



# Virginia Register of Regulations

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## TABLE OF CONTENTS

<b>Register Information Page</b> .....	2733
<b>Publication Schedule and Deadlines</b> .....	2734
<b>Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed</b> ..	2735
<b>Petitions for Rulemaking</b> .....	2747
<b>Notices of Intended Regulatory Action</b> .....	2748
<b>Regulations</b> .....	2749
4VAC20-40. Regulations Pertaining to Crab Catch Limits (Final) .....	2749
4VAC20-90. Pertaining to Dredging for Crabs (Final).....	2749
4VAC20-270. Pertaining to Crabbing (Final).....	2749
4VAC20-270. Pertaining to Crabbing (Emergency).....	2751
4VAC20-670. Pertaining to Recreational Gear Licenses (Final).....	2752
4VAC20-700. Pertaining to Crab Pots (Emergency) .....	2753
4VAC20-750. Pertaining to Crab Dredge License Sales (Final).....	2754
4VAC20-752. Pertaining to Blue Crab Sanctuaries (Final) .....	2754
4VAC20-880. Pertaining to Hard Crab and Peeler Pot License Sales (Emergency) .....	2755
4VAC20-880. Pertaining to Hard Crab and Peeler Pot License Sales (Final) .....	2756
4VAC20-1090. Pertaining to Licensing Requirements and License Fees (Emergency).....	2757
4VAC20-1090. Pertaining to Licensing Requirements and License Fees (Final).....	2760
4VAC20-1140. Prohibition of Crab Dredging in Virginia Waters (Final).....	2763
9VAC25-720. Water Quality Management Planning Regulation (Proposed).....	2763
12VAC5-90. Regulations for Disease Reporting and Control (Final) .....	2777
12VAC5-195. Virginia WIC Program (Final) .....	2778
20VAC5-315. Regulations Governing Net Energy Metering (Proposed).....	2802
<b>Governor</b> .....	2808
<b>General Notices/Errata</b> .....	2810

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# THE VIRGINIA REGISTER INFORMATION PAGE

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

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

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

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

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

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

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

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

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

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

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

## **FAST-TRACK RULEMAKING PROCESS**

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

## **EMERGENCY REGULATIONS**

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

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

## **STATEMENT**

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

## **CITATION TO THE VIRGINIA REGISTER**

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

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

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

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

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## PUBLICATION SCHEDULE AND DEADLINES

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

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### May 2008 through March 2009

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
24:19	May 7, 2008	May 26, 2008
24:20	May 21, 2008	June 9, 2008
<b>INDEX 3 Volume 24</b>		<b>July 2008</b>
24:21	June 4, 2008	June 23, 2008
24:22	June 18, 2008	July 7, 2008
24:23	July 2, 2008	July 21, 2008
24:24	July 16, 2008	August 4, 2008
24:25	July 30, 2008	August 18, 2008
24:26	August 13, 2008	September 1, 2008
<b>FINAL INDEX Volume 24</b>		<b>October 2008</b>
25:1	August 27, 2008	September 15, 2008
25:2	September 10, 2008	September 29, 2008
25:3	September 24, 2008	October 13, 2008
25:4	October 8, 2008	October 27, 2008
25:5	October 22, 2008	November 10, 2008
25:6	November 5, 2008	November 24, 2008
25:7	November 18, 2008 ( <b>Tuesday</b> )	December 8, 2008
<b>INDEX 1 Volume 25</b>		<b>January 2009</b>
25:8	December 3, 2008	December 22, 2008
25:9	December 16, 2008 ( <b>Tuesday</b> )	January 5, 2009
25:10	December 30, 2008 ( <b>Tuesday</b> )	January 19, 2009
25:11	January 14, 2009	February 2, 2009
25:12	January 28, 2009	February 16, 2009
25:13	February 11, 2009	March 2, 2009
25:14	February 25, 2009	March 16, 2009

\*Filing deadlines are Wednesdays unless otherwise specified.

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

The table printed below lists regulation sections, by Virginia Administrative Code (VAC) title, that have been amended, added or repealed in the *Virginia Register* since the regulations were originally published or last supplemented in VAC (the Spring 2008 VAC Supplement includes final regulations published through *Virginia Register* Volume 24, Issue 7, dated December 10, 2007, and fast-track regulations published through *Virginia Register* Volume 24, Issue 10, dated January 21, 2008). Emergency regulations, if any, are listed, followed by the designation "emer," and errata pertaining to final regulations are listed. Proposed regulations are not listed here. The table lists the sections in numerical order and shows action taken, the volume, issue and page number where the section appeared, and the effective date of the section.

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
<b>Title 2. Agriculture</b>			
2 VAC 5-30-10	Amended	24:17 VA.R. 2318	6/12/08
2 VAC 5-30-20	Amended	24:17 VA.R. 2318	6/12/08
2 VAC 5-50-20	Amended	24:17 VA.R. 2320	6/12/08
2 VAC 5-50-70	Amended	24:17 VA.R. 2320	6/12/08
2 VAC 5-50-100	Amended	24:17 VA.R. 2320	6/12/08
2 VAC 5-50-110	Amended	24:17 VA.R. 2321	6/12/08
2 VAC 5-90-30	Amended	24:17 VA.R. 2322	6/12/08
2 VAC 5-150-10	Amended	24:17 VA.R. 2323	6/12/08
2 VAC 5-180-20	Amended	24:17 VA.R. 2326	6/12/08
2 VAC 5-180-30	Amended	24:17 VA.R. 2327	6/12/08
2 VAC 5-180-50	Amended	24:17 VA.R. 2327	6/12/08
2 VAC 5-180-60	Amended	24:17 VA.R. 2327	6/12/08
2 VAC 5-180-80	Amended	24:17 VA.R. 2327	6/12/08
2 VAC 5-180-120	Amended	24:17 VA.R. 2328	6/12/08
2 VAC 5-210-30	Amended	24:9 VA.R. 1096	12/11/07
2 VAC 5-210-41	Amended	24:9 VA.R. 1097	12/11/07
2 VAC 5-390-180	Amended	24:15 VA.R. 2023	3/11/08
2 VAC 5-400-5	Added	24:17 VA.R. 2330	6/12/08
2 VAC 5-501-80	Amended	24:17 VA.R. 2332	6/12/08
2 VAC 5-501-100	Amended	24:17 VA.R. 2336	6/12/08
2 VAC 5-510-10	Amended	24:17 VA.R. 2340	6/12/08
2 VAC 5-510-50	Amended	24:17 VA.R. 2341	6/12/08
2 VAC 5-510-60	Repealed	24:17 VA.R. 2341	6/12/08
2 VAC 5-510-70	Repealed	24:17 VA.R. 2341	6/12/08
2 VAC 5-510-80	Repealed	24:17 VA.R. 2342	6/12/08
2 VAC 5-510-90	Amended	24:17 VA.R. 2342	6/12/08
2 VAC 5-510-100	Repealed	24:17 VA.R. 2344	6/12/08
2 VAC 5-510-110	Amended	24:17 VA.R. 2344	6/12/08
2 VAC 5-510-120	Repealed	24:17 VA.R. 2345	6/12/08
2 VAC 5-510-130	Amended	24:17 VA.R. 2345	6/12/08
2 VAC 5-510-140	Repealed	24:17 VA.R. 2347	6/12/08
2 VAC 5-510-150	Amended	24:17 VA.R. 2347	6/12/08
2 VAC 5-510-160	Repealed	24:17 VA.R. 2348	6/12/08
2 VAC 5-510-170	Amended	24:17 VA.R. 2348	6/12/08
2 VAC 5-510-180	Repealed	24:17 VA.R. 2348	6/12/08
2 VAC 5-510-190	Amended	24:17 VA.R. 2348	6/12/08
2 VAC 5-510-200	Repealed	24:17 VA.R. 2349	6/12/08
2 VAC 5-510-210	Amended	24:17 VA.R. 2349	6/12/08

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

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
2 VAC 5-510-220	Repealed	24:17 VA.R. 2349	6/12/08
2 VAC 5-510-230	Repealed	24:17 VA.R. 2349	6/12/08
2 VAC 5-510-240	Amended	24:17 VA.R. 2349	6/12/08
2 VAC 5-510-250	Repealed	24:17 VA.R. 2349	6/12/08
2 VAC 5-510-260	Amended	24:17 VA.R. 2349	6/12/08
2 VAC 5-510-270	Repealed	24:17 VA.R. 2350	6/12/08
2 VAC 5-510-290	Amended	24:17 VA.R. 2350	6/12/08
2 VAC 5-510-300	Repealed	24:17 VA.R. 2350	6/12/08
2 VAC 5-510-310	Amended	24:17 VA.R. 2350	6/12/08
2 VAC 5-510-320	Repealed	24:17 VA.R. 2350	6/12/08
2 VAC 5-510-330	Amended	24:17 VA.R. 2350	6/12/08
2 VAC 5-510-340	Repealed	24:17 VA.R. 2351	6/12/08
2 VAC 5-510-350	Amended	24:17 VA.R. 2351	6/12/08
2 VAC 5-510-360	Repealed	24:17 VA.R. 2351	6/12/08
2 VAC 5-510-390	Amended	24:17 VA.R. 2351	6/12/08
2 VAC 5-510-400	Repealed	24:17 VA.R. 2352	6/12/08
2 VAC 5-510-410	Amended	24:17 VA.R. 2352	6/12/08
2 VAC 5-510-420	Amended	24:17 VA.R. 2352	6/12/08
2 VAC 5-510-500	Amended	24:17 VA.R. 2352	6/12/08
2 VAC 5-510-510	Amended	24:17 VA.R. 2353	6/12/08
2 VAC 5-531-50	Amended	24:16 VA.R. 2235	5/29/08
2 VAC 5-531-140	Amended	24:16 VA.R. 2241	5/29/08
2 VAC 15-20-81	Amended	24:16 VA.R. 2242	4/14/08
2 VAC 20-20-70	Amended	24:17 VA.R. 2355	6/12/08
2 VAC 20-20-130	Amended	24:17 VA.R. 2355	6/12/08
2 VAC 20-20-210	Amended	24:17 VA.R. 2355	6/12/08
2 VAC 20-40-50	Amended	24:17 VA.R. 2357	6/12/08
<b>Title 3. Alcoholic Beverages</b>			
3 VAC 5-50-140 emer	Amended	24:11 VA.R. 1344	1/9/08-1/8/09
3 VAC 5-50-145 emer	Added	24:11 VA.R. 1345	1/9/08-1/8/09
3 VAC 5-70-220	Amended	24:14 VA.R. 1891	5/1/08
3 VAC 5-70-225 emer	Added	24:10 VA.R. 1257	1/2/08-1/1/09
<b>Title 4. Conservation and Natural Resources</b>			
4 VAC 5-50-10 through 4VAC5-50-170	Repealed	24:17 VA.R. 2357	5/28/08
4 VAC 15-20-50	Amended	24:10 VA.R. 1258	1/1/08
4 VAC 15-20-130	Amended	24:10 VA.R. 1259	1/1/08
4 VAC 15-20-200	Amended	24:10 VA.R. 1261	1/1/08
4 VAC 15-20-210	Amended	24:10 VA.R. 1261	1/1/08
4 VAC 15-30-5	Amended	24:10 VA.R. 1262	1/1/08
4 VAC 15-30-40	Amended	24:10 VA.R. 1262	1/1/08
4 VAC 15-320-25	Amended	24:10 VA.R. 1265	1/1/08
4 VAC 15-330-30	Amended	24:10 VA.R. 1272	1/1/08
4 VAC 15-330-100	Amended	24:10 VA.R. 1272	1/1/08
4 VAC 15-330-120	Amended	24:10 VA.R. 1272	1/1/08
4 VAC 15-330-160	Amended	24:10 VA.R. 1272	1/1/08
4 VAC 15-330-171	Amended	24:10 VA.R. 1273	1/1/08
4 VAC 15-330-200	Amended	24:10 VA.R. 1273	1/1/08
4 VAC 15-340-10	Amended	24:10 VA.R. 1273	1/1/08
4 VAC 15-340-30	Amended	24:10 VA.R. 1274	1/1/08
4 VAC 15-350-20	Amended	24:10 VA.R. 1275	1/1/08
4 VAC 15-350-30	Amended	24:10 VA.R. 1275	1/1/08

