated after January 31, 1996, shall document successful completion of Parts I, II, III, and IV of the National Board of Chiropractic Examiners examination (NBCE).
2. An applicant who graduated from January 31, 1991, to January 31, 1996, shall document successful completion of Parts I, II, and III of the National Board of Chiropractic Examiners examination (NBCE).
3. An applicant who graduated from July 1, 1965, to January 31, 1991, shall document successful completion of Parts I, II, and III of the NBCE, or Parts I and II of the NBCE and the Special Purpose Examination for Chiropractic (SPEC), and document evidence of licensure in another state for at least two years immediately preceding his application.
4. An applicant who graduated prior to July 1, 1965, shall document successful completion of the SPEC, and document evidence of licensure in another state for at least two years immediately preceding his application.

E. The following provisions shall apply for applicants taking Step 3 of the United States Medical Licensing Examination or the Podiatric Medical Licensing Examination:

1. Applicants for licensure in medicine and osteopathic medicine may be eligible to sit for Step 3 of the United States Medical Licensing Examination (USMLE) upon evidence of having passed Steps 1 and 2 of the United States Medical Licensing Examination (USMLE).
2. Applicants who sat for the United States Medical Licensing Examination (USMLE) shall provide evidence of passing Steps 1, 2, and 3 within a 10-year period unless the applicant is board certified in a specialty approved by the American Board of Medical Specialties or the Bureau of Osteopathic Specialists of the American Osteopathic Association.
3. Applicants shall have completed the required training or be engaged in their final year of required postgraduate training.
4. Applicants for licensure in podiatry shall provide evidence of having passed the National Board of Podiatric Medical Examiners Examination to be eligible to sit for the Podiatric Medical Licensing Examination (PMLEXIS) in Virginia.

18VAC85-20-220. Temporary licenses to interns and residents.

A. An intern or resident applying for a temporary license to practice in Virginia shall:

1. Successfully complete the preliminary academic education required for admission to examinations given by the board in his particular field of practice, and submit a letter of confirmation from the registrar of the school or college conferring the professional degree, or official transcripts confirming the professional degree and date the degree was received.
2. Submit a recommendation from the applicant's chief or director of graduate medical education of the approved internship or residency program specifying acceptance. The beginning and ending dates of the internship or residency shall be specified.
3. Submit evidence of a standard Educational Commission for Foreign Medical Graduates (ECFMG) certificate or its equivalent if the candidate graduated from a school not approved by an accrediting agency recognized by the board.

B. The intern or resident license applies only to the practice in the hospital or outpatient clinics where the internship or residency is served. Outpatient clinics in a hospital or other facility must be a recognized part of an internship or residency program.

C. The intern or resident license shall be renewed annually upon the recommendation of the chief or director of graduate medical education of the internship or residency program ~~no more than five times.~~

A residency program transfer request shall be submitted to the board in lieu of a full application.

D. The extent and scope of the duties and professional services rendered by the intern or resident shall be confined to persons who are bona fide patients within the hospital or who receive treatment and advice in an outpatient department of the hospital or outpatient clinic where the internship or residency is served.

E. The intern and resident shall be responsible and accountable at all times to a fully licensed member of the staff where the internship or residency is served. The intern and resident is prohibited from employment outside of the graduate medical educational program where a full license is required.

F. The intern or resident shall abide by the respective accrediting requirements of the internship or residency as approved by the Liaison Council on Graduate Education of the American Medical Association, American Osteopathic Association, American Podiatric Medical Association, or Council on Chiropractic Education.

18VAC85-20-235. Continued competency requirements for renewal of an active license.

A. In order to renew an active license biennially ~~on or after January 1, 2002,~~ a practitioner shall ~~complete the Continued Competency Activity and Assessment Form ("Form") which is provided by the board and which shall indicate~~ attest to completion of at least 60 hours of continuing learning activities within the two years immediately preceding renewal as follows:

1. A minimum of 30 of the 60 hours shall be in Type 1 activities or courses offered by an accredited sponsor or organization sanctioned by the profession.
 - a. Type 1 hours in chiropractic shall be clinical hours that are approved by a college or university accredited by the Council on Chiropractic Education or any other organization approved by the board.
 - b. Type 1 hours in podiatry shall be accredited by the American Podiatric Medical Association, the American Council of Certified Podiatric Physicians and Surgeons or any other organization approved by the board.
2. No more than 30 of the 60 hours may be Type 2 activities or courses, which may or may not be approved by an accredited sponsor or organization but which shall be chosen by the licensee to address such areas as ethics, standards of care, patient safety, new medical technology, and patient communication.

B. A practitioner shall be exempt from the continuing competency requirements for the first biennial renewal following the date of initial licensure in Virginia.

C. The practitioner shall retain in his records ~~the completed Form with~~ all supporting documentation for a period of six years following the renewal of an active license.

D. The board shall periodically conduct a random audit ~~of at least 1.0% to 2.0%~~ of its active licensees to determine compliance. The practitioners selected for the audit shall provide ~~the completed Form and~~ all supporting documentation within 30 days of receiving notification of the audit.

E. Failure to comply with these requirements may subject the licensee to disciplinary action by the board.

F. The board may grant an extension of the deadline for continuing competency requirements for up to one year for good cause shown upon a written request from the licensee prior to the renewal date.

G. The board may grant an exemption for all or part of the requirements for circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters.

H. The board may grant an exemption for all or part of the requirements for a licensee who:

1. Is practicing solely in an uncompensated position, provided his practice is under the direction of a physician fully licensed by the board; or
2. Is practicing solely as a medical examiner, provided the licensee obtains six hours of medical examiner training per year provided by the Office of the Chief Medical Examiner.

18VAC85-20-290. Reporting of medical malpractice judgments and settlements.

A. In compliance with requirements of § 54.1-2910.1 of the Code of Virginia, a doctor of medicine, osteopathic medicine, or podiatry licensed by the board shall report all medical malpractice judgments and settlements of ~~\$10,000 or~~ more than \$10,000 in the most recent 10-year period within 30 days of the initial payment. A doctor shall report a medical malpractice judgment or settlement of less than \$10,000 if any other medical malpractice judgment or settlement has been paid by or for the licensee within the preceding 12 months. Each report of a settlement or judgment shall indicate:

1. The year the judgment or settlement was paid.
2. The specialty in which the doctor was practicing at the time the incident occurred that resulted in the judgment or settlement.

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3. The total amount of the judgment or settlement in United States dollars.

4. The city, state, and country in which the judgment or settlement occurred.

B. The board shall not release individually identifiable numeric values of reported judgments or settlements but shall use the information provided to determine the relative frequency of judgments or settlements described in terms of the number of doctors in each specialty and the percentage with malpractice judgments or settlements within the most recent 10-year period. The statistical methodology used will include any specialty with more than 10 judgments or settlements. For each specialty with more than 10 judgments or settlements, the top 16% of the judgments or settlements will be displayed as above average payments, the next 68% of the judgments or settlements will be displayed as average payments, and the last 16% of the judgments or settlements will be displayed as below average payments.

C. For purposes of reporting required under this section, medical malpractice judgment and medical malpractice settlement shall have the meanings ascribed in § 54.1-2900 of the Code of Virginia. A medical malpractice judgment or settlement shall include:

1. A lump sum payment or the first payment of multiple payments;
2. A payment made from personal funds;
3. A payment on behalf of a doctor of medicine, osteopathic medicine, or podiatry by a corporation or entity comprised solely of that doctor of medicine, osteopathic medicine, or podiatry; or
4. A payment on behalf of a doctor of medicine, osteopathic medicine, or podiatry named in the claim where that doctor is dismissed as a condition of, or in consideration of the settlement, judgment or release. If a doctor is dismissed independently of the settlement, judgment or release, then the payment is not reportable.

Part IX

Mixing, Diluting, or Reconstituting of Drugs for Administration

18VAC85-20-400. Requirements for immediate-use sterile mixing, diluting, or reconstituting.

A. For the purposes of this chapter, the mixing, diluting, or reconstituting of sterile manufactured drug products when there is no direct contact contamination and administration begins within 10 hours of the completion time of preparation shall be considered immediate-use with the exception of drugs in fat emulsion for which immediate use shall be one hour. If manufacturers' instructions or any other accepted standard specifies or indicates an appropriate time between preparation and administration of less than 10 hours, the

mixing, diluting, or reconstituting shall be in accordance with the lesser time. No direct contact contamination means that there is no contamination from touch, gloves, bare skin, or secretions from the mouth or nose. Emergency drugs used in the practice of anesthesiology and administration of allergens may exceed 10 hours after completion of the preparation, provided administration does not exceed the specified expiration date of a multiple use vial and there is compliance with all other requirements of this section.

B. Doctors of medicine or osteopathic medicine who engage in immediate-use mixing, diluting, or reconstituting shall:

1. Utilize the practices and principles of disinfection techniques, aseptic manipulations and solution compatibility in immediate-use mixing, diluting, or reconstituting;
2. Ensure that all personnel under their supervision who are involved in immediate-use mixing, diluting, or reconstituting are appropriately and properly trained in and utilize the practices and principles of disinfection techniques, aseptic manipulations, and solution compatibility;
3. Establish and implement procedures for verification of the accuracy of the product that has been mixed, diluted, or reconstituted to include a second check performed by a doctor of medicine or osteopathic medicine or a pharmacist, or by a physician assistant or a registered nurse who has been specifically trained pursuant to subdivision 2 of this subsection in immediate-use mixing, diluting, or reconstituting. Mixing, diluting, or reconstituting that is performed by a doctor of medicine or osteopathic medicine, a pharmacist, or by a specifically trained physician assistant or registered nurse or mixing, diluting, or reconstituting of vaccines does not require a second check;
4. Provide a designated, sanitary work space and equipment appropriate for aseptic manipulations;
5. Document or ensure that personnel under his supervision documents in the patient record or other readily retrievable record that identifies the patient; the names of drugs mixed, diluted or reconstituted; and the date of administration; and
6. Develop and maintain written policies and procedures to be followed in mixing, diluting, or reconstituting of sterile products and for the training of personnel.

C. Any mixing, diluting, or reconstituting of drug products that are hazardous to personnel shall be performed consistent with requirements of all applicable federal and state laws and regulations for safety and air quality, to include but not be limited to those of the Occupational Safety and Health Administration (OSHA). For the purposes of this chapter, Appendix A of the National Institute for Occupational Safety and Health publication (NIOSH Publication No. 2004-165),

Preventing Occupational Exposure to Antineoplastic and Other Hazardous Drugs in Health Care Settings is incorporated by reference for the list of hazardous drug products and can be found at www.cdc.gov/niosh/docs/2004-165.

FORMS (18VAC85-20)

Instructions for Completing an Application to Practice Medicine in Virginia for Graduates of Approved Medical Schools in the US/Canada (rev. 7/08).

Instructions for Completing an Application to Practice Medicine for Graduates of Nonapproved Medical Schools (outside of the US/Canada) (rev. 7/08).

Information for Completing Chiropractic Endorsement Application (rev. 8/07).

Instructions for Completing Podiatry Endorsement Application (rev. 8/07).

Instructions for Completing Osteopathic Medicine Licensure Application (rev. 11/07).

Form A, Claims History Sheet (rev. 8/07).

Form B, Activity Questionnaire (rev. 8/07).

Form C, Clearance from Other State Boards (rev. 8/07).

Form E, Disciplinary Inquiry (rev. 8/07).

Application for a License to Practice Medicine and Surgery (rev. 11/07).

Application for a License to Practice Osteopathic Medicine (rev. 11/07).

Application for a License to Practice Podiatry (rev. 8/07).

Application for a License to Practice Chiropractic (rev. 8/07).

Form H, Federation of Podiatric Medical Boards Report (rev. 8/07).

Requirements and Instructions for an Intern/Resident License (rev. 8/07).

Intern/Resident, Form A, Memorandum from Associate Dean of Graduate Medical Education (rev. 8/07).

Intern/Resident, Form B, Certificate of Professional Education (rev. 8/07).