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

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
4 VAC 15-350-60	Amended	24:10 VA.R. 1275	1/1/08
4 VAC 15-350-70	Amended	24:10 VA.R. 1275	1/1/08
4 VAC 15-360-10	Amended	24:10 VA.R. 1276	1/1/08
4 VAC 20-150-30	Amended	24:10 VA.R. 1277	1/1/08
4 VAC 20-252-55	Amended	24:10 VA.R. 1278	1/1/08
4 VAC 20-252-120	Amended	24:10 VA.R. 1278	1/1/08
4 VAC 20-252-150	Amended	24:10 VA.R. 1279	1/1/08
4 VAC 20-252-160	Amended	24:10 VA.R. 1279	1/1/08
4 VAC 20-252-230	Amended	24:10 VA.R. 1281	1/1/08
4 VAC 20-270-55	Amended	24:15 VA.R. 2023	3/1/08
4 VAC 20-320-50	Amended	24:12 VA.R. 1456	2/1/08
4 VAC 20-530-20	Amended	24:12 VA.R. 1456	2/1/08
4 VAC 20-530-31	Amended	24:13 VA.R. 1735	2/5/08
4 VAC 20-530-32	Repealed	24:12 VA.R. 1457	2/1/08
4 VAC 20-610-20	Amended	24:8 VA.R. 959	12/1/07
4 VAC 20-610-25	Added	24:8 VA.R. 959	12/1/07
4 VAC 20-610-30	Amended	24:8 VA.R. 960	12/1/07
4 VAC 20-610-30	Amended	24:15 VA.R. 2024	3/1/08
4 VAC 20-610-50	Amended	24:8 VA.R. 961	12/1/07
4 VAC 20-610-60	Amended	24:8 VA.R. 961	12/1/07
4 VAC 20-620-30	Amended	24:10 VA.R. 1281	12/27/07
4 VAC 20-620-40 emer	Amended	24:8 VA.R. 962	11/28/07-12/27/07
4 VAC 20-620-40	Amended	24:10 VA.R. 1282	12/27/07
4 VAC 20-620-50	Amended	24:15 VA.R. 2025	3/1/08
4 VAC 20-620-70	Amended	24:15 VA.R. 2026	3/1/08
4 VAC 20-700-20	Amended	24:15 VA.R. 2026	3/1/08
4 VAC 20-720-40	Amended	24:12 VA.R. 1457	2/1/08
4 VAC 20-720-50	Amended	24:12 VA.R. 1458	2/1/08
4 VAC 20-720-60	Amended	24:12 VA.R. 1458	2/1/08
4 VAC 20-720-80	Amended	24:12 VA.R. 1458	2/1/08
4 VAC 20-750-10	Amended	24:15 VA.R. 2026	3/1/08
4 VAC 20-750-30	Amended	24:15 VA.R. 2026	3/1/08
4 VAC 20-751-15	Added	24:15 VA.R. 2027	3/1/08
4 VAC 20-751-20	Amended	24:15 VA.R. 2027	3/1/08
4 VAC 20-752-30	Amended	24:16 VA.R. 2246	4/1/08
4 VAC 20-950-47	Amended	24:15 VA.R. 2028	3/1/08
4 VAC 20-950-48	Amended	24:15 VA.R. 2028	3/1/08
4 VAC 20-950-48.1	Amended	24:15 VA.R. 2029	3/1/08
4 VAC 20-960-45	Amended	24:8 VA.R. 964	1/1/08
4 VAC 20-960-47	Amended	24:8 VA.R. 964	1/1/08
4 VAC 20-1040-20	Amended	24:8 VA.R. 964	1/1/08
4 VAC 20-1040-35	Added	24:12 VA.R. 1459	2/1/08
4 VAC 20-1090-30	Amended	24:8 VA.R. 965	12/1/07
4 VAC 20-1130-10 through 4 VAC 20-1130-70	Added	24:8 VA.R. 968-970	12/1/07
4 VAC 25-130 (Forms)	Amended	24:11 VA.R. 1424	--
4 VAC 25-150-90	Amended	24:17 VA.R. 2359	6/12/08
<b>Title 5. Corporations</b>			
5 VAC 5-20-20	Amended	24:11 VA.R. 1347	2/15/08
5 VAC 5-20-140	Amended	24:11 VA.R. 1347	2/15/08
5 VAC 5-20-150	Amended	24:11 VA.R. 1348	2/15/08

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

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
5 VAC 5-20-170	Amended	24:11 VA.R. 1348	2/15/08
5 VAC 5-20-240	Amended	24:11 VA.R. 1349	2/15/08
<b>Title 6. Criminal Justice and Corrections</b>			
6 VAC 15-61-10 through 6 VAC 15-61-300	Repealed	24:8 VA.R. 970	1/24/08
6 VAC 15-62-10 through 6 VAC 15-62-120	Added	24:8 VA.R. 970-979	1/24/08
6 VAC 15-62-110	Amended	24:13 VA.R. 1736	3/3/08
6 VAC 15-62 (Forms)	Amended	24:12 VA.R. 1523	--
6 VAC 40-50-10 through 6 VAC 40-50-80	Added	24:9 VA.R. 1103-1104	2/6/08
<b>Title 9. Environment</b>			
9 VAC 20-60-18	Amended	24:9 VA.R. 1106	2/6/08
9 VAC 25-32 (Forms)	Amended	24:13 VA.R. 1738	--
9 VAC 25-120-10	Amended	24:9 VA.R. 1107	2/6/08
9 VAC 25-120-20	Amended	24:9 VA.R. 1107	2/6/08
9 VAC 25-120-50	Amended	24:9 VA.R. 1108	2/6/08
9 VAC 25-120-60	Amended	24:9 VA.R. 1108	2/6/08
9 VAC 25-120-70	Amended	24:9 VA.R. 1108	2/6/08
9 VAC 25-120-80	Amended	24:9 VA.R. 1109	2/6/08
9 VAC 25-120-80	Amended	24:18 VA.R. 2502	6/11/08
9 VAC 25-193-40	Amended	24:18 VA.R. 2517	6/11/08
9 VAC 25-193-70	Amended	24:18 VA.R. 2517	6/11/08
9 VAC 25-196-20	Amended	24:9 VA.R. 1124	2/6/08
9 VAC 25-196-40	Amended	24:9 VA.R. 1124	2/6/08
9 VAC 25-196-60	Amended	24:9 VA.R. 1124	2/6/08
9 VAC 25-196-70	Amended	24:9 VA.R. 1125	2/6/08
9 VAC 25-196-70	Amended	24:18 VA.R. 2532	6/11/08
9 VAC 25-210-10	Amended	24:9 VA.R. 1132	2/6/08
9 VAC 25-210-60	Amended	24:9 VA.R. 1136	2/6/08
9 VAC 25-210-116	Amended	24:9 VA.R. 1140	2/6/08
9 VAC 25-210-130	Amended	24:9 VA.R. 1142	2/6/08
9 VAC 25-260-30	Amended	24:13 VA.R. 1741	*
9 VAC 25-660-10	Amended	24:9 VA.R. 1144	2/6/08
9 VAC 25-660-60	Amended	24:9 VA.R. 1145	2/6/08
9 VAC 25-660-70	Amended	24:9 VA.R. 1147	2/6/08
9 VAC 25-660-80	Amended	24:9 VA.R. 1148	2/6/08
9 VAC 25-660-100	Amended	24:9 VA.R. 1148	2/6/08
9 VAC 25-670-10	Amended	24:9 VA.R. 1156	2/6/08
9 VAC 25-670-70	Amended	24:9 VA.R. 1157	2/6/08
9 VAC 25-670-80	Amended	24:9 VA.R. 1158	2/6/08
9 VAC 25-670-100	Amended	24:9 VA.R. 1159	2/6/08
9 VAC 25-680-10	Amended	24:9 VA.R. 1170	2/6/08
9 VAC 25-680-60	Amended	24:9 VA.R. 1172	2/6/08
9 VAC 25-680-70	Amended	24:9 VA.R. 1174	2/6/08
9 VAC 25-680-80	Amended	24:9 VA.R. 1175	2/6/08
9 VAC 25-680-100	Amended	24:9 VA.R. 1176	2/6/08
9 VAC 25-690-10	Amended	24:9 VA.R. 1188	2/6/08
9 VAC 25-690-70	Amended	24:9 VA.R. 1190	2/6/08
9 VAC 25-690-80	Amended	24:9 VA.R. 1191	2/6/08
9 VAC 25-690-100	Amended	24:9 VA.R. 1191	2/6/08
9 VAC 25-720-50	Amended	24:18 VA.R. 2540	6/11/08

\* Effective upon filing notice of U.S. EPA approval with Registrar of Regulations