Application for a Temporary License for Intern/Resident Training Program (rev. 8/07).

Form G, Intern Resident, Request for Status Report of ECFMG Certification (eff. 8/07).

Form H, Report of Clinical Rotations (rev. 12/02).

Transfer Request, Intern /Resident (eff. 8/07).

Instructions for Completing an Application for a Limited License to Foreign Medical Graduates Pursuant to 54.1-2936 (rev. 8/07).

Application for a Limited License to Foreign Medical Graduates Pursuant to 54.1-2936 (rev. 8/07).

Form G, Request for Status Report of Educational Commission for Foreign Medical Graduates Certification (rev. 8/07).

Form L, Certificate of Professional Education (rev. 8/07).

~~Continued Competency Activity and Assessment Form (rev. 9/07).~~

Instructions for Reinstatement of Medicine and Surgery Licensure Application (rev. 4/08).

Application for Reinstatement of License to Practice Medicine (rev. 8/07).

Form A, MD Reinstatement, Claims History Sheet (rev. 8/07).

Form B, MD Reinstatement, Activity Questionnaire Form (rev. 8/07).

Form C, MD Reinstatement, State Questionnaire Form (rev. 8/07).

MD Reinstatement, Disciplinary Inquiries to Federation of State Medical Boards (rev. 8/07).

Instructions for Reinstatement of Osteopathic Medicine Licensure Application (rev. 4/08).

Application for Reinstatement of License to Practice Osteopathic Medicine (rev. 8/07).

Form A, Osteopathy Reinstatement, Claims History (rev. 8/07).

Instructions for Reinstatement of a Chiropractic Licensure Application (rev. 4/08).

Application for Reinstatement of License to Practice as a Chiropractor (rev. 8/07).

Instructions for Reinstatement of Podiatry Licensure Application (rev. 4/08).

Application for Reinstatement of License to Practice Podiatry (rev. 8/07).

Reinstatement Application Instructions for Medicine & Surgery or Osteopathy Licensure after Reinstatement Denied or License Revoked (rev. 8/07).

Reinstatement Application Instructions for Medicine & Surgery or Osteopathy Licensure after Mandatory Suspension, Suspension or Surrender (rev. 8/07).

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Reinstatement Application Instructions for Podiatry Licensure after Mandatory Suspension, Suspension or Surrender (rev. 8/07).

Application for Reinstatement of License to Practice Medicine/Osteopathy After Petition for Reinstatement Denied or License Revoked (rev. 8/07).

Application for Registration for Volunteer Practice (rev. 8/07).

Sponsor Certification for Volunteer Registration (rev. 8/08).

Guidelines for Completing the Practitioner Profile Questionnaire (rev. 12/02).

Practitioner's Help Section (rev. 11/07).

Practitioner Questionnaire (rev. 8/04).

V.A.R. Doc. No. R09-1755; Filed January 25, 2011, 10:40 a.m.

BOARD OF PHYSICAL THERAPY

Proposed Regulation

Title of Regulation: 18VAC112-20. Regulations Governing the Practice of Physical Therapy (amending 18VAC112-20-10, 18VAC112-20-50, 18VAC112-20-65, 18VAC112-20-70, 18VAC112-20-131, 18VAC112-20-135, 18VAC112-20-136, 18VAC112-20-140).

Statutory Authority: §§ 54.1-2400 and 54.1-3474 of the Code of Virginia.

Public Hearing Information:

March 8, 2011 - 10 a.m. - Department of Health Professions, 9960 Mayland Drive, 2nd Floor, Richmond, VA

Public Comment Deadline: April 15, 2011.

Agency Contact: Lisa R. Hahn, Executive Director, Board of Physical Therapy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4674, FAX (804) 527-4413, or email ptboard@dhp.virginia.gov.

Basis: Section 54.1-2400 of the Code of Virginia establishes the general powers and duties of health regulatory boards including the responsibility of the Board of Physical Therapy to promulgate regulations that are reasonable and necessary to administer effectively the regulatory system.

Section 54.1-3474 of the Code of Virginia requires the board to promulgate regulations establishing requirements to ensure continuing competency of physical therapists (PTs) and physical therapist assistants (PTAs), which may include continuing education, testing, or such other requirements as the board may determine to be necessary.

Purpose: The purpose of the regulatory action is to provide more flexibility and accountability in traineeships for graduates of approved or unapproved (foreign) programs in

physical therapy and for applicants who have not had recent clinical experience and are seeking licensure by endorsement or reinstatement. Additionally, the goal of the amendments is to provide more opportunities for obtaining the necessary continuing education hours for physical therapists and physical therapist assistants to maintain current licensure.

During the periodic review of regulations conducted in 2008, there were several comments and issues relating to traineeships and continuing competency that the board elected to refer to its Legislative/Regulatory Committee. In consultation with the Virginia Physical Therapy Association's representatives and a faculty member at VCU Health Systems, the committee and the board concluded that it should retain traineeships but make certain adjustments that would offer more flexibility and licensee oversight. Certain requirements were added for more accountability and greater assurance of public safety including provisions that should result in adequate supervision of the trainee, appropriate diagnosis and treatment being provided by a trainee, and a continuity of supervision. For the sake of public health and safety, a trainee should be so identified to the patient, and the progress notes from the trainee should be countersigned to document physical therapist oversight and responsibility for patient care.

Substance: The board has recommended the following substantive changes:

1. Clarify 18VAC112-20-70 to specify that the unlicensed graduate applying for a traineeship has been scheduled to take the national examination.
2. Amend 18VAC112-20-140 to limit the number of supervisors for each trainee to no more than two PTs to ensure some continuity in training.
3. Amend 18VAC112-20-140 to specify that a trainee be designated as a "PT Trainee" or "PTA Trainee" for the sake of public safety.
4. Amend 18VAC112-20-140 to state that all patient progress notes must be countersigned by the trainee's supervisor. This includes computerized/electronic patient care notes to have documentation that the trainee is being supervised.
5. Amend 18VAC112-20-50 D, which currently requires a 1,000-hour full-time traineeship to allow a part-time traineeship, but include a limitation of two years on the amount of time allotted for completion. The time limit could be waived or extended for hardship circumstances in which the trainee needs additional time for completion.
6. Allow the PTA traineeship to be a fewer number of hours than the PT traineeship, since PTA education programs are shorter than PT education programs, and the scope of services provided by the PTA is less than that provided by a PT. Traineeship hours for an unlicensed

graduate or an inactive PTA would be reduced from 480 hours to 320 hours.

7. Eliminate "face-to-face" requirement for Type 1 courses to allow home study, online, or audio courses offered by the approving organizations to be counted, but increase the number of hours that must be Type 1 from 15 to 20 per biennium for PTs and from 10 to 15 for PTAs. Type 2 hours would be reduced from 15 to 10 for PTs and from 20 to 15 for PTAs, so the total number of hours would remain the same.

8. Grant credit for all or part of the continuing competency hours for licensee who takes the new Practice Review Tool (PRT) of the Federation of State Boards of Physical Therapy. The amount of credit would be designated depending on whether the PT used the PRT as a self-assessment or as a measure of competency by meeting the standard set by the federation.

9. Amend sections on endorsement, reinstatement, or reactivation to use the PRT of the Federation of State Boards of Physical Therapy as a competency assessment for PT's who have not been in active clinical practice. The PRT would be used to allow the PT to assess his areas of weakness, so a precepted experience could be more directed. Additionally, PTs who meet the standard on the review tool would be granted credit for some of the traineeship hours.

Issues: The primary advantage to the public would be greater protection for patients in the practice of trainees by closer supervision of their practice and identification of their status as a trainee. Use of the PRT will offer applicants and licensees information about their weaknesses in current practice knowledge to allow them to direct continuing education (CE) or supervised practice in those areas. Elimination of the face-to-face requirement for Type 1 hours will reduce the financial burden of PTs and PTAs while continuing to ensure the safety of the public by allowing licensees to fulfill their CE requirements with less time from practice and patient care. There are no disadvantages to the public.

There are no advantages or disadvantages to the agency or the Commonwealth.

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

Summary of the Proposed Amendments to Regulation. The Board of Physical Therapy (Board) proposes to amend its Regulations Governing the Practice of Physical Therapy. Specifically, the Board proposes to:

- Allow graduates of non-approved education programs to complete their required traineeship hours on a part time basis so long as they are completed within a two-year period,

- Reduce the traineeship hours that physical therapy assistants must complete from 480 to 320,
- Allow individuals who are required to complete traineeships as a condition of either licensure by endorsement or reinstatement of licensure to successfully complete the Practice Review Tool (PRT) in lieu of 160 hours of their traineeship,
- Allow licensees to complete the PRT for Type 1 continuing education credit,
- Increase the proportion of Type 1 continuing education hours to total continuing education hours (from 15 out of 30 required hours to 20 out of 30 required hours) that physical therapy licensees must complete in order to renew their licenses,
- Increase the proportion of Type 1 continuing education hours to total continuing education hours (from 10 out of 30 required hours to 15 out of 30 required hours) that physical therapy assistant licensees must complete in order to renew their licenses,
- Remove the requirement that Type 1 training be face-to-face, and
- Limit the number of supervisors per trainee to two, require trainees to wear identification that has their proper designation and require supervisors to countersign patient documentation.

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

Estimated Economic Impact. Current regulations require graduates of non-approved schools who want to be licensed in the Commonwealth to complete a full time, 1,000 hour traineeship. The Board proposes to amend this requirement by no longer requiring that these individuals complete this traineeship by working full time hours. To ensure that traineeships are still completed in a timely fashion, the Board also proposes to require that this traineeship be completed within two years with the provision that the Board may extend this time period for "circumstances beyond the control of the applicant, such as temporary disability or mandatory military service." Since affected individuals will still be able to complete their traineeships on a full-time basis if they so choose, and trainee programs are free to only offer full-time positions if they choose, no entity is likely to incur costs on account of these proposed changes. Trainees are very likely to benefit from the added flexibility, to work at another job or take care of family obligations, that these changes will give them. Trainee programs may benefit from being able to attract more trainees by accommodating their other life obligations.

Currently both physical therapists and physical therapy assistants who are applying for licensure by endorsement, but who have not actively practiced at least 320 hours in the four

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years immediately preceding application, must complete a 480 hour traineeship. The Board proposes to reduce the number of hours of traineeship that physical therapy assistants (PTAs) must complete to 320 hours because PTAs have shorter education programs (so shorter traineeships are likely appropriate) and work directly under the supervision of physical therapists. This proposed change is likely to benefit PTAs who are applying for licensure by endorsement because they will be able to qualify for licensure more quickly than they currently do.

The Board also proposes to allow physical therapy license applicants that have to complete a 480 hour traineeship, because they are applying for licensure by endorsement or are licensees seeking to regain active licensure (because they currently have an inactive license or their license needs to be reinstated), the option of successfully completing the PRT and a 320 hour traineeship instead. Additionally, the Board proposes to allow completion of the PRT to count as 10 hours of Type 1 continuing education and successful completion of the PRT to count as 20 hours of Type 1 continuing education. The Board believes that the PRT accurately measures an applicant's current knowledge of physical therapy and can, therefore, be safely substituted for hours of traineeship. Physical therapists who take the PRT will pay a \$250 fee and will incur additional costs for the time they spend completing it; since in all cases completion of the PRT is just an additional option available to these individuals, no one is likely to choose to take it unless the benefits of doing so outweigh the costs.

Current regulations require physical therapists to complete 15 hours of face-to-face Type 1 continuing education, and 30 hours of total continuing education, biennially as a condition of license renewal. Physical therapy assistants must currently complete 10 hours of face-to-face Type 1, and a total of 30 hours, continuing education. The Board proposes to increase the number of hours of Type 1 continuing education, and eliminate the requirement that Type 1 training be face-to-face, while keeping the total hours required the same. Removing the requirement that Type 1 classes be face-to-face will benefit licensees by allowing them to take online and self-study Type 1 classes if these are less expensive options. Because the proposed elimination of the face-to-face requirement will likely make the cost of Type 1 classes approximately the same as the cost of other qualifying training, the Board believes increasing the proportion of Type 1 training required will provide a benefit for physical therapists and the public.