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

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
9 VAC 25-720-130	Amended	24:18 VA.R. 2548	6/11/08
<b>Title 11. Gaming</b>			
11 VAC 10-130-60	Amended	24:16 VA.R. 2247	4/14/08
11 VAC 10-180-10	Amended	24:16 VA.R. 2247	4/14/08
11 VAC 10-180-20	Repealed	24:16 VA.R. 2248	4/14/08
11 VAC 10-180-25	Added	24:16 VA.R. 2250	4/14/08
11 VAC 10-180-35	Added	24:16 VA.R. 2250	4/14/08
11 VAC 10-180-60	Amended	24:16 VA.R. 2251	4/14/08
11 VAC 10-180-70	Amended	24:16 VA.R. 2256	4/14/08
11 VAC 10-180-75	Added	24:16 VA.R. 2256	4/14/08
11 VAC 10-180-80	Amended	24:16 VA.R. 2257	4/14/08
11 VAC 10-180-85	Amended	24:16 VA.R. 2258	4/14/08
11 VAC 10-180-110	Amended	24:16 VA.R. 2259	4/14/08
<b>Title 12. Health</b>			
12 VAC 5-220-10	Amended	24:11 VA.R. 1350	3/5/08
12 VAC 5-220-110	Amended	24:11 VA.R. 1353	3/5/08
12 VAC 5-220-130	Amended	24:11 VA.R. 1354	3/5/08
12 VAC 5-220-200	Amended	24:11 VA.R. 1354	3/5/08
12 VAC 5-371-150	Amended	24:11 VA.R. 1357	3/5/08
12 VAC 5-381-10 through 12VAC5-381-40	Amended	24:11 VA.R. 1358-1361	3/5/08
12 VAC 5-381-60 through 12VAC5-381-100	Amended	24:11 VA.R. 1361-1362	3/5/08
12 VAC 5-381-120	Amended	24:11 VA.R. 1362	3/5/08
12 VAC 5-381-140	Amended	24:11 VA.R. 1362	3/5/08
12 VAC 5-381-150	Amended	24:11 VA.R. 1362	3/5/08
12 VAC 5-381-240	Amended	24:11 VA.R. 1363	3/5/08
12 VAC 5-381-280	Amended	24:11 VA.R. 1363	3/5/08
12 VAC 5-391-10	Amended	24:11 VA.R. 1364	3/5/08
12 VAC 5-391-30 through 12 VAC 5-391-100	Amended	24:11 VA.R. 1366-1368	3/5/08
12 VAC 5-391-120	Amended	24:11 VA.R. 1368	3/5/08
12 VAC 5-391-130	Amended	24:11 VA.R. 1368	3/5/08
12 VAC 5-391-150	Amended	24:11 VA.R. 1369	3/5/08
12 VAC 5-391-160	Amended	24:11 VA.R. 1369	3/5/08
12 VAC 5-391-250	Amended	24:11 VA.R. 1370	3/5/08
12 VAC 5-391-280	Amended	24:11 VA.R. 1370	3/5/08
12 VAC 5-410-230	Amended	24:11 VA.R. 1371	3/5/08
12 VAC 5-481-10	Amended	24:18 VA.R. 2566	6/12/08
12 VAC 5-481-20	Amended	24:18 VA.R. 2592	6/12/08
12 VAC 5-481-30	Amended	24:18 VA.R. 2592	6/12/08
12 VAC 5-481-90	Amended	24:18 VA.R. 2592	6/12/08
12 VAC 5-481-100	Amended	24:18 VA.R. 2593	6/12/08
12 VAC 5-481-110	Amended	24:18 VA.R. 2593	6/12/08
12 VAC 5-481-130	Amended	24:18 VA.R. 2594	6/12/08
12 VAC 5-481-150	Amended	24:18 VA.R. 2594	6/12/08
12 VAC 5-481-200	Repealed	24:18 VA.R. 2594	6/12/08
12 VAC 5-481-230 through 12 VAC 5-481-270	Amended	24:18 VA.R. 2594-2595	6/12/08
12 VAC 5-481-340	Amended	24:18 VA.R. 2595	6/12/08
12 VAC 5-481-370 through 12 VAC 5-481-450	Amended	24:18 VA.R. 2597-2607	6/12/08
12 VAC 5-481-460	Repealed	24:18 VA.R. 2607	6/12/08
12 VAC 5-481-470	Amended	24:18 VA.R. 2608	6/12/08
12 VAC 5-481-480	Amended	24:18 VA.R. 2610	6/12/08



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

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 5-481-500	Amended	24:18 VA.R. 2619	6/12/08
12 VAC 5-481-510	Amended	24:18 VA.R. 2620	6/12/08
12 VAC 5-481-530 through 12 VAC 5-481-590	Amended	24:18 VA.R. 2622-2626	6/12/08
12 VAC 5-481-571	Added	24:18 VA.R. 2624	6/12/08
12 VAC 5-481-630 through 12 VAC 5-481-760	Amended	24:18 VA.R. 2626-2629	6/12/08
12 VAC 5-481-780	Amended	24:18 VA.R. 2629	6/12/08
12 VAC 5-481-790	Amended	24:18 VA.R. 2629	6/12/08
12 VAC 5-481-800	Repealed	24:18 VA.R. 2629	6/12/08
12 VAC 5-481-810 through 12 VAC 5-481-910	Amended	24:18 VA.R. 2630-2631	6/12/08
12 VAC 5-481-930 through 12 VAC 5-481-1050	Amended	24:18 VA.R. 2632-2633	6/12/08
12 VAC 5-481-971	Added	24:18 VA.R. 2632	6/12/08
12 VAC 5-481-1070	Amended	24:18 VA.R. 2633	6/12/08
12 VAC 5-481-1090	Amended	24:18 VA.R. 2633	6/12/08
12 VAC 5-481-1100	Amended	24:18 VA.R. 2633	6/12/08
12 VAC 5-481-1110	Amended	24:18 VA.R. 2633	6/12/08
12 VAC 5-481-1130	Amended	24:18 VA.R. 2634	6/12/08
12 VAC 5-481-1151	Added	24:18 VA.R. 2634	6/12/08
12 VAC 5-481-1160	Repealed	24:18 VA.R. 2635	6/12/08
12 VAC 5-481-1161	Added	24:18 VA.R. 2635	6/12/08
12 VAC 5-481-1190	Amended	24:18 VA.R. 2637	6/12/08
12 VAC 5-481-1200	Amended	24:18 VA.R. 2638	6/12/08
12 VAC 5-481-1220 through 12 VAC 5-481-1250	Amended	24:18 VA.R. 2639-2640	6/12/08
12 VAC 5-481-1270	Amended	24:18 VA.R. 2640	6/12/08
12 VAC 5-481-1300	Amended	24:18 VA.R. 2640	6/12/08
12 VAC 5-481-1310	Amended	24:18 VA.R. 2641	6/12/08
12 VAC 5-481-1320	Amended	24:18 VA.R. 2641	6/12/08
12 VAC 5-481-1350	Amended	24:18 VA.R. 2644	6/12/08
12 VAC 5-481-1380	Amended	24:18 VA.R. 2644	6/12/08
12 VAC 5-481-1420	Amended	24:18 VA.R. 2644	6/12/08
12 VAC 5-481-1440	Amended	24:18 VA.R. 2644	6/12/08
12 VAC 5-481-1490	Amended	24:18 VA.R. 2645	6/12/08
12 VAC 5-481-1520	Amended	24:18 VA.R. 2645	6/12/08
12 VAC 5-481-1540	Repealed	24:18 VA.R. 2645	6/12/08
12 VAC 5-481-1550	Repealed	24:18 VA.R. 2646	6/12/08
12 VAC 5-481-1560	Amended	24:18 VA.R. 2646	6/12/08
12 VAC 5-481-1570	Amended	24:18 VA.R. 2647	6/12/08
12 VAC 5-481-1670 through 12 VAC 5-481-2040	Amended	24:18 VA.R. 2647-2650	6/12/08
12 VAC 5-481-2001	Added	24:18 VA.R. 2649	6/12/08
12 VAC 5-481-2050	Repealed	24:18 VA.R. 2650	6/12/08
12 VAC 5-481-2060	Amended	24:18 VA.R. 2651	6/12/08
12 VAC 5-481-2070	Amended	24:18 VA.R. 2651	6/12/08
12 VAC 5-481-2080	Amended	24:18 VA.R. 2651	6/12/08
12 VAC 5-481-2100	Amended	24:18 VA.R. 2651	6/12/08
12 VAC 5-481-2230	Amended	24:18 VA.R. 2652	6/12/08
12 VAC 5-481-2240	Amended	24:18 VA.R. 2653	6/12/08
12 VAC 5-481-2260	Amended	24:18 VA.R. 2653	6/12/08
12 VAC 5-481-2270	Amended	24:18 VA.R. 2653	6/12/08
12 VAC 5-481-2280	Amended	24:18 VA.R. 2654	6/12/08
12 VAC 5-481-2330	Amended	24:18 VA.R. 2654	6/12/08
12 VAC 5-481-2420	Amended	24:18 VA.R. 2654	6/12/08
12 VAC 5-481-2430	Amended	24:18 VA.R. 2655	6/12/08

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

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 5-481-2470	Amended	24:18 VA.R. 2655	6/12/08
12 VAC 5-481-2490	Amended	24:18 VA.R. 2655	6/12/08
12 VAC 5-481-2510	Amended	24:18 VA.R. 2656	6/12/08
12 VAC 5-481-2530	Amended	24:18 VA.R. 2656	6/12/08
12 VAC 5-481-2540	Amended	24:18 VA.R. 2656	6/12/08
12 VAC 5-481-2550	Amended	24:18 VA.R. 2657	6/12/08
12 VAC 5-481-2571	Added	24:18 VA.R. 2657	6/12/08
12 VAC 5-481-2572	Added	24:18 VA.R. 2659	6/12/08
12 VAC 5-481-2573	Added	24:18 VA.R. 2660	6/12/08
12 VAC 5-481-2660 through 12 VAC 5-481-2950	Amended	24:18 VA.R. 2660-2661	6/12/08
12 VAC 5-481-2970	Amended	24:18 VA.R. 2661	6/12/08
12 VAC 5-481-2980	Amended	24:18 VA.R. 2662	6/12/08
12 VAC 5-481-3000 through 12 VAC 5-481-3040	Amended	24:18 VA.R. 2663-2665	6/12/08
12 VAC 5-481-3070 through 12 VAC 5-481-3140	Amended	24:18 VA.R. 2667-2670	6/12/08
12 VAC 5-481-3050	Repealed	24:18 VA.R. 2665	6/12/08
12 VAC 5-481-3051	Added	24:18 VA.R. 2666	6/12/08
12 VAC 5-481-3091	Added	24:18 VA.R. 2668	6/12/08
12 VAC 5-481-3151	Added	24:18 VA.R. 2670	6/12/08
12 VAC 5-481-3160	Amended	24:18 VA.R. 2671	6/12/08
12 VAC 5-481-3200 through 12 VAC 5-481-3270	Amended	24:18 VA.R. 2671-2675	6/12/08
12 VAC 5-481-3241	Added	24:18 VA.R. 2673	6/12/08
12 VAC 5-481-3261	Added	24:18 VA.R. 2674	6/12/08
12 VAC 5-481-3290	Amended	24:18 VA.R. 2675	6/12/08
12 VAC 5-481-3300	Amended	24:18 VA.R. 2675	6/12/08
12 VAC 5-481-3340	Amended	24:18 VA.R. 2675	6/12/08
12 VAC 5-481-3350	Amended	24:18 VA.R. 2675	6/12/08
12 VAC 5-481-3400	Amended	24:18 VA.R. 2676	6/12/08
12 VAC 5-481-3430	Amended	24:18 VA.R. 2677	6/12/08
12 VAC 5-481-3440	Amended	24:18 VA.R. 2683	6/12/08
12 VAC 5-481-3480	Amended	24:18 VA.R. 2684	6/12/08
12 VAC 5-481-3490	Amended	24:18 VA.R. 2684	6/12/08
12 VAC 5-481-3510	Amended	24:18 VA.R. 2684	6/12/08
12 VAC 5-481-3520	Amended	24:18 VA.R. 2685	6/12/08
12 VAC 5-481-3530	Amended	24:18 VA.R. 2685	6/12/08
12 VAC 5-481-3560	Amended	24:18 VA.R. 2686	6/12/08
12 VAC 5-481-3580	Amended	24:18 VA.R. 2687	6/12/08
12 VAC 5-481-3600	Amended	24:18 VA.R. 2687	6/12/08
12 VAC 5-481-3610	Amended	24:18 VA.R. 2688	6/12/08
12 VAC 5-481-3650	Amended	24:18 VA.R. 2688	6/12/08
12 VAC 5-481-3670 through 12 VAC 5-481-3780	Repealed	24:18 VA.R. 2689-2715	6/12/08
12 VAC 30-80-30	Erratum	24:17 VA.R. 2473	--
12 VAC 30-120-70	Amended	24:13 VA.R. 1791	7/1/08
12 VAC 30-120-90	Amended	24:13 VA.R. 1793	7/1/08
12 VAC 30-120-140	Amended	24:13 VA.R. 1794	7/1/08
12 VAC 30-120-211	Amended	24:13 VA.R. 1797	7/1/08
12 VAC 30-120-213	Amended	24:13 VA.R. 1800	7/1/08
12 VAC 30-120-225	Amended	24:13 VA.R. 1802	7/1/08
12 VAC 30-120-229	Amended	24:13 VA.R. 1804	7/1/08
12 VAC 30-120-237	Amended	24:13 VA.R. 1805	7/1/08
12 VAC 30-120-247	Amended	24:13 VA.R. 1807	7/1/08

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

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 30-120-700	Amended	24:13 VA.R. 1808	7/1/08
12 VAC 30-120-710	Amended	24:13 VA.R. 1812	7/1/08
12 VAC 30-120-754	Amended	24:13 VA.R. 1813	7/1/08
12 VAC 30-120-758	Amended	24:13 VA.R. 1815	7/1/08
12 VAC 30-120-762	Amended	24:13 VA.R. 1815	7/1/08
12 VAC 30-120-770	Amended	24:13 VA.R. 1816	7/1/08
12 VAC 30-120-900	Amended	24:13 VA.R. 1818	7/1/08
12 VAC 30-120-910	Amended	24:13 VA.R. 1820	7/1/08
12 VAC 30-120-920	Amended	24:13 VA.R. 1821	7/1/08
12 VAC 30-120-970	Amended	24:13 VA.R. 1823	7/1/08
12 VAC 30-120-1500	Amended	24:13 VA.R. 1825	7/1/08
12 VAC 30-120-1510	Amended	24:13 VA.R. 1827	7/1/08
12 VAC 30-120-1550	Amended	24:13 VA.R. 1828	7/1/08
12 VAC 30-120-1560	Added	24:13 VA.R. 1830	7/1/08
12 VAC 30-120-2000	Added	24:13 VA.R. 1832	7/1/08
12 VAC 30-120-2010	Added	24:13 VA.R. 1833	7/1/08
12 VAC 35-105-115	Added	24:11 VA.R. 1372	3/5/08
<b>Title 13. Housing</b>			
13 VAC 5-21-10	Amended	24:14 VA.R. 1894	5/1/08
13 VAC 5-21-20	Amended	24:14 VA.R. 1894	5/1/08
13 VAC 5-21-31	Amended	24:14 VA.R. 1895	5/1/08
13 VAC 5-21-41	Amended	24:14 VA.R. 1895	5/1/08
13 VAC 5-21-45	Amended	24:14 VA.R. 1895	5/1/08
13 VAC 5-21-51	Amended	24:14 VA.R. 1895	5/1/08
13 VAC 5-21-61	Amended	24:14 VA.R. 1896	5/1/08
13 VAC 5-31-20 through 13 VAC 5-31-50	Amended	24:14 VA.R. 1897-1898	5/1/08
13 VAC 5-31-70 through 13 VAC 5-31-170	Repealed	24:14 VA.R. 1898-1903	5/1/08
13 VAC 5-31-75	Added	24:14 VA.R. 1898	5/1/08
13 VAC 5-31-85	Added	24:14 VA.R. 1900	5/1/08
13 VAC 5-31-200	Amended	24:14 VA.R. 1904	5/1/08
13 VAC 5-31-210	Amended	24:14 VA.R. 1904	5/1/08
13 VAC 5-31-215 through 13 VAC 5-31-270	Added	24:14 VA.R. 1904-1905	5/1/08
13 VAC 5-51-21 through 13 VAC 5-51-51	Amended	24:14 VA.R. 1907-1910	5/1/08
13 VAC 5-51-81	Amended	24:14 VA.R. 1910	5/1/08
13 VAC 5-51-85	Amended	24:14 VA.R. 1921	5/1/08
13 VAC 5-51-91	Amended	24:14 VA.R. 1924	5/1/08
13 VAC 5-51-130 through 13 VAC 5-51-135	Amended	24:14 VA.R. 1925-1928	5/1/08
13 VAC 5-51-143	Added	24:14 VA.R. 1928	5/1/08
13 VAC 5-51-145	Amended	24:14 VA.R. 1932	5/1/08
13 VAC 5-51-150	Amended	24:14 VA.R. 1932	5/1/08
13 VAC 5-51-152	Repealed	24:14 VA.R. 1937	5/1/08
13 VAC 5-51-154	Amended	24:14 VA.R. 1937	5/1/08
13 VAC 5-51-155	Amended	24:14 VA.R. 1939	5/1/08
13 VAC 5-63-10 through 13 VAC 5-63-50	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-70	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-80	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-100 through 13 VAC 5-63-130	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-150	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-160	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-190 through 13 VAC 5-63-260	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-225	Repealed	24:14 VA.R. 1941	5/1/08

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

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
13 VAC 5-63-265	Repealed	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-267	Added	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-270	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-280	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-300 through 13 VAC 5-63-360	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-335	Added	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-400	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-430	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-432	Repealed	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-434 through 13 VAC 5-63-450	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-470 through 13 VAC 5-63-500	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-520	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-525	Added	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-550	Repealed	24:14 VA.R. 1941	5/1/08
13 VAC 5-91-20	Amended	24:14 VA.R. 1943	5/1/08
13 VAC 5-91-100	Amended	24:14 VA.R. 1943	5/1/08
13 VAC 5-91-110	Repealed	24:14 VA.R. 1944	5/1/08
13 VAC 5-91-115	Added	24:14 VA.R. 1944	5/1/08
13 VAC 5-91-120	Amended	24:14 VA.R. 1944	5/1/08
13 VAC 5-91-160	Amended	24:14 VA.R. 1945	5/1/08
13 VAC 5-91-270	Amended	24:14 VA.R. 1945	5/1/08
13 VAC 5-95-10	Amended	24:14 VA.R. 1947	5/1/08
13 VAC 5-95-30	Amended	24:14 VA.R. 1948	5/1/08
13 VAC 5-112-340	Amended	24:8 VA.R. 979	1/23/08
13 VAC 10-180-10	Amended	24:11 VA.R. 1373	2/4/08
13 VAC 10-180-50	Amended	24:11 VA.R. 1374	2/4/08
13 VAC 10-180-60	Amended	24:11 VA.R. 1376	2/4/08
13 VAC 10-180-60	Amended	24:11 VA.R. 1387	2/4/08
13 VAC 10-180-100	Amended	24:11 VA.R. 1397	2/4/08
<b>Title 14. Insurance</b>			
14 VAC 5-30-30	Amended	24:15 VA.R. 2153	4/1/08
14 VAC 5-200-185	Amended	24:15 VA.R. 2155	4/1/08
14 VAC 5-215 (Forms)	Amended	24:17 VA.R. 2452	--
14 VAC 5-270-10 through 14 VAC 5-270-150	Amended	24:12 VA.R. 1460-1470	1/1/10
14 VAC 5-270-144	Added	24:12 VA.R. 1467	1/1/10
14 VAC 5-270-146	Added	24:12 VA.R. 1468	1/1/10
14 VAC 5-270-148	Added	24:12 VA.R. 1469	1/1/10
14 VAC 5-270-170	Amended	24:12 VA.R. 1470	1/1/10
14 VAC 5-270-174	Added	24:12 VA.R. 1470	1/1/10
14 VAC 5-270-180	Amended	24:12 VA.R. 1470	1/1/10
<b>Title 16. Labor and Employment</b>			
16 VAC 25-90-1910.6	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.68	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.94	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.103	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.107	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.110	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.111	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.132	Added	24:16 VA.R. 2263	6/1/08
16 VAC 25-90-1910.144	Added	24:16 VA.R. 2262	6/1/08

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

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
16 VAC 25-90-1910.243	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.251	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.253	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.261	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-100-1915.152	Added	24:16 VA.R. 2263	6/1/08
16 VAC 25-120-1917.96	Added	24:16 VA.R. 2263	6/1/08
16 VAC 25-130-1918.106	Added	24:16 VA.R. 2263	6/1/08
16 VAC 25-175-1926.95	Added	24:16 VA.R. 2263	6/1/08
<b>Title 18. Professional and Occupational Licensing</b>			
18 VAC 15-20-451	Amended	24:17 VA.R. 2455	8/1/08
18 VAC 30-20-80	Amended	24:10 VA.R. 1284	2/20/08
18 VAC 30-20-170	Amended	24:10 VA.R. 1284	2/20/08
18 VAC 30-20-171	Amended	24:10 VA.R. 1285	2/20/08
18 VAC 60-20-81	Added	24:14 VA.R. 1949	4/16/08
18 VAC 60-20-108	Amended	24:14 VA.R. 1950	4/16/08
18 VAC 60-20-190	Amended	24:14 VA.R. 1951	4/16/08
18 VAC 60-20-220	Amended	24:10 VA.R. 1287	3/10/08
18 VAC 60-20-220	Amended	24:14 VA.R. 1951	4/16/08
18 VAC 85-20-22	Amended	24:11 VA.R. 1404	3/5/08
18 VAC 85-20-22	Amended	24:14 VA.R. 1952	4/16/08
18 VAC 85-20-226	Added	24:11 VA.R. 1404	3/5/08
18 VAC 115-30-150	Amended	24:14 VA.R. 1953	4/16/08
18 VAC 115-30-160	Amended	24:14 VA.R. 1953	4/16/08
18 VAC 85-40-35	Amended	24:11 VA.R. 1404	3/5/08
18 VAC 85-40-67	Added	24:11 VA.R. 1405	3/5/08
18 VAC 85-50-35	Amended	24:11 VA.R. 1405	3/5/08
18 VAC 85-50-61	Added	24:11 VA.R. 1405	3/5/08
18 VAC 85-80-26	Amended	24:11 VA.R. 1406	3/5/08
18 VAC 85-80-73	Added	24:11 VA.R. 1406	3/5/08
18 VAC 85-101-25	Amended	24:11 VA.R. 1406	3/5/08
18 VAC 85-101-153	Added	24:11 VA.R. 1407	3/5/08
18 VAC 85-110-35	Amended	24:11 VA.R. 1407	3/5/08
18 VAC 85-110-161	Added	24:11 VA.R. 1407	3/5/08
18 VAC 85-130-30	Amended	24:14 VA.R. 1952	4/16/08
18 VAC 90-20-10	Amended	24:13 VA.R. 1842	4/2/08
18 VAC 90-20-35	Amended	24:13 VA.R. 1843	4/2/08
18 VAC 90-20-40 through 18 VAC 90-20-60	Amended	24:13 VA.R. 1843-1845	4/2/08
18 VAC 90-20-65	Repealed	24:13 VA.R. 1844	4/2/08
18 VAC 90-20-70	Amended	24:13 VA.R. 1844	4/2/08
18 VAC 90-20-90	Amended	24:13 VA.R. 1845	4/2/08
18 VAC 90-20-95	Amended	24:13 VA.R. 1846	4/2/08
18 VAC 90-20-96	Added	24:13 VA.R. 1846	4/2/08
18 VAC 90-20-110 through 18 VAC 90-20-140	Amended	24:13 VA.R. 1846-1848	4/2/08
18 VAC 90-20-151	Added	24:13 VA.R. 1848	4/2/08
18 VAC 90-20-160	Amended	24:13 VA.R. 1849	4/2/08
18 VAC 90-20-190	Amended	24:13 VA.R. 1849	4/2/08
18 VAC 90-20-200	Amended	24:13 VA.R. 1850	4/2/08
18 VAC 90-20-220	Amended	24:13 VA.R. 1850	4/2/08
18 VAC 90-20-230	Amended	24:13 VA.R. 1851	4/2/08
18 VAC 90-20-275	Amended	24:13 VA.R. 1851	4/2/08
18 VAC 90-20-280	Amended	24:13 VA.R. 1851	4/2/08