Current regulations require that traineeships be completed under the direct supervision of a licensed physical therapist but is otherwise silent on the supervisor/trainee relationship. The Board is concerned, however, that some trainees have supervisors numerous enough that no one is taking responsibility for their work or the progress of their learning. Consequently, the Board now proposes to require that

trainees have not more than two supervisors and that these supervisors countersign patient documentation for services provided by their trainees. These proposed changes may increase costs for physical therapy clinical education facilities that will now have to coordinate schedules so that trainees work the same hours as one or the other of their assigned supervisors. These changes will, however, provide the benefit of allowing greater enforcement of the Board's intent that traineeships be effectively supervised.

Businesses and Entities Affected. The Department of Health Professions (DHP) reports that the Board currently licenses 5,552 physical therapists and 2,144 physical therapy assistants. All of these individuals, plus any individuals who may choose to be licensed in the future, will be affected by these proposed regulations.

Localities Particularly Affected. No locality will be particularly affected by this proposed regulatory action.

Projected Impact on Employment. This regulatory action will likely have no impact on employment in the Commonwealth.

Effects on the Use and Value of Private Property. This regulatory action will likely have no effect on the use or value of private property in the Commonwealth.

Small Businesses: Costs and Other Effects. Small businesses that have physical therapy trainees may accrue additional costs on account of the new restriction on the number of supervisors that a trainee may have.

Small Businesses: Alternative Method that Minimizes Adverse Impact. There are likely no alternate methods that the Board could have employed in writing the requirement for trainee supervision that would have both accomplished the Board's goal (of ensuring that supervisors are aware of trainee activity and progress) and further minimized any adverse impact on small businesses.

Real Estate Development Costs. This regulatory action will likely have no effect on real estate development costs in the Commonwealth.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include

(i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to Economic Impact Analysis: The Board of Physical Therapy concurs with the analysis of the Department of Planning and Budget for amendments to 18VAC112-20, Regulations Governing the Practice of Physical Therapy, relating to changes to traineeship and continuing education requirements.

Summary:

The proposed amendments (i) offer the option of passage of the Practice Review Tool in lieu of some training hours for applicants returning to practice through reinstatement, reactivation, or endorsement; (ii) reduce the traineeship hours for physical therapist assistants; (iii) allow part-time traineeships for graduates of nonapproved physical therapy schools; (iv) limit the numbers of supervisors for each trainee; (v) require co-signing of trainee documentation in patient records and identification of a trainee for the patient; and (vi) eliminate the requirement that Type 1 continuing education training be face-to-face.

Part I
General Provisions

18VAC112-20-10. Definitions.

In addition to the words and terms defined in § 54.1-3473 of the Code of Virginia, the following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Active practice" means a minimum of 160 hours of professional practice as a physical therapist or physical therapist assistant within the 24-month period immediately preceding renewal. Active practice may include supervisory, administrative, educational or consultative activities or responsibilities for the delivery of such services.

"Approved program" means an educational program accredited by the Commission on Accreditation in Physical Therapy Education of the American Physical Therapy Association.

"CLEP" means the College Level Examination Program.

"Contact hour" means 60 minutes of time spent in continuing learning activity exclusive of breaks, meals or vendor exhibits.

"Direct supervision" means a physical therapist or a physical therapist assistant is physically present and immediately available and is fully responsible for the physical therapy tasks or activities being performed.

"Discharge" means the discontinuation of interventions in an episode of care that have been provided in an unbroken sequence in a single practice setting and related to the physical therapy interventions for a given condition or problem.

"Evaluation" means a process in which the physical therapist makes clinical judgments based on data gathered during an examination or screening in order to plan and implement a treatment intervention, provide preventive care, reduce risks of injury and impairment, or provide for consultation.

~~"Face to face" means learning activities or courses obtained in a group setting or through interactive, real time technology.~~

"FCCPT" means the Foreign Credentialing Commission on Physical Therapy.

"General supervision" means a physical therapist shall be available for consultation.

"National examination" means the examinations developed and administered by the Federation of State Boards of Physical Therapy and approved by the board for licensure as a physical therapist or physical therapist assistant.

"PRT" means the Practice Review Tool for competency assessment given by the Federation of State Boards of Physical Therapy.

"Support personnel" means a person who is performing designated routine tasks related to physical therapy under the direction and supervision of a physical therapist or physical therapist assistant within the scope of this chapter.

"TOEFL" means the Test of English as a Foreign Language.

"Trainee" means a person seeking licensure as a physical therapist or physical therapist assistant who is undergoing a traineeship.

"Traineeship" means a period of active clinical practice during which an applicant for licensure as a physical therapist or physical therapist assistant works under the direct supervision of a physical therapist approved by the board.

"TSE" means the Test of Spoken English.

"Type 1" means ~~face-to-face~~ continuing learning activities offered by an approved organization as specified in 18VAC112-20-131.

"Type 2" means continuing learning activities which may or may not be offered by an approved organization but shall be activities considered by the learner to be beneficial to practice or to continuing learning.

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18VAC112-20-50. Education requirements: graduates of schools not approved by an accrediting agency approved by the board.

A. An applicant for initial licensure as a physical therapist who is a graduate of a school not approved by an accrediting agency approved by the board shall submit the required application and fee and provide documentation of the physical therapist's certification by a report from the FCCPT or of the physical therapist eligibility for licensure as verified by a report from any other credentialing agency approved by the board that substantiates that the physical therapist has been evaluated in accordance with requirements of subsection B of this section.

B. The board shall only approve a credentialing agency that:

1. Utilizes the Coursework Evaluation Tool for Foreign Educated Physical Therapists of the Federation of State Boards of Physical Therapy and utilizes original source documents to establish substantial equivalency to an approved physical therapy program;
2. Conducts a review of any license or registration held by the physical therapist in any country or jurisdiction to ensure that the license or registration is current and unrestricted or was unrestricted at the time it expired or was lapsed; and
3. Verifies English language proficiency by passage of the TOEFL and TSE examination or the TOEFL iBT, the Internet-based tests of listening, reading, speaking and writing or by review of evidence that the applicant's physical therapy program was taught in English or that the native tongue of the applicant's nationality is English.

C. An applicant for licensure as a physical therapist assistant who is a graduate of a school not approved by the board shall submit with the required application and fee the following:

1. Proof of proficiency in the English language by passing TOEFL and TSE or the TOEFL iBT, the Internet-based tests of listening, reading, speaking, and writing by a score determined by the board or an equivalent examination approved by the board. TOEFL iBT or TOEFL and TSE may be waived upon evidence that the applicant's physical therapist assistant program was taught in English or that the native tongue of the applicant's nationality is English.
2. A copy of the original certificate or diploma that has been certified as a true copy of the original by a notary public, verifying his graduation from a physical therapy curriculum. If the certificate or diploma is not in the English language, submit either:
 - a. An English translation of such certificate or diploma by a qualified translator other than the applicant; or

b. An official certification in English from the school attesting to the applicant's attendance and graduation date.

3. Verification of the equivalency of the applicant's education to the educational requirements of an approved program for physical therapist assistants from a scholastic credentials service approved by the board.

D. An applicant for initial licensure as a physical therapist or a physical therapist assistant who is not a graduate of an approved program shall also submit verification of having successfully completed a ~~full-time~~ 1,000-hour traineeship within a two-year period under the direct supervision of a licensed physical therapist. The board may grant an extension beyond two years for circumstances beyond the control of the applicant, such as temporary disability or mandatory military service.

1. The traineeship shall be in accordance with requirements in 18VAC112-20-140.
2. The traineeship requirements of this part may be waived if the applicant for a license can verify, in writing, the successful completion of one year of clinical physical therapy practice as a licensed physical therapist or physical therapist assistant in the United States, its territories, the District of Columbia, or Canada, equivalent to the requirements of this chapter.

18VAC112-20-65. Requirements for licensure by endorsement.

A. A physical therapist or physical therapist assistant who holds a current, unrestricted license in the United States, its territories, the District of Columbia, or Canada may be licensed in Virginia by endorsement.

B. An applicant for licensure by endorsement shall submit:

1. Documentation of having met the educational requirements prescribed in 18VAC112-20-40 or 18VAC112-20-50. In lieu of meeting such requirements, an applicant may provide evidence of clinical practice during the five years immediately preceding application for licensure in Virginia with a current, unrestricted license issued by another U.S. jurisdiction;
2. The required application, fees, and credentials to the board;
3. A current report from the Healthcare Integrity and Protection Data Bank (HIPDB) and a current report from the National Practitioner Data Bank (NPDB);
4. Evidence of completion of 15 hours of continuing education for each year in which the applicant held a license in another U.S. jurisdiction, or 60 hours obtained within the past four years; and

5. Documentation of passage of an examination equivalent to the Virginia examination at the time of initial licensure or documentation of passage of an examination required by another state at the time of initial licensure in that state and active, clinical practice with a current, unrestricted license for at least five years prior to applying for licensure in Virginia.

For the purpose of this subsection, active, clinical practice shall mean at least 2,500 hours of patient care over a five-year period.

C. A physical therapist ~~or physical therapist assistant~~ seeking licensure by endorsement who has not actively practiced physical therapy for at least 320 hours within the four years immediately preceding his application for licensure shall ~~first successfully~~:

1. Successfully complete 480 hours in a traineeship in accordance with requirements in 18VAC112-20-140; or

2. Document passage of the PRT within the two years preceding application for licensure in Virginia and successfully complete 320 hours in a traineeship in accordance with the requirements in 18VAC112-20-140.

D. A physical therapist assistant seeking licensure by endorsement who has not actively practiced physical therapy for at least 320 hours within the four years immediately preceding his application for licensure shall successfully complete 320 hours in a traineeship in accordance with the requirements in 18VAC112-20-140.

18VAC112-20-70. Traineeship for unlicensed graduate scheduled to sit for the national examination.

A. Upon approval of the president of the board or his designee, an unlicensed graduate who is registered with the Federation of State Boards of Physical Therapy to sit for the national examination may be employed as a trainee under the direct supervision of a licensed physical therapist until the results of the national examination are received.

B. The traineeship, which shall be in accordance with requirements in 18VAC112-20-140, shall terminate two working days following receipt by the candidate of the licensure examination results.

C. The unlicensed graduate may reapply for a new traineeship while awaiting to take the next examination. A new traineeship shall not be approved for more than one year following the receipt of the first examination results.

18VAC112-20-131. Continued competency requirements for renewal of an active license.

A. In order to renew an active license biennially, a physical therapist or a physical therapist assistant shall complete at least 30 contact hours of continuing learning activities within the two years immediately preceding renewal. In choosing continuing learning activities or courses, the licensee shall

consider the following: (i) the need to promote ethical practice, (ii) an appropriate standard of care, (iii) patient safety, (iv) application of new medical technology, (v) appropriate communication with patients, and (vi) knowledge of the changing health care system.

B. To document the required hours, the licensee shall maintain the Continued Competency Activity and Assessment Form that is provided by the board and that shall indicate completion of the following:

1. A minimum of ~~45~~ 20 of the contact hours required for physical therapists and ~~40~~ 15 of the contact hours required for physical therapist assistants shall be in Type 1 ~~face-to-face~~ courses. For the purpose of this section, "course" means an organized program of study, classroom experience or similar educational experience that is directly related to the clinical practice of physical therapy and approved or provided by one of the following organizations or any of its components:

- a. The Virginia Physical Therapy Association;
- b. The American Physical Therapy Association;
- c. Local, state or federal government agencies;
- d. Regionally accredited colleges and universities;
- e. Health care organizations accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO);
- f. The American Medical Association - Category I Continuing Medical Education course; and
- g. The National Athletic Trainers Association.

2. No more than ~~45~~ 10 of the contact hours required for physical therapists and ~~20~~ 15 of the contact hours required for physical therapist assistants may be Type 2 activities or courses, which may or may not be offered by an approved organization but which shall be related to the clinical practice of physical therapy. Type 2 activities may include but not be limited to consultation with colleagues, independent study, and research or writing on subjects related to practice.

3. Documentation of specialty certification by the American Physical Therapy Association may be provided as evidence of completion of continuing competency requirements for the biennium in which initial certification or recertification occurs.

4. Documentation of graduation from a transitional doctor of physical therapy program may be provided as evidence of completion of continuing competency requirements for the biennium in which the physical therapist was awarded the degree.

5. A physical therapist who can document that he has taken the PRT may receive 10 hours of Type 1 credit for the

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biennium in which the assessment examination was taken. A physical therapist who can document that he has passed the PRT may receive 20 hours of Type 1 credit for the biennium in which the assessment examination was passed.

C. A licensee shall be exempt from the continuing competency requirements for the first biennial renewal following the date of initial licensure by examination in Virginia.

D. The licensee shall retain his records on the completed form with all supporting documentation for a period of four years following the renewal of an active license.

E. The licensees selected in a random audit conducted by the board shall provide the completed Continued Competency Activity and Assessment Form and all supporting documentation within 30 days of receiving notification of the audit.

F. Failure to comply with these requirements may subject the licensee to disciplinary action by the board.

G. The board may grant an extension of the deadline for continuing competency requirements for up to one year for good cause shown upon a written request from the licensee prior to the renewal date.

H. The board may grant an exemption for all or part of the requirements for circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters.

I. Physical therapists holding certification to provide direct access without a referral shall include four contact hours as part of the required 30 contact hours of continuing education in courses related to clinical practice in a direct access setting.

18VAC112-20-135. Inactive license.

A. A physical therapist or physical therapist assistant who holds a current, unrestricted license in Virginia shall, upon a request on the renewal application and submission of the required renewal fee of \$70 for a physical therapist and \$35 for a physical therapist assistant, be issued an inactive license. The fee for the renewal of an inactive license due December 31, 2010, shall be \$60 for a physical therapist and \$30 for a physical therapist assistant.

1. The holder of an inactive license shall not be required to meet active practice requirements.

2. An inactive licensee shall not be entitled to perform any act requiring a license to practice physical therapy in Virginia.

B. A physical therapist or physical therapist assistant who holds an inactive license may reactivate his license by:

1. Paying the difference between the renewal fee for an inactive license and that of an active license for the biennium in which the license is being reactivated; ~~and~~

2. Providing proof of: ~~a. Active~~ active practice hours in another jurisdiction equal to those required for renewal of an active license in Virginia for the period in which the license has been inactive.

a. If the inactive physical therapist licensee does not meet the requirement for active practice, the license may be reactivated by completing 480 hours in a traineeship that meets the requirements prescribed in 18VAC112-20-140 or documenting passage of the PRT within the two years preceding application for licensure in Virginia and successfully completing 320 hours in a traineeship in accordance with requirements in 18VAC112-20-140.

b. If the inactive physical therapist assistant licensee does not meet the requirement for active practice, the license may be reactivated by completing 320 hours in a traineeship that meets the requirements prescribed in 18VAC112-20-140; and

~~b. Completion of 3.~~ Completing the number of continuing competency hours required for the period in which the license has been inactive, not to exceed four years.

18VAC112-20-136. Reinstatement requirements.

A. A physical therapist or physical therapist assistant whose Virginia license is lapsed for two years or less may reinstate his license by payment of the renewal and late fees as set forth in 18VAC112-20-150 and completion of continued competency requirements as set forth in 18VAC112-20-131.

B. A physical therapist or physical therapist assistant whose Virginia license is lapsed for more than two years and who is seeking reinstatement shall:

1. Apply for reinstatement and pay the fee specified in 18VAC112-20-150; ~~Practice physical therapy in another jurisdiction for at least 320 hours within the four years immediately preceding applying for reinstatement or successfully complete 480 hours as specified in 18VAC112-20-140; and~~

2. Complete the number of continuing competency hours required for the period in which the license has been lapsed, not to exceed four years; and

3. Have actively practiced physical therapy in another jurisdiction for at least 320 hours within the four years immediately preceding applying for reinstatement.

a. If a physical therapist licensee does not meet the requirement for active practice, the license may be reinstated by completing 480 hours in a traineeship that meets the requirements prescribed in 18VAC112-20-140 or documenting passage of the PRT within the two years preceding application for licensure in Virginia and successfully completing 320 hours in a traineeship in accordance with requirements in 18VAC112-20-140.

b. If a physical therapist assistant licensee does not meet the requirement for active practice, the license may be reinstated by completing 320 hours in a traineeship that meets the requirements prescribed in 18VAC112-20-140.

18VAC112-20-140. Traineeship requirements.

A. The traineeship: shall be (i) ~~shall be~~ in a facility that serves as a clinical education facility for students enrolled in an accredited program educating physical therapists in Virginia, (ii) ~~is~~ approved by the board, and (iii) ~~is~~ under the direction and supervision of a licensed physical therapist.

B. Supervision and identification of trainees:

1. There shall be a limit of two physical therapists assigned to provide supervision for each trainee.
2. The supervising physical therapist shall countersign patient documentation (i.e., notes, records, charts) for services provided by a trainee.
3. The trainee shall wear identification designating them as a "physical therapist trainee" or a "physical therapist assistant trainee."

C. Completion of traineeship.

1. The physical therapist supervising the ~~inactive practice~~ trainee shall submit a report to the board at the end of the required number of hours on forms supplied by the board.
2. If the traineeship is not successfully completed at the end of the required hours, as determined by the supervising physical therapist, the president of the board or his designee shall determine if a new traineeship shall commence. If the president of the board determines that a new traineeship shall not commence, then the application for licensure shall be denied.
3. The second traineeship may be served under a different supervising physical therapist and may be served in a different organization than the initial traineeship. If the second traineeship is not successfully completed, as determined by the supervising physical therapist, then the application for licensure shall be denied.

VA.R. Doc. No. R09-1926; Filed January 25, 2011, 10:40 a.m.

BOARD OF PSYCHOLOGY

Proposed Regulation

Title of Regulation: 18VAC125-20. Regulations Governing the Practice of Psychology (amending 18VAC125-20-10, 18VAC125-20-30, 18VAC125-20-41, 18VAC125-20-42, 18VAC125-20-43, 18VAC125-20-54, 18VAC125-20-65, 18VAC125-20-80, 18VAC125-20-120, 18VAC125-20-150).

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

Public Hearing Information:

February 15, 2011 - 10 a.m. - 9960 Mayland Drive, 2nd Floor Conference Center, Richmond, VA

Public Comment Deadline: April 15, 2011.

Agency Contact: Evelyn B. Brown, Executive Director, Board of Psychology, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4697, FAX (804) 327-4435, or email evelyn.brown@dhp.virginia.gov.

Basis: Section 54.1-2400 of the Code of Virginia provides the Board of Psychology the authority to promulgate regulations that are reasonable and necessary to administer effectively the regulatory system. In addition, § 54.1-3605 of the Code of Virginia authorizes the board to promulgate regulations establishing the requirements for licensure of clinical psychologists to include appropriate emphasis in the diagnosis and treatment of persons with moderate and severe mental disorders.

Purpose: This regulatory action is necessary to eliminate any impediments to licensure for psychologists. For licensure by endorsement, it should be possible to ensure minimum competency and protect the health and welfare of citizens through documentation of having the appropriate degree, passage of the national examination, a license in good standing with practice in another U.S. jurisdiction, and malpractice and disciplinary history as evidence that the applicant has not committed acts that would be cause for discipline in Virginia. A requirement for lengthy practice in another state does not ensure competency for clients receiving services by an endorsement applicant.

For licensure by examination, the hours of post-doctoral clinical experience may be an unnecessary extension of the supervised training and experience an applicant would have received in his educational program. By standardizing the requirements for pre-internship experience, the board may be able to count hours of supervised experience in a pre-doctoral program in lieu of hours of post-doctoral experience, thereby allowing a person to obtain a license and began providing clinical services post-doctorate without having to complete an additional 1,500 hours in a residency. With the oversight incorporated in an accredited educational program for the supervised professional experience, the board is confident that a licensee would be qualified to provide clinical services with safety and competency to clients.

Substance: The substantive changes or provisions of this proposal are as follows:

Prerequisites for licensure by endorsement (18VAC125-20-42): The board has added a requirement for a report on malpractice and disciplinary history from the national data banks to ensure that applicants from other states do not have a significant malpractice history or disciplinary actions that would represent grounds for denial of

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licensure in Virginia. To simplify the qualifications for endorsement and make the process less burdensome, the board proposes eliminating the 20-year practice regulation and replacing it with requirements for 10 years in practice with evidence of holding the degree appropriate to the level of licensure sought, passage of the national examination, verification of a license in good standing, and no unresolved disciplinary or malpractice history.

Education requirements for clinical psychologists (18VAC125-20-54): The board has proposed changes or clarification to the requirements for graduate hours and practicum experiences in consultation and supervision. The proposed changes will allow an applicant to provide evidence of clinical experience that would be a part of his doctoral experience. Provided the supervised experience in a pre-doctoral program is part of an organized sequence of training and meets the criteria set out in regulation, those hours may be used to fulfill the supervised experience requirements for licensure.

Supervised experience (18VAC125-20-65): Subsection B is amended to eliminate the "one-year, full-time" language and provide that the residency (consisting of 1,500 hours of delivery of services) shall be completed in not less than one or more than three years. The board has added a hardship provision to allow approval of alternative supervision arrangements for geography or disability. The board proposes to allow the required 1,500 hours of supervised experience or some part thereof to be accomplished in pre-doctoral experiences as specified in subsection D of 18VAC125-20-54. If the supervised experiences in the practicum do not total 1,500, the remaining hours may be accomplished in a residency, as currently specified in subsection B.

Standards of practice (18VAC125-20-150): The board has amended its prohibition on sexual intimacies from two years after cessation of professional services to five years for consistency with other behavioral health professions.

Issues: The primary advantage to the public is the likelihood of an increased supply of clinical psychologists available to provide clinical services to citizens and institutions. There are no disadvantages; the regulations are amended with appropriate safeguards for supervised experience and evidence of competency to practice.

There are no disadvantages to the agency or the Commonwealth; mental health facilities may have more access to licensed psychologists as a result of less restrictive requirements for licensure by endorsement and examination.

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

Summary of the Proposed Amendments to Regulation. The Board of Psychology proposes 1) to start accepting pre-internship supervised professional experience in lieu of all or part of the post-doctoral residency currently required for licensure by examination, 2) to reduce the required experience in another state from 20 to 10 years for licensure by endorsement, 3) to require malpractice and disciplinary history reports for licensure by endorsement, 4) to extend the prohibition on sexual intimacies with clients from two years to five years, and 5) to clarify several other requirements.

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

Estimated Economic Impact. The Board of Psychology proposes to start accepting pre-internship supervised professional experience in lieu of all or part of the post-doctoral residency currently required. Currently, applicants are required to complete 1,500 hours of post-doctoral residency for licensure. According to the Department of Health Professions (DHP), most residents have to pay a supervisor \$50 to \$60 per hour for supervision. The proposed changes will allow applicants to count the hours of their pre-internship experience that meet certain standards in lieu of the hours of post-doctoral experience.

According to DHP, all of the applicants will be able to count at least some of their pre-doctoral experience toward the 1,500 hours required for residency. Thus, the proposed change will reduce the compliance costs for applicants in terms of the number of hours worked without compensation and the fees paid for supervision. It will also allow an applicant to obtain a license and began providing clinical services after completing a doctorate sooner as they will not have to wait the additional time to complete the 1,500 hours in a residency. According to DHP, the board is confident that the standards for the pre-internship supervised professional experience that can be accepted will ensure that a licensee would be qualified to provide clinical services with safety and competency.