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

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 90-20-300	Amended	24:13 VA.R. 1851	4/2/08
18 VAC 90-20-370	Amended	24:13 VA.R. 1852	4/2/08
18 VAC 90-20-390	Amended	24:13 VA.R. 1852	4/2/08
18 VAC 90-20-410	Amended	24:13 VA.R. 1853	4/2/08
18 VAC 90-30-10	Amended	24:10 VA.R. 1288	2/20/08
18 VAC 90-30-80	Erratum	24:18 VA.R. 2731-2732	--
18 VAC 90-30-120	Amended	24:10 VA.R. 1288	2/20/08
18 VAC 90-30-121	Added	24:10 VA.R. 1289	2/20/08
18 VAC 95-20-80	Amended	24:16 VA.R. 2264	5/14/08
18 VAC 95-30-40	Amended	24:16 VA.R. 2264	5/14/08
18 VAC 110-20-10	Amended	24:8 VA.R. 983	1/23/08
18 VAC 110-20-321	Added	24:8 VA.R. 986	1/23/08
18 VAC 110-20-411 through 18 VAC 110-20-416	Repealed	24:8 VA.R. 986-987	1/23/08
18 VAC 110-20-530	Amended	24:16 VA.R. 2265	5/14/08
18 VAC 110-30-15	Amended	24:10 VA.R. 1290	2/20/08
18 VAC 110-50-10	Amended	24:10 VA.R. 1290	2/20/08
18 VAC 110-50-160	Added	24:10 VA.R. 1291	2/20/08
18 VAC 110-50-170	Added	24:10 VA.R. 1291	2/20/08
18 VAC 110-50-180	Added	24:10 VA.R. 1292	2/20/08
18 VAC 110-50-190	Added	24:10 VA.R. 1292	2/20/08
18 VAC 115-30-150	Amended	24:14 VA.R. 1953	4/16/08
18 VAC 115-30-160	Amended	24:14 VA.R. 1953	4/16/08
18 VAC 125-20-170	Amended	24:12 VA.R. 1471	3/19/08
18 VAC 125-30-120	Amended	24:12 VA.R. 1471	3/19/08
18 VAC 135-20-10	Amended	24:11 VA.R. 1408	4/1/08
18 VAC 135-20-30	Amended	24:11 VA.R. 1409	4/1/08
18 VAC 135-20-60	Amended	24:11 VA.R. 1410	4/1/08
18 VAC 135-20-100	Amended	24:11 VA.R. 1410	4/1/08
18 VAC 135-20-101	Added	24:11 VA.R. 1412	4/1/08
18 VAC 135-20-105	Amended	24:11 VA.R. 1413	4/1/08
18 VAC 135-20-160	Amended	24:11 VA.R. 1413	4/1/08
18 VAC 135-20-170	Amended	24:11 VA.R. 1414	4/1/08
18 VAC 135-20-180	Amended	24:11 VA.R. 1414	4/1/08
18 VAC 135-20-190	Amended	24:11 VA.R. 1416	4/1/08
18 VAC 135-20-210	Amended	24:11 VA.R. 1417	4/1/08
18 VAC 135-20-220	Amended	24:11 VA.R. 1417	4/1/08
18 VAC 135-20-280	Amended	24:11 VA.R. 1417	4/1/08
18 VAC 135-20-300	Amended	24:11 VA.R. 1418	4/1/08
18 VAC 135-20-345	Added	24:11 VA.R. 1418	4/1/08
18 VAC 135-20-360	Amended	24:11 VA.R. 1419	4/1/08
18 VAC 135-20-370	Amended	24:11 VA.R. 1419	4/1/08
18 VAC 135-20-390	Amended	24:11 VA.R. 1420	4/1/08
18 VAC 135-60-60	Amended	24:9 VA.R. 1230	3/1/08
<b>Title 19. Public Safety</b>			
19 VAC 30-20-115	Added	24:11 VA.R. 1421	3/6/08
19 VAC 30-70-6	Amended	24:8 VA.R. 988	3/1/08
19 VAC 30-70-7	Amended	24:8 VA.R. 988	3/1/08
19 VAC 30-70-9	Amended	24:8 VA.R. 989	3/1/08
19 VAC 30-70-10	Amended	24:8 VA.R. 991	3/1/08
19 VAC 30-70-40	Amended	24:8 VA.R. 994	3/1/08

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

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
19 VAC 30-70-50	Amended	24:8 VA.R. 995	3/1/08
19 VAC 30-70-60	Amended	24:8 VA.R. 997	3/1/08
19 VAC 30-70-80	Amended	24:8 VA.R. 998	3/1/08
19 VAC 30-70-90	Amended	24:8 VA.R. 1001	3/1/08
19 VAC 30-70-110 through 19 VAC 30-70-660	Amended	24:8 VA.R. 1001-1070	3/1/08
19 VAC 30-190-10 through 19 VAC 30-190-140	Added	24:11 VA.R. 1421-1423	3/6/08
<b>Title 22. Social Services</b>			
22 VAC 15-30-310	Amended	24:10 VA.R. 1295	3/6/08
22 VAC 40-470-10	Amended	24:9 VA.R. 1231	2/6/08
22 VAC 40-685-30	Amended	24:9 VA.R. 1231	2/6/08
22 VAC 40-705-10 emer	Amended	24:14 VA.R. 1987	3/1/08-2/28/09
22 VAC 40-705-30 emer	Amended	24:14 VA.R. 1990	3/1/08-2/28/09
<b>Title 23. Taxation</b>			
23 VAC 10-10-10 through 23 VAC 10-10-80	Amended	24:12 VA.R. 1520-1521	4/19/08
23 VAC 10-10-80	Amended	24:12 VA.R. 1521	4/19/08
23 VAC 10-10-90	Repealed	24:12 VA.R. 1522	4/19/08
<b>Title 24. Transportation and Motor Vehicles</b>			
24 VAC 30-72-10 through 24 VAC 30-72-170	Added	24:17 VA.R. 2458-2466	7/1/08
24 VAC 30-72-30	Erratum	24:18 VA.R. 2732	--

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# PETITIONS FOR RULEMAKING

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## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF PHARMACY

#### Initial Agency Notice

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

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

Name of Petitioner: Dr. Carl Armstrong.

Nature of Petitioner's Request: Amend regulations for consistency with 12VAC5-481 and 10 CFR Parts 30 and 35.

Agency's Plan for Disposition of the Request: Board staff will review other state and federal regulations to determine points of inconsistency and recommend amendments or the possible repeal of board regulations relating to nuclear pharmacies.

Comments may be submitted until June 25, 2008.

Agency Contact: Elizabeth Scott Russell, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Richmond, VA 23233, telephone (804) 367-4456, FAX (804) 527-4472, or email [scotti.russell@dhp.virginia.gov](mailto:scotti.russell@dhp.virginia.gov).

VA.R. Doc. No. R08-13; Filed May 5, 2008, 9:14 a.m.

### BOARD OF SOCIAL WORK

#### Initial Agency Notice

Title of Regulation: **18VAC140-20. Regulations Governing the Practice of Social Work.**

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

Name of Petitioner: Mary Jaquelin Simons, MSW.

Nature of Petitioner's Request: To amend regulations to clarify that the requirement for face-to-face client contact for supervised experience in clinical social work means an average of no less than 15 hours per week or the equivalent in part-time service.

Agency's Plan for Disposition of the Request: The board will send the petition for comment and will consider the request at its meeting on July 18, 2008, at 9960 Mayland Drive, 2nd Floor Conference Center, Richmond, Virginia.

Comments may be submitted until June 26, 2008.

Agency Contact: Evelyn B. Brown, Executive Director, Board of Social Work, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4441, FAX (804) 527-4435, or email [evelyn.brown@dhp.virginia.gov](mailto:evelyn.brown@dhp.virginia.gov).

VA.R. Doc. No. R08-11; Filed April 28, 2008, 2:49 p.m.



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# NOTICES OF INTENDED REGULATORY ACTION

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## TITLE 3. ALCOHOLIC BEVERAGES

### ALCOHOLIC BEVERAGE CONTROL BOARD

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with §2.2-4007.01 of the Code of Virginia that the Alcoholic Beverage Control Board intends to consider amending the following regulations: **3VAC5-20, Advertising**, and **3VAC5-30, Tied-House**. The purpose of the proposed action is to develop amendments to (i) conform the board's advertising and tied-house regulations to statutory amendments enacted by the 2007 General Assembly; (ii) reorganize the advertising and tied-house chapters; and (iii) eliminate or modernize outdated provisions.

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

Statutory Authority: §§4.1-111 and 4.1-320 of the Code of Virginia.

Public Comments: Public comments may be submitted until 5 p.m. on June 25, 2008.

Agency Contact: Jeffrey L. Painter, Legislative and Regulatory Coordinator, 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](mailto:jeffrey.painter@abc.virginia.gov).

VA.R. Doc. No. R08-878; Filed April 30, 2008, 11:45 a.m.



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# REGULATIONS

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

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## Symbol Key

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

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## TITLE 4. CONSERVATION AND NATURAL RESOURCES

### MARINE RESOURCES COMMISSION

#### Final Regulation

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

**Title of Regulation:** 4VAC20-40. Regulations Pertaining to Crab Catch Limits (repealing 4VAC20-40-10 through 4VAC20-40-40).

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

**Effective Date:** April 30, 2008.

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

#### Summary:

*The amendments repeals the chapter pertaining to crab catch limits.*

VA.R. Doc. No. R08-1286; Filed April 30, 2008, 4:18 p.m.

#### Final Regulation

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

**Title of Regulation:** 4VAC20-90. Pertaining to Dredging for Crabs (repealing 4VAC20-90-10, 4VAC20-90-20, 4VAC20-90-30).

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

**Effective Date:** April 30, 2008.

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

#### Summary:

*The amendment repeals the chapter pertaining to dredging for crabs.*

VA.R. Doc. No. R08-1287; Filed April 30, 2008, 4:21 p.m.

#### Final Regulation

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

**Title of Regulation:** 4VAC20-270. Pertaining to Crabbing (amending 4VAC20-270-30, 4VAC20-270-40, 4VAC20-270-50, 4VAC20-270-55, 4VAC20-270-56, adding 4VAC20-270-58).

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

**Effective Date:** April 30, 2008.

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

#### Summary:

*The amendments (i) make it unlawful to take or harvest crabs by crab dredge between sunset and sunrise; (ii) establish that, from October 27, 2008, through November 30, 2008, it shall be unlawful for any person to harvest or possess, aboard a vessel, any female crab; (iii) establish the lawful season for the harvest of male crabs as March 17, 2008, through November 30 2008; and for female crabs as March 17, 2008, through October 27, 2008; (iv) make it unlawful for any person to harvest or possess crabs aboard a vessel, except during the lawful season; (v) make it unlawful for any person to knowingly place, set, fish or leave any hard crab pot or peeler pot in any tidal waters of Virginia from December 1, 2008, through March 6, 2009; (vi) establish peeler crab pot and crab pot limit, as 210 peeler crab pots in Virginia tidal waters, and, for crab pot categories, establish the following limits: up to 70 crab pots, up to 105 crab pots, up to 140 crab pots, up to 210 crab pots, up to 210 crab pots and up to 350 crab pots; (vii) make it unlawful to place, set, or fish any amount of crab pots that exceeds that persons crab pot limit; (viii) modify the date "November 15" to "November 30" as to when it shall be*

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# Regulations

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*unlawful to sell more than 10 peeler crabs or 5.0% of peeler crabs in any container; (ix) make it unlawful for any person to harvest or possess aboard a vessel any female peeler crab from October 27 through November 30, 2008; (x) make it unlawful, using an unlicensed dip net, hand line, or two crab pots, for any person to possess for personal use aboard a vessel more than one bushel of hard crabs or two dozen peeler crabs; and (xi) establish that any person convicted by a court of two crab fishery-related violations may be subject to having his crab license revoked.*

## **4VAC20-270-30. Daily time limits.**

A. It shall be unlawful for any person licensed to catch and sell crabs taken by crab pot or peeler pot to take and harvest crabs from any crab pot or peeler pot, or to retrieve, bait or set any crab pot or peeler pot, except during the lawful daily time periods described in this subsection or subsection B of this section. The lawful daily time periods for the commercial harvesting of crabs by crab pot or peeler pot shall be from 6 a.m. to 2 p.m. from March 17 through April 30 and September 1 through November 30, except as described in subsection C of this section, and from 5 a.m. to 1 p.m. during the months of May, June, July, and August, except as specified in subsection B of this section. Crab pots or peeler pots already on board a boat at the end of the lawful daily time period, as defined in this subsection or subsection B of this section, may be set during the period starting immediately following the lawful daily time period and ending one hour after the lawful daily time period.

B. Any licensed crab pot or peeler pot fisherman who provides an opinion and supporting documentation from an attending physician to the commissioner of an existing medical condition that prevents him from adhering to the daily time limit established in subsection A of this section may be permitted by the commissioner or his designee to take and harvest crabs from his crab pot or peeler pot, or to retrieve, bait or set his crab pot or peeler pot during an alternate eight-hour daily time limit. That alternative eight-hour daily time limit will be prescribed by the commissioner or his designee in accordance with the medical condition that forms a basis for the exception to the daily time limit as described in subsection A of this section.

Nothing in this regulation shall prohibit any licensed crab pot or peeler pot fisherman, who has been granted an exception to the eight-hour work schedule, on a medical basis, from using another licensed crab pot or peeler pot fisherman as a mate, provided; however, during the designated alternate work hours, only the crab pots or peeler pots of the fisherman receiving the exception shall be fished. Further, it shall be unlawful for the licensed crab fisherman, who has been granted an exception, or his mate, who is a licensed crab pot or peeler pot fisherman, to fish, set, retrieve, or bait, during the alternate work hours, any crab pot or peeler

pot that is not owned and licensed by the fisherman granted the exception.

~~C. It shall be unlawful to take or harvest crabs by crab dredge between sunset and sunrise. From October 27, 2008, through November 30, 2008, it shall be unlawful for any person to harvest from Virginia tidal waters, or to possess aboard a vessel, any female crab.~~

D. The lawful daily time periods for the commercial harvest of crabs by crab pot or peeler pot may be rescinded by the Commissioner of Marine Resources when he determines that a pending weather event is sufficient cause for the removal of crab pots from the tidal waters of the Commonwealth.

## **4VAC20-270-40. Season limits.**

~~A. It shall be unlawful for any person knowingly to place, set, fish or leave any hard crab pot or peeler crab pot in any tidal waters of Virginia from December 1 through March 16. The lawful season for the harvest of male crabs shall be March 17, 2008, through November 30, 2008. The lawful season for the harvest of female crabs shall be March 17, 2008, through October 26, 2008.~~

~~B. It shall be unlawful for any person to harvest crabs or to possess crabs on board a vessel, except during the lawful season, as described in subsection A of this section.~~

~~C. It shall be unlawful for any person knowingly to place, set, fish or leave any hard crab pot or peeler crab pot in any tidal waters of Virginia from December 1, 2008, through March 16, 2009.~~

~~D. It shall be unlawful for any person knowingly to place, set, fish or leave any fish pot in any tidal waters from March 12 through March 16, except as provided in subdivisions 1 and 2 of this subsection.~~

1. It shall be lawful for any person to place, set, or fish any fish pot in those waters located upriver of the following boundary lines:

- a. In the James River the boundary shall be a line connecting Hog Point and the downstream point at the mouth of College Creek.
- b. In the York River the boundary lines shall be the Route 33 bridges at West Point.
- c. In the Rappahannock River the boundary line shall be the Route 360 bridge at Tappahannock.

2. This subsection shall not apply to lawful eel pots as described in 4VAC20-500-50.

## **4VAC20-270-50. Peeler crab pot and crab pot limits.**

~~A. It shall be unlawful for any person to place, set or fish or attempt to place, set, or fish more than ~~300~~ 210 peeler crab pots in Virginia tidal waters.~~

B. The lawful crab pot license categories and crab pot limits for the 2009 crab pot season are as follows:

1. Up to 70 crab pots.
2. Up to 105 crab pots.
3. Up to 140 crab pots.
4. Up to 210 crab pots.
5. Up to 350 crab pots.

C. It shall be unlawful for any person to knowingly place, set or fish any amount of crab pots that exceeds that person's crab pot limit, as described in subsection B of this section.

**4VAC20-270-55. Minimum size limits.**

A. From March 17 through July 15, it shall be unlawful for any person to harvest, possess, sell or offer for sale more than 10 peeler crabs, per United States standard bushel, or 5.0% of peeler crabs in any other container, that measure less than 3-1/4 inches across the shell from tip to tip of the longest spikes. From July 16, 2008, through November ~~15~~ 30, 2008, it shall be unlawful for any person to harvest, possess, sell or offer for sale more than 10 peeler crabs, per United States standard bushel, or 5.0% of peeler crabs in any other container, that measure less than 3-1/2 inches across the shell from tip to tip of the longest spikes, except as described in ~~subsection~~ subsections B and C of this section.

B. From July 16, 2008, through November ~~15~~ 30, 2008, it shall be unlawful for any person to harvest, possess, sell or offer for sale more than 10 peeler crabs, per United States standard bushel, or 5.0% of peeler crabs in any other container, that are harvested from waters on the ocean side of Accomack and Northampton counties and measure less than 3-1/4 inches across the shell from tip to tip of the longest spikes, except as described in subsection C of this section.

C. From October 27, 2008, through November 30, 2008, it shall be unlawful for any person to harvest from Virginia tidal waters, or to possess aboard a vessel, any female peeler crab.

~~C. D.~~ D. In the enforcement of these peeler crab minimum size limits aboard a vessel, the marine police officer shall select a single container of peeler crabs of his choosing to determine if the contents of that container violate the minimum size and tolerance described in this section. If the officer determines the contents of the container are in violation, then the officer shall return all peeler crabs on board the vessel to the water alive.

~~D. E.~~ E. It shall be unlawful for any person to take, catch, harvest, possess, sell or offer for sale, or to destroy in any manner, any soft crab that measures less than 3-1/2 inches across the shell from tip to tip of the longest spikes.

**4VAC20-270-56. Recreational harvest limit.**

It shall be unlawful to take by using an unlicensed dip net, or hand line, or two crab pot pots, or to possess for personal use aboard any vessel, more than one bushel of hard crabs or two dozen peeler crabs.

**4VAC20-270-58. License revocation.**

Any person convicted by a court of two crab fishery-related violations may be subject to having his license(s) to take crabs revoked in accordance with the provisions of §28.2-232 of the Code of Virginia.

VA.R. Doc. No. R08-1281; Filed April 30, 2008, 3:53 p.m.

**Emergency Regulation**

Title of Regulation: **4VAC20-270. Pertaining to Crabbing (amending 4VAC20-270-10, 4VAC20-270-50).**

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

Effective Dates: May 1, 2008, through May 31, 2008.

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

Preamble:

*This emergency chapter establishes time limits, season limits, peeler pot limits and peeler and softshell crab minimum size limits for commercial crabbing in Virginia and is promulgated pursuant to authority contained in §§28.2-201, 28.2-210 and 28.2-700 of the Code of Virginia. This emergency chapter amends and readopts, as amended, 4VAC20-270, which was promulgated April 22, 2008, and made effective on April 30, 2008. The effective date of this emergency chapter, as amended, is May 1, 2008.*

*The amendment establishes hard crab pot limits for crab pot category limits, up to 85 crab pots, up to 127 crab pots, up to 170 crab pots, up to 255 crab pots, and up to 425 for the 2008 crab pot season.*

**4VAC20-270-10. Purpose.**

The purpose of this emergency chapter is to allow for the conservation ~~of crabs and rebuilding of the crab resource~~ and to improve the enforceability of other laws pertaining to crabbing.

**4VAC20-270-50. Peeler crab pot and crab pot limits.**

A. It shall be unlawful for any person to place, set or fish or attempt to place, set or fish more than 210 peeler crab pots in Virginia tidal waters.

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# Regulations

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B. The lawful crab pot license categories and crab pot limits for the 2008 crab pot season are as follows:

1. Up to 85 crab pots.
2. Up to 127 crab pots.
3. Up to 170 crab pots.
4. Up to 255 crab pots.
5. Up to 425 crab pots.

C. The lawful crab pot license categories and crab pot limits for the 2009 crab pot season are as follows:

1. Up to 70 crab pots.
2. Up to 105 crab pots.
3. Up to 140 crab pots.
4. Up to 210 crab pots.
5. Up to 350 crab pots.

Ⓞ D. It shall be unlawful for any person to knowingly place, set or fish any amount of crab pots that exceeds that person's crab pot limit, as described in ~~subsection~~ subsections B and C of this section.

VA.R. Doc. No. R08-1306; Filed May 1, 2008, 3:52 p.m.

## Final Regulation

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

Title of Regulation: **4VAC20-670. Pertaining to Recreational Gear Licenses (amending 4VAC20-670-20, 4VAC20-670-25, 4VAC20-670-30, 4VAC20-670-40).**

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

Effective Date: April 30, 2008.

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

Summary:

*The amendment eliminates the recreational crab pot gear license and renders any recreational crab pot gear license purchased for 2008 as null and void.*

### **4VAC20-670-20. Recreational gear licenses.**

A. Any person desiring to take or catch finfish or shellfish for recreational purposes in the tidal waters of Virginia using

commercial gear authorized under §28.2-226.1 of the Code of Virginia shall first obtain the license for the appropriate gear.

B. Any license to use fishing gear for recreational purposes shall be issued to an individual for his exclusive use and shall not be transferable.

C. No person shall be issued more than one recreational gill net license, ~~more than one recreational crab pot license~~, more than one crab trap license, nor more than one recreational eel pot license.