The proposed changes will also reduce the required experience in another state from 20 to 10 years for licensure by endorsement. The number of years of experience in another state is one of the several options an applicant may use to demonstrate competency for licensure by endorsement. According to DHP, it is also possible to assure minimum competency through documentation of having the appropriate degree, passage of the national examination, a license in good standing with practice in another U.S. jurisdiction, and malpractice and disciplinary history as evidence that the applicant has not committed acts that would be cause for discipline in Virginia. Thus, a requirement for lengthy practice in another state is not needed to ensure competency for clients receiving services by an endorsement applicant.

This change will make it slightly easier to obtain licensure by endorsement and reduce the costs associated documenting an additional 10 years of experience.

Another proposed change will require submission of current reports from the Healthcare Integrity and Protection Data Bank and the National Practitioner Data Bank from the applicants for licensure by endorsement. These reports will be used to ensure that applicants from other states do not have a significant malpractice and disciplinary history. According to DHP, both reports are produced together at a cost of \$16. Thus, this change will introduce additional costs on the applicants for licensure by endorsement.

The remaining proposed changes will extend the prohibition on sexual intimacies with clients from two years to five years and clarify several other requirements. These changes are not expected to have a significant economic effect, but are expected to improve the professional standards and the clarity of the regulations.

Businesses and Entities Affected. The proposed regulations will affect psychologists wishing to obtain licensure by examination and by endorsement. In 2009, there were approximately 125 people licensed by examination and about 35 people licensed by endorsement.

Localities Particularly Affected. The proposed regulations apply throughout the Commonwealth.

Projected Impact on Employment. The proposed change on accepting pre-internship supervised professional experience in lieu of all or part of the post-doctoral residency will allow graduates to start practicing sooner. This is expected to increase the supply of psychologists in Virginia.

On the other hand, the new graduates will no longer need the supervisory services of the experienced professionals reducing the demand for supervisory services.

The proposed changes will also make it slightly easier to obtain licensure by endorsement as the applicants will now be required to document only 10 years of out-of-state experience. This change could have a positive impact on the supply of psychologists as well.

Effects on the Use and Value of Private Property. The counting of the pre-internship supervised professional experience and reducing the out-of-state experience are expected to reduce the compliance costs and contribute to the asset values of the businesses providing these services. On the other hand, the cost of the additional reports malpractice and disciplinary history reports for licensure by endorsement would add slightly to the costs and balance some of the positive impact on the asset values.

Small Businesses: Costs and Other Effects. Since clinical psychologists work in private and public settings it is not known how many small businesses might be affected.

However, the effects on the small businesses would be the same effects discussed above.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The only change that may have an additional cost on small businesses is the requirement for malpractice and disciplinary history reports from licensure by endorsement applicants.

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

Legal Mandate.

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 107 (09). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to Economic Impact Analysis: The Board of Psychology concurs with the analysis of the Department of Planning and Budget on proposed amended regulations for 18VAC125-20, Regulations Governing the Practice of Psychology, relating to changes in requirements for licensure and other amendments pursuant to a periodic review of regulations.

Summary:

The proposed amendments (i) reduce the required experience in another state to 10 years for licensure by endorsement, (ii) permit acceptance of pre-internship supervised professional experience in lieu of all or part of the post-doctoral residency currently required for licensure by examination, (iii) provide for consistency in requirements for a jurisprudence examination, (iv) extend the prohibition on sexual intimacies with clients from two

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years to five years following termination of professional services and expand such prohibition to include romantic relationships, (v) require malpractice and disciplinary history reports for licensure by endorsement, and (vi) clarify existing regulations.

Part I General Provisions

18VAC125-20-10. Definitions.

The following words and terms, in addition to the words and terms defined in § 54.1-3600 of the Code of Virginia, when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

"APA" means the American Psychological Association.

"APPIC" means the Association of Psychology Postdoctoral and Internship Centers.

~~"Applicant" means a person who submits a complete application for licensure with the appropriate fees.~~

"Board" means the Virginia Board of Psychology.

"Candidate for licensure" means a person who has satisfactorily completed the appropriate educational and experience requirements for licensure and has been deemed eligible by the board to sit for the required examinations.

"Demonstrable areas of competence" means those therapeutic and assessment methods and techniques, and populations served, for which one can document adequate graduate training, workshops, or appropriate supervised experience.

"Internship" means an ongoing, supervised and organized practical experience obtained in an integrated training program identified as a psychology internship. Other supervised experience or on-the-job training does not constitute an internship.

"NASP" means the National Association of School Psychologists.

"NCATE" means the National Council for the Accreditation of Teacher Education.

"Practicum" means the pre-internship clinical experience that is part of a graduate educational program.

"Professional psychology program" means an integrated program of doctoral study designed to train professional psychologists to deliver services in psychology.

"Regional accrediting agency" means one of the six regional accrediting agencies recognized by the United States Secretary of Education established to accredit senior institutions of higher education.

"Residency" means a post-internship, post-terminal degree, supervised experience approved by the board.

"School psychologist-limited" means a person licensed pursuant to § 54.1-3606 of the Code of Virginia to provide school psychology services solely in public school divisions.

"Supervision" means the ongoing process performed by a supervisor who monitors the performance of the person supervised and provides regular, documented individual consultation, guidance and instruction with respect to the skills and competencies of the person supervised.

"Supervisor" means an individual who assumes full responsibility for the education and training activities of a person and provides the supervision required by such a person.

18VAC125-20-30. Fees required by the board.

A. The board has established fees for the following:

	Applied psychologists, Clinical psychologists, School psychologists	School psychologists- limited
1. Registration of residency (per residency request)	\$50	
2. Add or change supervisor	\$25	
3. Application processing and initial licensure	\$200	\$85
4. Annual renewal of active license	\$140	\$70
5. Annual renewal of inactive license	\$70	\$35
6. Late renewal	\$50	\$25
7. Verification of license to another jurisdiction	\$25	\$25
8. Duplicate license	\$5	\$5
9. Additional or replacement wall certificate	\$15	\$15
10. Returned check	\$35	\$35

11. Reinstatement of a lapsed license	\$270	\$125
12. Reinstatement following revocation or suspension	\$500	\$500
13. One-time reduction in fee for annual renewal due on June 30, 2010, for holders of an active license	\$70	\$35
14. One-time reduction in fee for annual renewal due on June 30, 2010, for holders of an inactive license	\$35	\$17

shall submit documentation from an accrediting agency acceptable to the board that their education meets the requirements set forth in 18VAC125-20-54, 18VAC125-20-55 or 18VAC125-20-56; and

e. Verification of any other professional license or certificate ever held in another jurisdiction.

B. In addition to fulfillment of the education and experience requirements, each applicant for licensure by examination must achieve a passing score on the ~~required examinations for each category of licensure sought~~. Examination for Professional Practice of Psychology.

~~1. Clinical psychologist: State Practice Examination for Clinical Psychology, Jurisprudence and Examination for Professional Practice in Psychology;~~

~~2. School psychologist: State Practice Examination for School Psychology, Jurisprudence and Examination for Professional Practice in Psychology; or~~

~~3. Applied psychologist: State Practice Examination in Applied Psychology, Jurisprudence and Examination for Professional Practice in Psychology.~~

C. Every applicant shall submit an affidavit of having read and agreed to comply with the current standards of practice and laws governing the practice of psychology in Virginia.

~~B. The fee for review of a continuing education provider seeking board approval shall be \$200.~~

~~C. B.~~ Fees shall be paid by check or money order made payable to the Treasurer of Virginia and forwarded to the board. All fees are nonrefundable.

~~D. Examination fees shall be established and made payable as determined by the board.~~

18VAC125-20-42. Prerequisites for licensure by endorsement.

~~A.~~ Every applicant for licensure by endorsement shall submit:

18VAC125-20-41. Requirements for licensure by examination.

A. Every applicant for examination for licensure by the board shall:

1. Meet the education requirements prescribed in 18VAC125-20-54, 18VAC125-20-55, or 18VAC125-20-56 and the experience requirement prescribed in 18VAC125-20-65 as applicable for the particular license sought; and

2. Submit the following:

- a. A completed application on forms provided by the board;
- b. A completed residency agreement or documentation of having fulfilled the experience requirements of 18VAC125-20-65;
- c. The application processing fee prescribed by the board;
- d. Official transcripts documenting the graduate work completed and the degree awarded. Applicants who are graduates of institutions that are not regionally accredited

- 1. A completed application;
- 2. The application processing fee prescribed by the board;
- 3. An affidavit of having read and agreed to comply with the current Standards of Practice and laws governing the practice of psychology in Virginia;
- 4. Verification of all other professional licenses or certificates ever held in any jurisdiction. In order to qualify for endorsement, the applicant ~~shall have no history of disciplinary action~~, shall not have surrendered a license or certificate while under investigation and shall have no unresolved action against a license or certificate; ~~and~~

5. A current report from the Healthcare Integrity and Protection Data Bank (HIPDB) and a current report from the National Practitioner Data Bank; and

- ~~5.~~ 6. Further documentation of one of the following:
 - a. A current listing in the National Register of Health Services Providers in Psychology;
 - b. Current diplomate status in good standing with the American Board of Professional Psychology in a

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category comparable to the one in which licensure is sought;

c. ~~Twenty~~ Ten years of active licensure in a category comparable to the one in which licensure is sought, with an appropriate degree as required in this chapter documented by an official transcript; or

d. If less than ~~20~~ 10 years of active licensure, documentation of current psychologist licensure in good standing obtained by standards substantially equivalent to the education, experience and examination requirements set forth in this chapter for the category in which licensure is sought as verified by a certified copy of the original application submitted directly from the out-of-state licensing agency or a copy of the regulations in effect at the time of initial licensure and the following:

(1) Documentation of post-licensure active practice for at least five of the last six years immediately preceding licensure application;

(2) Verification of a passing score on the Examination for Professional Practice of Psychology as established in Virginia for the year of that administration; and

~~(3) Verification of a passing score on other written and oral examinations or both as required by the jurisdiction which granted the license; and~~

~~(4)~~ (3) Official transcripts documenting the graduate work completed and the degree awarded in the category in which licensure is sought.

~~B. Notwithstanding the provisions of this section, the board may issue a license to any individual who qualifies for such a license pursuant to an agreement of reciprocity entered into by this board with a board of another jurisdiction or multiple jurisdictions.~~

18VAC125-20-43. Requirements for licensure as a school psychologist-limited.

A. Every applicant for licensure as a school psychologist-limited shall submit to the board:

1. A copy of a current license issued by the Board of Education showing an endorsement in psychology.

2. An official transcript showing completion of a master's degree in psychology.

3. A completed Employment Verification Form of current employment by a school system under the Virginia Department of Education.

4. The application fee.

B. At the time of licensure renewal, school psychologists-limited shall be required to submit an updated Employment Verification Form if there has been a change in school district in which the licensee is currently employed.

18VAC125-20-54. Education requirements for clinical psychologists.

A. The applicant shall hold a doctorate from a professional psychology program in a regionally accredited university, which was accredited by the APA within four years after the applicant graduated from the program, or shall meet the requirements of subsection B of this section.

B. If the applicant does not hold a doctorate from an APA accredited program, the applicant shall hold a doctorate from a professional psychology program which documents that it offers education and training which prepares individuals for the practice of clinical psychology as defined in § 54.1-3600 of the Code of Virginia and which meets the following criteria:

1. The program is within an institution of higher education accredited by an accrediting agency recognized by the United States Department of Education or publicly recognized by the Association of Universities and Colleges of Canada as a member in good standing. Graduates of programs that are not within the United States or Canada must provide documentation from an acceptable credential evaluation service which provides information that allows the board to determine if the program meets the requirements set forth in this chapter.

2. The program shall be recognizable as an organized entity within the institution.

3. The program shall be an integrated, organized sequence of study with an identifiable psychology faculty and a psychologist directly responsible for the program, and shall have an identifiable body of students who are matriculated in that program for a degree. The faculty shall be accessible to students and provide them with guidance and supervision. The faculty shall provide appropriate professional role models and engage in actions that promote the student's acquisition of knowledge, skills and competencies consistent with the program's training goals.

4. The program shall encompass a minimum of three academic years of full-time graduate study or the equivalent thereof.

5. The program shall include a general core curriculum containing a minimum of three or more graduate semester hours or five or more graduate quarter hours in each of the following substantive content areas.

a. Biological bases of behavior (e.g., physiological psychology, comparative psychology, neuropsychology, sensation and perception, health psychology, pharmacology, neuroanatomy).

b. Cognitive-affective bases of behavior (e.g., learning theory, cognition, motivation, emotion).

- c. Social bases of behavior (e.g., social psychology, group processes, organizational and systems theory, community and preventive psychology, multicultural issues).
- d. Psychological measurement.
- e. Research methodology.
- f. Techniques of data analysis.
- g. Professional standards and ethics.

6. The program shall include a minimum of at least three or more graduate semester credit hours or five or more graduate quarter hours in each of the following clinical psychology content areas:

- a. Individual differences in behavior (e.g., personality theory, cultural difference and diversity).
- b. Human development (e.g., child, adolescent, geriatric psychology).
- c. Dysfunctional behavior, abnormal behavior or psychopathology.
- d. Theories and methods of intellectual assessment and diagnosis.
- e. Theories and methods of personality assessment and diagnosis including its practical application.
- f. Effective interventions and evaluating the efficacy of interventions.
- g. ~~Consultation and supervision (e.g., community mental health, organizational behavior, consultation liaison).~~

C. Applicants who graduated from programs which meet the criteria set forth under subsection A or B of this section shall submit documentation of having successfully completed practicum experiences in assessment and diagnosis, psychotherapy, consultation and supervision. The practicum shall include a minimum of nine graduate semester hours or 15 or more graduate quarter hours or equivalent in appropriate settings to ensure a wide range of supervised training and educational experiences.

D. An applicant for a clinical license may fulfill the residency requirement of 1,500 hours, or some part thereof, as required for licensure in 18VAC125-20-65 B, in the pre-doctoral practicum supervised experience that meets the following standards:

- 1. The supervised professional experience shall be part of an organized sequence of training within the applicant's doctoral program, which meets the criteria specified in subsections A or B of this section.
- 2. The supervised experience shall include face-to-face direct client services, service-related activities, and supporting activities.

a. "Face-to-face direct client services" means treatment/intervention, assessment, and interviewing of clients.

b. "Service-related activities" means scoring, reporting or treatment note writing, and consultation related to face-to-face direct services.

c. "Supporting activities" means time spent under supervision of face-to-face direct services and service-related activities provided on-site or in the trainee's academic department, as well as didactic experiences, such as laboratories or seminars, directly related to such services or activities.

3. In order for pre-doctoral practicum hours to fulfill the all or part of the residency requirement, the following shall apply:

a. Not less than one-quarter of the hours shall be spent in providing face-to-face direct client services;

b. Not less than one-half of the hours shall be in a combination of face-to-face direct service hours and hours spent in service-related activities; and

c. The remainder of the hours may be spent in a combination of face-to-face direct services, service-related activities, and supporting activities.

4. A minimum of one hour of individual face-to-face supervision shall be provided for every eight hours of supervised professional experience spent in direct client contact and service-related activities.

5. The hours of pre-doctoral supervised experience reported by an applicant shall be certified by the program's director of clinical training on a form provided by the board.

18VAC125-20-65. Supervised experience.

A. Internship requirement.

- 1. Candidates for clinical psychologist licensure shall have successfully completed an internship that is either accredited by APA, APPIC or the National Register of Health Service Providers in Psychology, or one that meets equivalent standards.
- 2. Candidates for school psychologist licensure shall have successfully completed an internship accredited by the APA, APPIC or NASP or one that meets equivalent standards.

B. Residency requirement.

- 1. Candidates for clinical or school psychologist licensure shall have successfully completed a ~~one year, full time~~ residency, ~~or its equivalent in part-time experience for a period not to exceed three years,~~ consisting of a minimum of 1,500 hours in a period of not less than 12 months and

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not to exceed three years of supervised experience in the delivery of clinical or school psychology services acceptable to the board, or the applicant may request approval to begin a residency.

2. Supervised experience obtained in Virginia without prior written board approval will not be accepted toward licensure. Candidates shall not begin the residency until after completion of the required degree as set forth in 18VAC125-20-54 or 18VAC125-20-56. An individual who proposes to obtain supervised post-degree experience in Virginia shall, prior to the onset of such supervision, submit a supervisory contract along with the application package and pay the registration of supervision fee set forth in 18VAC125-20-30.

3. There shall be a minimum of two hours of individual supervision per week. Group supervision of up to five residents may be substituted for one of the two hours per week on the basis that two hours of group supervision equals one hour of individual supervision, but in no case shall the resident receive less than one hour of individual supervision per week.

4. Residents may not refer to or identify themselves as applied psychologists, clinical psychologists, or school psychologists; independently solicit clients; bill for services; or in any way represent themselves as licensed psychologists. Notwithstanding the above, this does not preclude supervisors or employing institutions for billing for the services of an appropriately identified resident. During the residency period they shall use their names, the initials of their degree, and the title, "Resident in Psychology," in the licensure category in which licensure is sought.

5. Supervision shall be provided by a psychologist licensed to practice in the licensure category in which the resident is seeking licensure.

6. The supervisor shall not provide supervision for activities beyond the supervisor's demonstrable areas of competence, nor for activities for which the applicant has not had appropriate education and training.

7. At the end of the residency training period, the supervisor or supervisors shall submit to the board a written evaluation of the applicant's performance.

8. The board may consider special requests in the event that the regulations create an undue burden in regard to geography or disability that limits the resident's access to qualified supervisors.

C. For a clinical psychologist license, a candidate may submit evidence of having met the supervised experience requirements in a pre-doctoral practicum as specified in 18VAC125-20-54 D in substitution for all or part of the 1,500 residency hours specified in this section. If the supervised

experience hours completed in a practicum do not total 1,500 hours, a person may fulfill the remainder of the hours by meeting requirements specified in subsection B of this section.

D. Candidates for clinical psychologist licensure shall provide documentation that the internship and residency included appropriate emphasis and experience in the diagnosis and treatment of persons with moderate to severe mental disorders.

Part III Examinations

18VAC125-20-80. General examination requirements.

A. An applicant for clinical or school psychologist licensure enrolled in an approved residency training program required in 18VAC125-20-65 who has met all requirements for licensure except completion of that program shall be eligible to take ~~both the national and state written examinations~~ examination.

B. A candidate approved by the board to sit for an examination shall take that examination within two years of the date of the initial board approval. If the candidate has not taken the examination by the end of the two-year period here prescribed, the applicant shall reapply according to the requirements of the regulations in effect at that time.

C. The board shall establish passing scores on the ~~examinations~~ examination.

D. Candidates who fail an examination may be reexamined once within a 12-month period without reapplying.

E. Candidates who fail any examination twice shall wait at least one year between the second failure and the next reexamination.

Part V Licensure Renewal; Reinstatement

18VAC125-20-120. Annual renewal of licensure.

~~Effective January 1, 2004, every~~ Every license issued by the board shall expire each year on June 30.

1. Every licensee who intends to continue to practice shall, on or before the expiration date of the license, submit to the board a license renewal form supplied by the board and the renewal fee prescribed in 18VAC125-20-30.

2. ~~Beginning with the 2004 renewal, licensees~~ Licensees who wish to maintain an active license shall pay the appropriate fee and verify on the renewal form compliance with the continuing education requirements prescribed in 18VAC125-20-121. First-time licensees by examination are not required to verify continuing education on the first renewal date following initial licensure.

3. A licensee who wishes to place his license in inactive status may do so upon payment of the fee prescribed in 18VAC125-20-30. No person shall practice psychology in Virginia unless he holds a current active license. An inactive licensee may activate his license by fulfilling the reactivation requirements set forth in 18VAC125-20-130.

4. Licensees shall notify the board office in writing of any change of address of record or of the public address, if different from the address of record. Failure of a licensee to receive a renewal notice and application forms from the board shall not excuse the licensee from the renewal requirement.

Part VI

Standards of Practice; Unprofessional Conduct; Disciplinary Actions; Reinstatement

18VAC125-20-150. Standards of practice.

A. The protection of the public health, safety, and welfare and the best interest of the public shall be the primary guide in determining the appropriate professional conduct of all persons whose activities are regulated by the board. Psychologists respect the rights, dignity and worth of all people, and are mindful of individual differences.

B. Persons licensed by the board shall:

1. Provide and supervise only those services and use only those techniques for which they are qualified by training and appropriate experience. Delegate to their employees, supervisees, residents and research assistants only those responsibilities such persons can be expected to perform competently by education, training and experience. Take ongoing steps to maintain competence in the skills they use;
2. When making public statements regarding credentials, published findings, directory listings, curriculum vitae, etc., ensure that such statements are neither fraudulent nor misleading;
3. Neither accept nor give commissions, rebates or other forms of remuneration for referral of clients for professional services. Make appropriate consultations and referrals consistent with the law and based on the interest of patients or clients;
4. Refrain from undertaking any activity in which their personal problems are likely to lead to inadequate or harmful services;
5. Avoid harming patients or clients, research participants, students and others for whom they provide professional services and minimize harm when it is foreseeable and unavoidable. Not exploit or mislead people for whom they provide professional services. Be alert to and guard against misuse of influence;
6. Avoid dual relationships with patients, clients, residents or supervisees that could impair professional judgment or compromise their well-being (to include but not limited to treatment of close friends, relatives, employees);
7. Withdraw from, adjust or clarify conflicting roles with due regard for the best interest of the affected party or parties and maximal compliance with these standards;
8. Not engage in sexual intimacies or a romantic relationship with a student, supervisee, resident, therapy patient, client, or those included in collateral therapeutic services (such as a parent, spouse, or significant other) while providing professional services. For at least ~~two~~ five years after cessation or termination of professional services, not engage in sexual intimacies or a romantic relationship with a therapy patient, client, or those included in collateral therapeutic services. Consent to, initiation of, or participation in sexual behavior or romantic involvement with a psychologist does not change the exploitative nature of the conduct nor lift the prohibition. Since sexual or romantic relationships are potentially exploitative, psychologists shall bear the burden of demonstrating that there has been no exploitation;
9. Keep confidential their professional relationships with patients or clients and disclose client records to others only with written consent except: (i) when a patient or client is a danger to self or others, (ii) as required under § 32.1-127.1:03 of the Code of Virginia, or (iii) as permitted by law for a valid purpose;
10. Make reasonable efforts to provide for continuity of care when services must be interrupted or terminated;
11. Inform clients of professional services, fees, billing arrangements and limits of confidentiality before rendering services. Inform the consumer prior to the use of collection agencies or legal measures to collect fees and provide opportunity for prompt payment. Avoid bartering goods and services. Participate in bartering only if it is not clinically contraindicated and is not exploitative;
12. Construct, maintain, administer, interpret and report testing and diagnostic services in a manner and for purposes which are appropriate;
13. Keep pertinent, confidential records for at least five years after termination of services to any consumer;
14. Design, conduct and report research in accordance with recognized standards of scientific competence and research ethics; and
15. Report to the board known or suspected violations of the laws and regulations governing the practice of psychology.

VA.R. Doc. No. R10-2226; Filed January 25, 2011, 10:40 a.m.

GENERAL NOTICES/ERRATA

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Notice of Extension of Periodic Review

Pursuant to Executive Order 14 (2010), the Virginia Department of Agriculture and Consumer Services, on behalf of the Board of Agriculture and Consumer Services, is currently reviewing 2VAC5-240, Rules and Regulations for Enforcement of the Grain Handlers Law, to determine whether they should be terminated, amended, or retained in their current form. Each regulation will be reviewed to determine whether (i) the regulation protects public health, safety, and welfare with the least possible intrusion in the lives of citizens; (ii) alternatives in lieu of regulation may achieve the goals of the regulation; (iii) the regulation is based on the best reasonably available scientific, economic, and other information; (iv) the regulation is designed to achieve its intended objective in the most efficient, cost-effective manner; (v) the regulation is clearly written and easily understandable by the individuals and entities affected; and (vi) the regulation has been developed in accordance with laws relating to the impact of regulations on small businesses.