D. After May 1, 2008, no license to take crabs by crab pot for recreation or personal use shall be issued and any license purchased prior to May 1, 2008, shall be null and void. The commission shall establish a five-pot recreational crab pot license, at such time that it determines from the Virginia-Maryland Baywide Winter Dredge Survey that the abundance of age one and older blue crabs in the Chesapeake Bay meets or exceeds an interim abundance target of 200 million crabs.

~~D.~~ E. No license shall be required of any person taking minnows, menhaden, or mullet with a cast net for personal use as bait which is not to be sold, traded, or bartered.

### **4VAC20-670-25. Harvest limits.**

It shall be unlawful for any person licensed to use ~~recreational crab pot~~, recreational crab trap or recreational ordinary crab trotline, as described in 4VAC20-670-20, to take or possess more than one bushel of hard crabs and two dozen peeler crabs, in any one day, for personal use.

### **4VAC20-670-30. Gear restrictions.**

A. It shall be unlawful for any person to use any gill net greater than 300 feet in length when licensed for recreational purposes under this chapter except as described in subsection B of this section. Any person licensed to use a recreational gill net up to 300 feet in length shall stay within 100 yards of such net when it is overboard. Failure to attend such net in this fashion is a violation of this chapter.

B. It shall be unlawful for any person to use any anchored gill net when licensed for recreational purposes under this chapter that is greater than 110 feet in length in any of the tidal waters upriver of the saltwater-freshwater boundaries. Any anchored gill net set or placed in areas upriver of the saltwater-freshwater boundaries shall be retrieved within one hour of setting or placing that gill net. Any person licensed to use a recreational anchored gill net shall stay within 100 yards of such net when it is overboard. Failure to attend such net in this fashion is a violation of this chapter, and any unattended anchored gill net shall be confiscated by the marine police officer.

C. It shall be unlawful for any person to use more than ~~five crab pots or more than~~ two eel pots when licensed for recreational purposes under this chapter.

D. Any law or chapter applying to the setting or fishing of commercial gill nets, cast nets, dip nets, ~~crab pots~~, crab traps, or crab trot lines shall also apply to the gear licensed under this chapter when set or fished for recreational purposes, except that ~~(i) certain commercial gear used for recreational purposes shall be marked in accordance with the provisions described in 4VAC20-670-40, (ii) the daily time limits for commercial crab potting and peeler potting established in 4VAC20-270-30 shall not apply to the setting and fishing of recreational crab pots licensed under this chapter, and (iii) the closed season and area established in §28.2-709 of the Code of Virginia shall not apply to the setting and fishing of recreational crab pots licensed under this chapter.~~

E. It shall be unlawful for any person to use any recreational gill net to catch and possess any species of fish whose commercial fishery is regulated by an annual harvest quota.

F. It shall be unlawful for any person using a recreational gill net, fish cast net, or fish dip net to take and possess more than the recreational possession limit for any species regulated by such a limit. When fishing from any boat, using gear licensed under this chapter, the total possession limit shall be equal to the number of persons on board legally eligible to fish multiplied by the individual possession limit for the regulated species, and the captain or operator of the boat shall be responsible for adherence to the possession limit.

G. It shall be unlawful for any person using a recreational gill net, fish cast net, or fish dip net to take and possess any fish which is less than the lawful minimum size established for that species. When the taking of any fish is regulated by different size limits for commercial and recreational fishermen, that size limit applicable to recreational fishermen or to hook-and-line fishermen shall apply to the taking of that species by persons licensed under this chapter.

~~H. It shall be unlawful for any person licensed to use five crab pots under this chapter to fish these crab pots on Sunday.~~

~~H.~~ It shall be unlawful for any person to use any ordinary crab trot line greater than 300 feet in length when licensed for recreational purposes under this chapter.

**4VAC20-670-40. Gear marking requirements.**

A. Buoys of any ~~crab pot~~, eel pot, gill net or ordinary crab trot line used for recreational purposes shall be marked with the licensee's last four numbers of his social security number or driver's license number, preceded by the letter "R."

B. An offshore stake of any crab trap used for recreational purposes shall be marked with the licensee's last four numbers of his social security number or driver's license number, preceded by the letter "R."

C. In accordance with subsections A and B of this section, licensees shall mark their gear in a legible and visible manner and in figures of not less than one inch in height.

**Emergency Regulation**

**Title of Regulation: 4VAC20-700. Pertaining to Crab Pots (amending 4VAC20-700-10, 4VAC20-700-20; adding 4VAC20-700-15).**

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

**Effective Dates:** May 1, 2008, through May 31, 2008.

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

**Preamble:**

*This emergency chapter establishes a requirement for the use of cull rings in crab pots, and is promulgated pursuant to the authority contained in §§28.2-201 and 28.2-210 of the Code of Virginia.*

*This emergency chapter amends and readopts, as amended, previous 4VAC20-700, which was promulgated February 26, 2008, and made effective on March 1, 2008. The effective date of this emergency chapter, as amended, is May 1, 2008.*

*The amendments establish that all crab pots in any area shall contain four unobstructed cull rings, one 2-5/16-inch ring and one 2-3/16-inch ring, which shall be located one each in opposite exterior side panels of the upper chamber of the pot; and two 2-3/8-inch rings, which shall be located on each opposite exterior side panels of the upper chamber of the pot.*

**4VAC20-700-10. Purpose.**

The purpose of this emergency chapter is to conserve the blue crab resource by promoting the escape of small crabs from crab pots through the use of cull rings.

**4VAC20-700-15. Definitions.**

"Mainstem Chesapeake Bay" means all tidal waters westward of the shoreward boundary of Virginia's portion of the federal territorial sea, exclusive of the tributaries of the Chesapeake Bay and Potomac River.

"Seaside area" means any Virginia tidal waters on the ocean side of Accomack and Northampton counties, including any bays, inlets or other waters that have an open connection to ocean waters.

"Tributaries of the mainstem Chesapeake Bay" means those waters outside of the mainstem of the Chesapeake Bay but

# Regulations

westward of the shoreward boundary of Virginia's portion of the federal territorial sea.

## 4VAC20-700-20. Cull ring requirements.

A. ~~Effective July 1, 2008, it shall be unlawful for any person to place, set or fish any crab pot, in Virginia's tidal waters seaside area, that does not contain at least two unobstructed cull rings of size and location within the pot, as described in this subsection, except as provided in subsections B and C of this section. One cull ring shall be at least 2-5/16 inches inside diameter, and the other cull ring shall be at least 2-3/16 inches inside diameter. These cull rings shall be located one each in opposite exterior side panels of the upper chamber of the pot.~~

B. ~~Effective July 1, 2008, it shall be unlawful for any person to place, set or fish any crab pot, in any Virginia waters, except as described in subsection A of this section, that does not contain at least four unobstructed cull rings of size and location within the pot, as described in this subsection. Two cull rings shall be at least 2-3/8 inches inside diameter. These cull rings shall be located one each in opposite exterior side panels of the upper chamber of the pot. A third cull ring shall be at least 2-5/16 inches inside diameter, and the fourth cull ring shall be at least 2-3/16 inches inside diameter. The 2-5/16 inch and 2-3/16 inch cull rings shall be located one each in opposite exterior side panels of the upper chamber of the pot.~~

C. ~~Peeler pots with a mesh size less than 1-1/2 inches shall be exempt from the cull ring requirement.~~

VA.R. Doc. No. R08-1309; Filed May 1, 2008, 3:47 p.m.

## Final Regulation

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

**Title of Regulation:** 4VAC20-750. **Pertaining to Crab Dredge License Sales (repealing 4VAC20-750-10, 4VAC20-750-30, 4VAC20-750-40, 4VAC20-750-50).**

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

**Effective Date:** April 30, 2008.

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

### Summary:

*The amendment repeals the chapter pertaining to crab dredge license sales.*

VA.R. Doc. No. R08-1288; Filed April 30, 2008, 4:09 p.m.

## Final Regulation

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

**Title of Regulation:** 4VAC20-752. **Pertaining to Blue Crab Sanctuaries (amending 4VAC20-752-20, 4VAC20-752-30).**

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

**Effective Date:** April 30, 2008.

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

### Summary:

*The amendment makes it unlawful for any person to dredge for crabs within the Hampton Roads Blue Crab Sanctuary at any time.*

## 4VAC20-752-20. Definitions.

"COLREGS Line" means the COLREGS Demarcation lines, as specified in Coastal Pilot, 35th and 36th editions by Lighthouse Press.

~~"Hampton Roads Blue Crab Sanctuary" means that area consisting of all tidal waters inshore and upstream of a line formed by the extreme south and north ends of the westbound span of the Hampton Roads Bridge Tunnel.~~

"Three Nautical Mile Limit Line" means the outer limit of the area extending three miles out to sea from the coast as depicted on NOAA nautical charts.

"Virginia Blue Crab Sanctuary" means two distinct sanctuary areas, Area 1 and Area 2, with Area 1 consisting of all tidal waters that are bounded by a line beginning at a point, near the western shore of Fisherman's Island, being on a line from the Cape Charles Lighthouse to the Thimble Shoal Light, having NAD83 geographic coordinates of 37° 05' 58.00" N, 75° 58' 45.95" W; thence southwesterly to Thimble Shoal Light, 37° 00' 52.19" N, 76° 14' 24.63" W; thence southwesterly to the offshore end of Harrison's Fishing Pier, 36° 57' 44.98" N, 76° 15' 31.76" W; thence north to Flashing Green Buoy "9" on the York River Entrance Channel, 37° 11' 30.99" N, 76° 15' 16.85" W; thence northeasterly to Wolf Trap Light, 37° 23' 27.15" N, 76° 11' 46.01" W; thence northwesterly to a point, northeast of Windmill Point, 37° 38' 23.13" N, 76° 15' 59.54" W; thence northerly to a point due east of Great Wicomico Light at 37° 48' 15.72" N, 76° 14' 33.15" W; thence northeasterly to a point, 37° 49' 18.10" N,

76° 13' 06.00" W; thence northerly to a point on the Virginia-Maryland state line, 37° 54' 04.00" N, 76° 11' 49.15" W; thence northeasterly to a point on the Virginia-Maryland state line, 37° 55' 44.82" N, 76° 07' 13.41" W; thence southeasterly to a point, southwest of Tangier Island, 37° 44' 59.85" N, 76° 01' 34.31" W; thence southeasterly to a point, southeast of Tangier Island, 37° 43' 41.05" N, 75° 57' 51.84" W; thence northeasterly to a point, south of Watts Island, 37° 45' 36.95" N, 75° 52' 53.87" W; thence southeasterly to a point, 37° 44' 56.15" N, 75° 51' 33.18" W; thence southwesterly to a point, west of Parkers Marsh, 37° 42' 41.49" N, 75° 55' 06.31" W; thence southwesterly to a point, west of Cape Charles Harbor, 37° 15' 37.23" N, 76° 04' 13.79" W; thence southeasterly to a point near the western shore of Fisherman's Island, on the line from Cape Charles Lighthouse to Thimble Shoal Light, said point being the point of beginning, and a continuation of Area 1, consisting of all tidal waters that are bounded by a line beginning at Cape Charles Lighthouse, having NAD83 geographic coordinates of 37° 07' 31.63" N, 75° 53' 58.36" W; thence southwesterly to Cape Henry Lighthouse, 36° 55' 42.02" N, 76° 00' 18.44" W; thence southeasterly to a point, 36° 54' 42.39" N, 75° 56' 44.23" W; thence northeasterly to a point, east of Cape Charles Lighthouse 37° 06' 45" N, 75° 52' 05" W; thence westerly to the Cape Charles Lighthouse, said point being the point of beginning and a second area, Area 2, beginning at a point, 37° 06' 45.00" N, 75° 52' 05.00" W; thence southwesterly to a point, 37° 03' 11.49" N, 75° 53' 27.02" W, said point being a point on the Three Nautical Mile Limit Line; thence southerly following the Three Nautical Mile Limit Line to a point on the Virginia – North Carolina state boundary, 36° 33' 02.59" N, 75° 48' 16.21" W; thence westerly to a point, along the Virginia – North Carolina state boundary to its intersection with the mean low water line, 36° 33' 01.34" N, 75° 52' 03.06" W; thence northerly, following the mean low water line to the Rudee Inlet weir; thence easterly along the weir to the stone breakwater; thence following the stone breakwater to its northernmost point; thence northerly to the mean low water line at the easternmost point of the stone jetty; thence northerly following the mean low water line to its intersection with the COLREG Line, 36° 55' 38.50" N, 76° 00' 20.32" W; thence southeasterly to a point, 36° 54' 42.39" N, 75° 56' 44.23", thence northeasterly to a point, 37° 06' 45.00" N, 75° 52' 05.00" W, said point being the point of beginning of this second area.

#### 4VAC20-752-30. Harvest restrictions.

~~A. It shall be unlawful for any person to dredge for crabs within the Hampton Roads Blue Crab Sanctuary at any time.~~

~~B. A.~~ It shall be unlawful for any person to conduct commercial or recreational crabbing within Area 1 of the Virginia Blue Crab Sanctuary from May 1 through September 15.

~~C. B.~~ It shall be unlawful for any person to take, harvest or possess crabs for commercial purposes from Area 2 from May 1 through September 15.

VA.R. Doc. No. R08-1290; Filed April 30, 2008, 4:00 p.m.

### Emergency Regulation

**Title of Regulation: 4VAC20-880. Pertaining to Hard Crab and Peeler Pot License Sales (amending 4VAC20-880-10, 4VAC20-880-20, 4VAC20-880-30).**

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

**Effective Dates:** May 1, 2008, through May 31, 2008.

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

#### Preamble:

*This emergency chapter establishes daily hard crab pot and peeler pot limits. This emergency chapter is promulgated pursuant to authority contained in §§28.2-201, 28.2-210 and 28.2-204.1 of the Code of Virginia. This emergency chapter amends and readopts, as amended, previous 4VAC20-880, which was adopted April 22, 2008, and made effective April 30, 2008. The effective date of this emergency chapter is May 1, 2008.*

*The amendments to this emergency chapter (i) establish that between May 1, 2008, through November 30, 2008, it shall be unlawful to place, set or fish more than 255 hard crab pots in the tributaries of the mainstem Chesapeake Bay; (ii) establish that between May 1, 2008, through November 30, 2008, it is unlawful to fish more than 425 hard crab pots in the mainstem Chesapeake Bay or coastal area; and (iii) make it unlawful, from May 1, 2008, through November 30, 2008, to place, set or fish more than 425 pots in Virginia tidal waters.*

#### 4VAC20-880-10. Purpose.

The purpose of this emergency chapter is to protect and conserve the blue crab resource by controlling fishing effort by establishing additional limits on the number of crab pots that can be set or fished.

#### 4VAC20-880-20. Definitions.

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

"Coastal area" means the area that includes Back Bay and Virginia's portion of the territorial sea, plus all of the creeks, bays, inlets, and tributaries on the seaside of Accomack



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# Regulations

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County, Northampton County (including areas east of the causeway from Fisherman Island to the mainland), and the City of Virginia Beach (including federal areas and state parks, fronting on the Atlantic Ocean and east and south of the point where the shoreward boundary of the territorial sea joins the mainland at Cape Henry).

"Mainstem Chesapeake Bay" means all tidal waters westward of the shoreward boundary of Virginia's portion of the federal territorial sea, exclusive of the tributaries of the Chesapeake Bay and Potomac River.

"Potomac River tributaries" means all the tributaries of the Potomac River that are within Virginia's jurisdiction beginning with, and including, Flag Pond thence upstream to the District of Columbia boundary.

"Tributaries of the mainstem Chesapeake Bay" means those waters outside of the mainstem of the Chesapeake Bay but westward of the shoreward boundary of Virginia's portion of the federal territorial sea.

## **4VAC20-880-30. Hard crab pot limits.**

A. ~~From May 1, 2008, through November 30, 2008, it shall be unlawful for any person to place, set or fish more than 300~~ 255 hard crab pots in the tributaries of the mainstem Chesapeake Bay. After March 16, 2009, it shall be unlawful for any person to place, set or fish more than 210 hard crab pots in the tributaries of the mainstem Chesapeake Bay or the Potomac River tributaries.

B. ~~From May 1, 2008, through November 30, 2008, it shall be unlawful for any person to place, set or fish more than 500~~ 425 hard crab pots in the mainstem Chesapeake Bay and coastal area. After March 16, 2009, it shall be unlawful for any person to place, set or fish more than 350 hard crab pots in the mainstem Chesapeake Bay or coastal area.

C. ~~From May 1, 2008, through November 30, 2008, it shall be unlawful for any person to place, set or fish more than a combined total of 500~~ 425 hard crab pots in Virginia tidal waters. After March 16, 2009, it shall be unlawful for any person to place, set or fish more than 350 hard crab pots in Virginia tidal waters.

D. It shall be unlawful for any person to take or catch hard crabs or peeler crabs using any type of pot other than a licensed hard crab pot or peeler pot except as provided in §28.2-226 of the Code of Virginia.

VA.R. Doc. No. R08-1307; Filed May 1, 2008, 3:48 p.m.

## **Final Regulation**

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

**Title of Regulation:** 4VAC20-880. Pertaining to Hard Crab and Peeler Pot License Sales (amending 4VAC20-880-20, 4VAC20-880-30).

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

**Effective Date:** April 30, 2008.

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

### **Summary:**

*The amendments (i) define the coastal area, mainstem Chesapeake Bay, Potomac River tributaries and tributaries of the mainstem Chesapeake Bay; (ii) establish that after March 16, 2009, it shall be unlawful to place, set or fish more than 210 hard crab pots in the tributaries of the mainstem Chesapeake Bay or Potomac River tributaries; (iii) establish that after March 16, 2009, it is unlawful to fish more than 350 hard crab pots in the mainstem Chesapeake Bay or coastal area; and (iv) make it unlawful, after March 16, 2009, to place, set or fish more than 350 pots in Virginia tidal waters.*

## **CHAPTER 880 PERTAINING TO HARD CRAB AND PEELER POT LICENSE SALES LIMITS**

### **4VAC20-880-20. Definitions.**

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

"Coastal area" means the area that includes Back Bay and Virginia's portion of the territorial sea, plus all of the creeks, bays, inlets, and tributaries on the seaside of Accomack County, Northampton County (including areas east of the causeway from Fisherman Island to the mainland), and the City of Virginia Beach (including federal areas and state parks, fronting on the Atlantic Ocean and east and south of the point where the shoreward boundary of the territorial sea joins the mainland at Cape Henry).

"Mainstem Chesapeake Bay" means all tidal waters westward of the shoreward boundary of Virginia's portion of the federal territorial sea, exclusive of the tributaries of the Chesapeake Bay and Potomac River.

"Potomac River tributaries" means all the tributaries of the Potomac River that are within Virginia's jurisdiction beginning with, and including, Flag Pond thence upstream to the District of Columbia boundary.

"Tributaries of the mainstem Chesapeake Bay" means those waters inshore of the crab dredge line as established by

~~Virginia Marine Resources Commission regulations 4VAC20-90-10 and 4VAC20-752-10 and the Virginia tributaries of the Potomac River, outside of the mainstem of the Chesapeake Bay but westward of the shoreward boundary of Virginia's portion of the federal territorial sea.~~

~~"Chesapeake Bay and coastal waters" means all other waters under the jurisdiction of the Virginia Marine Resources Commission, including Pocomoke and Tangier Sounds and Back Bay.~~

**4VAC20-880-30. Hard crab pot, peeler pot and catch limits.**

A. It shall be unlawful for any person to place, set or fish more than 300 hard crab pots in the tributaries of the mainstem Chesapeake Bay as defined in 4VAC20-880-20. After March 16, 2009, it shall be unlawful for any person to place, set or fish more than 210 hard crab pots in the tributaries of the mainstem Chesapeake Bay or the Potomac River tributaries.

B. It shall be unlawful for any person to place, set or fish more than 500 hard crab pots in the mainstem Chesapeake Bay and coastal waters as defined in 4VAC20-880-20 area. After March 16, 2009, it shall be unlawful for any person to place, set or fish more than 350 hard crab pots in the mainstem Chesapeake Bay or coastal area.

C. It shall be unlawful for any person to place, set or fish more than a combined total of 500 hard crab pots in Virginia tidal waters. After March 16, 2009, it shall be unlawful for any person to place, set or fish more than 350 hard crab pots in Virginia tidal waters.

D. It shall be unlawful for any person to take or catch hard crabs or peeler crabs using any type of pot other than a licensed hard crab pot or peeler pot except as provided in §28.2-226 of the Code of Virginia.

VA.R. Doc. No. R08-1301; Filed April 30, 2008, 3:36 p.m.

**Emergency Regulation**

**Title of Regulation: 4VAC20-1090. Pertaining to Licensing Requirements and License Fees (amending 4VAC20-1090-10, 4VAC20-1090-30).**

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

**Effective Dates:** May 1, 2008, through May 31, 2008.

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

**Preamble:**

*This emergency chapter establishes licenses required of persons to take, catch, harvest, possess or market fish, oysters, crabs, clams or other seafood species for commercial purposes in the tidal waters of Virginia. This emergency chapter establishes recreational licenses and licenses used for noncommercial purposes required of persons to take, catch, harvest, or possess finfish or blue crab for recreational purposes in the tidal waters of Virginia.*

*This emergency chapter is promulgated pursuant to authority contained in §§28.2-201 and 28.2-210 of the Code of Virginia and amends and readopts, as amended, previous 4VAC20-1090, which was promulgated April 22, 2008, and made effective on April 30, 2008. The effective date of this emergency chapter, as amended, is May 1, 2008.*

*The amendments establish crab hard pot categories and their limits for May 1, 2008, through November 30, 2008.*

**4VAC20-1090-10. Purpose.**

The purpose of this emergency regulation is to specify the fees for each license required of persons to take, catch, harvest, possess or market fish, oysters, crabs, clams or other seafood species in the tidal waters of Virginia for commercial purposes or to take, catch or possess any species for recreational purposes. The license fees described in this emergency regulation supersede those fishing license fees described in Title 28.2 of the Code of Virginia.

**4VAC20-1090-30. License fees.**

The following listing of license fees applies to any person who purchases a license for the purposes of harvesting for commercial purposes, or fishing for recreational purposes, during any calendar year.

1. COMMERCIAL LICENSES.	
Commercial Fisherman Registration License	\$190.00
Commercial Fisherman Registration License for a person 70 years or older	\$90.00
Delayed Entry Registration.	\$190.00
Delayed Entry Registration License for a person 70 years or older	\$90.00
Seafood Landing License for each boat or vessel	\$175.00
For each Commercial Fishing Pier over or