Comment period began on January 17, 2011, and has been extended to February 28, 2011.

Agency Contact: Roy E. Seward, Department of Agriculture and Consumer Services, Oliver Hill Building, Room 214, Richmond, VA 23219, telephone (804) 786-3535 or email roy.seward@vdacs.virginia.gov.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Federal Consistency Certification - United States Nuclear Regulatory Commission for the Combined License Application from Dominion Virginia Power Company North Anna Power Station

Comment period: January 30, 2011, through March 18, 2011.

Type of response: Federal consistency certification.

The Department of Environmental Quality (DEQ) is reviewing a federally licensed activity to determine if it is consistent with the Virginia Coastal Zone Management Program (VCP), as approved under the federal Coastal Zone Management Act. The coastal area includes the counties of Spotsylvania, Hanover, Caroline, and King William. Activities adjacent to the coastal area, such as those in Louisa County (which borders Lake Anna), are subject to review because they may affect resources or uses in the coastal area.

Purpose of notice: To invite the public to comment and to attend a public hearing on March 3, 2011, at Louisa County Middle School from 6:30 p.m. to 10 p.m. (inclement weather date is March 10, 2011) as DEQ develops its response to the

federal consistency certification. An informal informational session will precede the hearing from 5:30 p.m. to 6:30 p.m.

Name of agency proposing the project: United States Nuclear Regulatory Commission (NRC) is the federal licensing agency for the combined license (COL) application submitted by Dominion Virginia Power Company (Dominion).

Project description: Dominion has submitted an application for a COL to the NRC for the construction and operation of the proposed Unit 3 at Dominion's existing North Anna Power Station (NAPS) in Louisa County near Mineral. The proposed project requires the issuance of a COL from NRC for the construction and operation of the new unit. The project also requires the issuance of permits by the U.S. Army Corps of Engineers under § 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act. The federal consistency certification is required under the federal Coastal Zone Management Act and federal consistency regulations for activities related to the COL and Corps permits.

How a decision is made: DEQ's Office of Environmental Impact Review coordinates the Commonwealth's review of federal consistency certifications; distributing documents to appropriate state agencies, planning districts, and localities; and providing for public notice and input. Upon consideration of all comments, and in cooperation with other state agencies, DEQ prepares a single state response.

How to comment: DEQ accepts written comments from the public by U.S. mail, FAX, or email (see contact information below). All comments must include the name, address, and telephone number of the person commenting and be received by DEQ within the comment period. Oral comments submitted at the March 3, 2011, hearing will be recorded by a court reporter and the resulting transcript will become part of DEQ's records. The public may review project documents at DEQ's central office in Richmond (see contact information below).

To review the project documents: The public may review the documents at DEQ's central office in Richmond every work day by appointment. Copies of the documents have also been placed in the main libraries of the following counties:

Louisa County Public Library located at 881 Davis Highway, Mineral, VA 23117;

C. Melvin Snow Memorial Branch Library located at 8740 Courthouse Road, Spotsylvania, VA 22553;

Orange County Public Library located at 146A Madison Road, Orange, VA 22960;

Upper King William Branch Library located at 694-J Sharon Road, Sharon Office Park, King William, VA 23086;

Ladysmith Branch, Caroline County Library located at 7199 Clara Smith Street, Ruther Glen, VA 22546; and

Hanover Branch Library located at 7527 Library Drive, Hanover, VA 23069.

The documents are also available at the North Anna Nuclear Information Center located at 1022 Haley Drive, Mineral, VA 23117.

Contact Information: Ellie Irons, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4325, FAX (804) 698-4319, or email ellie.iron@deq.virginia.gov.

U.S. Environmental Protection Agency to Designate a Federal No Discharge Zone

Public meeting: Tuesday, February 22, 2011, 6 p.m., in the Board of Supervisors Meeting Room of the Lancaster County Administrative Building (old general district courtroom), 8311 Mary Ball Road, Lancaster, VA 22503.

Purpose of notice: The Virginia Department of Environmental Quality (DEQ) is announcing its intent to apply to the U.S. Environmental Protection Agency (EPA) to designate a federal No Discharge Zone, and is seeking public comment on the draft application.

Meeting description: This public meeting is to solicit public comment for the designation of selected creeks within Lancaster County (Mulberry, Deep, Greenvale, Paynes, Beach, Whitehouse, Town, Myer, Moran, Taylor, Carter, Mosquito, Oyster, Windmill Point Resort Boat Basin, Antipoison, Davenport, Tabbs, and Dyer Creek and both East and Western Branches of the Corrotoman River) and a portion of one creek in Northumberland County (Indian Creek) as federal No Discharge Zones (NDZs). The NDZ designation would ban the overboard discharge of human sewage, either treated or untreated, in these creeks.

Description of study: House Bill 1774 resolves that all tidal creeks in Virginia be designated federal No Discharge Zones, and directs DEQ to pursue this designation. It is currently illegal to discharge raw sewage in U.S. territorial waters. In an NDZ, this ban is expanded to include sewage treated by on-board marine sanitation devices. This designation is determined by EPA upon application from the states, and is contingent on the states' demonstrating a) the need for enhanced protection of water quality, b) the availability of sufficient local alternatives to overboard discharge (i.e. pump-outs), and c) local stakeholder support. DEQ is seeking this designation as one component of a "clean-up plan" for small tidal Chesapeake Bay tributaries that are frequently impaired for shellfish harvest due to elevated levels of fecal bacteria. DEQ has conducted an analysis of boat traffic and pump-out availability for the creeks proposed for NDZs in Lancaster County (and a portion of one creek in Northumberland County), and concluded that existing pump-out facilities are adequate to service estimated peak-season demand. A draft application to EPA for No Discharge Zone designation has

been prepared and is available for public review and comment. This draft will be available on the DEQ website <http://www.deq.virginia.gov/tmdl/ndz.html> the day of or the day after the public meeting. Presentations provided at the meeting will also be made available on the website.

How to comment: DEQ will accept written comments beginning on February 23, 2011, by email, FAX, or postal mail. Comments should include the name, address, and telephone number of the person commenting and be received by DEQ during the comment period, that will expire on Monday, March 28, 2011.

Contact for additional information: Margaret Smigo, TMDL Coordinator, Department of Environmental Quality, Piedmont Regional Office, 4949A Cox Road, Glen Allen, VA 23060, telephone (804) 527-5124, FAX (804) 527-5106, or email margaret.smigo@deq.virginia.gov.

Notice of Public Meeting and Public Comment for a Total Maximum Daily Load Study in Hoffer Creek, Cities of Suffolk and Portsmouth

The Virginia Department of Environmental Quality (DEQ) will host a public meeting on a water quality study for Hoffer Creek, located in the Cities of Suffolk and Portsmouth, on Wednesday March 9, 2011.

The meeting will start at 7 p.m. in the Northern Shores Elementary School cafeteria located at 6701 Respass Beach Road, Suffolk, VA. The purpose of the meeting is to provide information and discuss the study with interested local community members and local government.

Hoffer Creek (VAT-G15E_HOF01A06) was identified in Virginia's Water Quality Assessment Integrated Report as impaired for not supporting the primary contact use. The impairment is based on water quality monitoring data reports of sufficient exceedances of Virginia's water quality standard for bacteria.

Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia, require DEQ to develop total maximum daily loads (TMDLs) for pollutants responsible for each impaired water contained in Virginia's 303(d) TMDL Priority List and Report and subsequent Water Quality Assessment Reports.

During the study, DEQ will develop a TMDL for the impaired water. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, pollutant levels have to be reduced to the TMDL amount.

The public comment period on materials presented at this meeting will extend from March 9, 2011, to April 8, 2011. For additional information or to submit comments, contact Jennifer Howell, Virginia Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Blvd.,

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Virginia Beach, VA 23462, by telephone (757) 518-2111, or by email jennifer.howell@deq.virginia.gov.

Additional information is also available on the DEQ website at www.deq.virginia.gov/tmdl.

Development of an Implementation Plan to Address Fecal Bacteria Impairments in the Kings Creek Watershed

The Department of Environmental Quality (DEQ), the Department of Conservation and Recreation (DCR), and Northampton County invite citizens to a public meeting to discuss the development of an implementation plan (IP) to address fecal bacteria impairments in the Kings Creek Watershed. Water quality monitoring indicates that bacteria levels in Kings Creek violate Virginia's water quality standards for shellfish propagation. A total maximum daily load (TMDL) study for the impairments was approved by EPA in 2007 and is available on DEQ's website at <http://www.deq.virginia.gov/tmdl/apptmdls/shellfish/cherryst.pdf>.

The IP will identify ways to meet the pollutant reductions outlined in the TMDL study. The final public meeting to review the draft TMDL implementation plan will be held in the auditorium of the former Northampton Middle School on Wednesday, February 23, 2011, at 7 p.m., Northampton County Middle School, 7247 Young Street, Machipongo, VA.

The purpose of the meeting is to discuss the proposed management actions to reduce bacteria concentrations in the affected watershed and to solicit public comment on the draft IP. The IP includes the corrective actions needed to reduce bacteria and the associated costs, benefits, and environmental impacts. The IP also provides measurable goals and a timeline of expected achievement of water quality objectives. A copy of the draft IP will be available on the DEQ website by February 23, 2011. (<http://www.deq.virginia.gov/tmdl/iprpts.html>)

How to comment: The public comment period on the development of the IP will end on March 25, 2011. Oral comments will be accepted and addressed at the public meeting. Additional questions or information requests should be addressed to Todd Herbert or Jennifer Howell. Written comments and inquiries should include the name, address, and telephone number of the person submitting the comments and should be sent to Todd Herbert, Department of Conservation and Recreation, 1548-A Holland Road, Suffolk, VA 23434, telephone (757) 925-2319, FAX (757) 925-2388, or email todd.herbert@dcr.virginia.gov, or Jennifer Howell, Department of Environmental Quality, 5636 Southern Blvd., Virginia Beach, VA 23262, telephone (757) 518-2111, FAX (757) 518-2003, or email jshowell@deq.virginia.gov.

Total Maximum Daily Load Study in Mill Creek, Northampton County

The Virginia Department of Environmental Quality will host a public meeting on a water quality study for Mill Creek, located in Northampton County, on Thursday, March 10, 2011.

The meeting will start at 6:30 p.m. in the Kiptopeke Elementary School Library located at 24023 Fairview Road, Cape Charles. The purpose of the meeting is to provide information and discuss the study with interested local community members and local government.

Mill Creek (VAT-D06R_MCR01A00) was identified in Virginia's Water Quality Assessment Integrated Report as impaired for not supporting the primary contact use. The impairment is based on water quality monitoring data reports of sufficient exceedances of Virginia's water quality standard for bacteria.

Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia, require DEQ to develop total maximum daily loads (TMDLs) for pollutants responsible for each impaired water contained in Virginia's 303(d) TMDL Priority List and Report and subsequent Water Quality Assessment Reports.

During the study, DEQ will develop a TMDL for the impaired water. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, pollutant levels have to be reduced to the TMDL amount.

The public comment period on materials presented at this meeting will extend from March 10, 2011, to April 11, 2011. For additional information or to submit comments, contact Jennifer Howell, Virginia Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Blvd., Virginia Beach, VA 23462, by telephone (757) 518-2111, or by email jennifer.howell@deq.virginia.gov.

Additional information is also available on the DEQ website at www.deq.virginia.gov/tmdl.

Total Maximum Daily Load Studies to Restore Water Quality in the Bacteria Impaired Waters of Sugarland Run, Mine Run, Pimmit Run, Powells Creek, Quantico Creek, South Fork Quantico Creek, Little Creek, Chopawamsic Creek, North Branch Chopawamsic Creek, Aquia Creek, Austin Run, Accokeek Creek, Potomac Creek, Potomac Run, and an Unnamed Tributary to the Potomac River

Announcement of total maximum daily load (TMDL) studies to restore water quality in the bacteria impaired waters of Sugarland Run, Mine Run, Pimmit Run, Powells Creek, Quantico Creek, South Fork Quantico Creek, Little Creek, Chopawamsic Creek, North Branch Chopawamsic Creek,

Aquia Creek, Austin Run, Accokeek Creek, Potomac Creek, Potomac Run, and an Unnamed Tributary to the Potomac River.

Purpose of notice: The Virginia Department of Environmental Quality (DEQ) and the Virginia Department of Conservation and Recreation (DCR) announce the first Technical Advisory Committee (TAC) meeting to introduce a series of total maximum daily load (TMDL) studies on several tributaries to the Potomac River.

Technical advisory committee meeting: Tuesday, March 1, 2011, 10 a.m. - 12 Noon, Virginia Department of Environmental Quality, Northern Regional Office, Conference Rooms 1 and 2, 13901 Crown Court, Woodbridge, VA 22193.

In case of inclement weather, an alternate meeting date has been established for Tuesday, March 8, 2011, same time and location as listed above. If the weather is questionable on March 1, please contact Jennifer Carlson (see contact information below) to determine whether the meeting will be postponed to the alternate meeting date.

Meeting description: This is the first meeting to introduce these TMDL projects to the TAC. The purpose of the TAC will be to provide technical input and insight for the project, and to assist with stakeholder and public participation.

Description of study: Portions of the following streams have been identified as impaired on the Clean Water Act § 303(d) list for not supporting Virginia's water quality recreational use standard due to exceedances of the bacteria criterion:

Waterbody Name	Watershed Location	Segment Size	Cause	Segment Description
Sugarland Run	Fairfax County Loudoun County Town of Herndon	0.95 miles	Escherichia coli	Segment begins at the confluence with Folly Lick Branch, at approximately rivermile 5.75, and continues downstream until the boundary of the PWS designation area, at rivermile 4.82.
Sugarland Run	Fairfax County Loudoun County Town of Herndon	4.77 miles	Escherichia coli	Segment begins at the boundary of the PWS designation area, at rivermile 4.82, and continues downstream until the confluence with the Potomac River.
Mine Run	Fairfax County	0.93 miles	Escherichia coli	Segment begins at the confluence with an unnamed tributary to Mine Run, approximately 0.5 rivermile upstream from River Bend Road, and continues downstream until the confluence with the Potomac River.
Pimmit Run	Arlington County Fairfax County	1.62 miles	Escherichia coli	Segment begins at the confluence with Little Pimmit Run, approximately 0.1 rivermile downstream from Route 695, and continues downstream until the confluence with the Potomac River.
Pimmit Run	Arlington County Fairfax County	2.46 miles	Escherichia coli	Segment begins at the Route 309 bridge crossing, at rivermile 4.16, and continues downstream until the confluence with Little Pimmit Run, approximately 0.1 rivermile downstream from Route 695.
Pimmit Run	Arlington County Fairfax County	3.29 miles	Escherichia coli	Segment begins at the headwaters of Pimmit Run, approximately 0.12 rivermile upstream from Route 7, and continues downstream until the Route 309 bridge crossing, at rivermile 4.16.
Powells Creek	Prince William County	4.62 miles	Escherichia coli	Segment begins approximately 0.2 rivermiles below Lake Montclair and continues downstream until the end of the free-flowing waters of Powells Creek.

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Quantico Creek	Prince William County Town of Dumfries	1.45 miles	Escherichia coli	Segment begins at the confluence with South Fork Quantico Creek, approximately 0.75 rivermile upstream from I-95, and continues downstream until the start of the tidal waters of Quantico Bay.
South Fork Quantico Creek	Prince William County Town of Dumfries	4.63 miles	Escherichia coli	Segment begins at the headwaters of the South Fork Quantico Creek and continues downstream until the start of the impounded waters, adjacent to what is labeled as Mawavi Camp No 2 on the Joplin quad.
Little Creek	Prince William County	3.78 miles	Escherichia coli	Segment begins at the headwaters of Little Creek and continues downstream until the confluence with the Potomac River.
Chopawamsic Creek	Stafford County Prince William County	0.1143 mi ²	Fecal Coliform	Segment extends from approximately 0.5 rivermile upstream, at the upstream boundary of tidal waters, until 0.5 rivermile downstream of monitoring station 1aCHO003.65. Portion of CBP segment POTOH.
North Branch Chopawamsic Creek	Stafford County Prince William County	6.9 miles	Escherichia coli	Segment begins at the headwaters of North Branch Chopawamsic Creek and continues downstream until the confluence with Middle Branch.
Aquia Creek	Fauquier County Stafford County	6.47 miles	Escherichia coli	Segment begins at the confluence with Cannon Creek, approximately 0.1 rivermile downstream from Route 610, and continues downstream until Smith Lake (Aquia Reservoir).
Aquia Creek	Fauquier County Stafford County	0.3638 mi ²	Enterococcus	Segment extends from rivermile 4.28 to rivermile 3.28 in Aquia Creek encompassing a 0.5-mile radius around station 1aAUA003.71. Portion of CBP segment POTOH.
Austin Run	Fauquier County Stafford County	0.79 miles	Fecal Coliform	Segment begins at the confluence with an unnamed tributary to Austin Run (streamcode XGQ) and continues downstream until the confluence with Aquia Creek.
Accokeek Creek	Stafford County	4.21 miles	Escherichia coli	Segment begins at the confluence with an unnamed tributary to Accokeek Creek (rivermile 8.62), approximately 0.33 rivermile downstream from Route 1, and continues downstream until the end of the free-flowing waters.
Potomac Creek	Stafford County	2.18 miles	Escherichia coli	Segment begins at the railroad crossing at the west end of swamp, upstream from Route 608, and continues downstream until the east end of swamp.

Potomac Creek	Stafford County	3.66 miles	Escherichia coli	Segment begins at the outlet of Abel Lake and continues downstream until the confluence with an unnamed tributary to Potomac Creek, at rivermile 9.12.
Potomac Run	Stafford County	6.13 miles	Escherichia coli	Segment begins at the headwaters of Potomac Run and continues downstream until the confluence with Long Branch.
Unnamed Tributary to the Potomac River	Stafford County	2.9 miles	Escherichia coli	Segment begins at the headwaters of the unnamed tributary and continues downstream until its confluence with the Potomac River.

Virginia agencies are working to identify sources of bacteria contamination in these stream segments. During this study, DEQ will develop a TMDL for each of the impaired stream segments. A TMDL is the total amount of a pollutant a water body can receive and still meet water quality standards. To restore water quality, pollutant levels have to be reduced to the TMDL allocated amount.

How to comment: The public comment period on the materials presented at the TAC meeting will extend from March 1, 2011, to March 31, 2011. DEQ accepts written comments by email, FAX, or postal mail. Written comments should include the name, address, and telephone number of the person commenting, and be received by DEQ during the comment period. Please send all comments to the contact listed below.

Contact for additional information: Jennifer Carlson, Virginia Department of Environmental Quality, 13901 Crown Court, Woodbridge, VA 22193, telephone (703) 583-3859, email jennifer.carlson@deq.virginia.gov.

DEPARTMENT OF HEALTH

Notice of Public Hearing - 2011 Preventive Health and Health Services Block Grant

The Virginia Health Department (VDH) is publishing this notice of intent to hold a public hearing for the Fiscal Year 2011 Preventive Health and Health Services (PHHS) Block Grant. All interested individuals and groups are invited to participate at the public hearing on the PHHS Block Grant. In accordance with Title XIX, Section 1905 of the Public Health Service Act, the Commonwealth of Virginia hereby gives notice that VDH will apply for FY 2011 PHHS Block Grant funds for programs addressing Healthy People 2010 national health objectives. The public hearing will be held on Wednesday, February 9, 2011, from 9 a.m. to 10 a.m. at the Virginia Department of Health, 109 Governor Street, Room 715, Richmond, VA. The State Work Plan is available on the agency's website at www.vahealth.org. Public comment on the work plan can be made at the public hearing and written

comments can be addressed to Robin Buskey, Office of Family Health Services, P.O. Box 2448, Room 721, Richmond, VA 23218.

Contact Information: Robin Buskey, Grants Coordinator, 109 Governor Street, Room 721, Richmond, VA, telephone (804) 864-7663, FAX (804) 864-7647, or email robin.buskey@vdh.virginia.gov.

STATE LOTTERY DEPARTMENT

Director's Orders

The following Director's Orders of the State Lottery Department were filed with the Virginia Registrar of Regulations on January 20, 2011, January 21, 2011, and January 28, 2011. The orders may be viewed at the State Lottery Department, 900 East Main Street, Richmond, VA, or at the office of the Registrar of Regulations, 910 Capitol Street, 2nd Floor, Richmond, VA.

Director's Order Number One (11)

Virginia's Instant Game Lottery 1220; "\$100,000 Riches" Final Rules for Game Operation (effective January 19, 2011)

Director's Order Number Two (11)

Virginia's Instant Game Lottery 1226; "Hot Slots" Final Rules for Game Operation (effective January 19, 2011)

Director's Order Number Three (11)

Virginia's Instant Game Lottery 1175; "Quick \$100" Final Rules for Game Operation (effective January 20, 2011)

Director's Order Number Four (11)

Virginia's Instant Game Lottery 1202; "\$1,000,000 Cash Blast" Final Rules for Game Operation (effective January 19, 2011)

Director's Order Number Five (11)

"EZ Stop Winter Chain Promotion" Virginia Lottery Retailer Incentive Program Rules (effective January 20, 2011)

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Director's Order Number Seven (11)

Virginia's Instant Game Lottery 1238; "Mad Money" Final Rules for Game Operation (effective January 28, 2011)

Director's Order Number Ten (11)

Virginia's Twenty-Fifth Online Game Lottery; "Decades of Dollars" Final Rules for Game Operation (effective on the first sale date of the Matrix set forth in the Multi-State "Decades of Dollars" Official Game Rules, as adopted)

Director's Order Number Eleven (11)

Virginia's Twenty-Sixth Online Game Lottery; "Fast Play Blackjack" Final Rules for Game Operation (effective on the first sale date of the Matrix set forth in the Multi-State "Fast Play Blackjack" Official Game Rules, as adopted)

Director's Order Number Twelve (11)

Virginia's Twenty-Seventh Online Game Lottery; "Fast Play 3-Card Bingo" Final Rules for Game Operation (effective on the first sale date of the Matrix set forth in the Multi-State "Fast Play 3-Card Bingo" Official Game Rules, as adopted)

complement and enhance one another by sharing pertinent regulatory information.

The Office of the Virginia Register is working toward the eventual elimination of the requirement that agencies file print copies of regulatory packages. Until that time, agencies may file petitions for rulemaking, notices of intended regulatory actions, and general notices in electronic form only; however, until further notice, agencies must continue to file print copies of proposed, final, fast-track, and emergency regulatory packages.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Contact Information: *Mailing Address:* Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219; *Telephone:* Voice (804) 786-3591; FAX (804) 692-0625; *Email:* varegs@dls.virginia.gov.

Meeting Notices: Section 2.2-3707 C of the Code of Virginia requires state agencies to post meeting notices on their websites and on the Commonwealth Calendar at <http://www.virginia.gov/cmsportal3/cgi-bin/calendar.cgi>.

Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed: A table listing regulation sections that have been amended, added, or repealed in the *Virginia Register of Regulations* since the regulations were originally published or last supplemented in the print version of the Virginia Administrative Code is available at <http://register.dls.virginia.gov/cumultab.htm>.

Filing Material for Publication in the Virginia Register of Regulations: Agencies are required to use the Regulation Information System (RIS) when filing regulations for publication in the *Virginia Register of Regulations*. The Office of the Virginia Register of Regulations implemented a web-based application called RIS for filing regulations and related items for publication in the Virginia Register. The Registrar's office has worked closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall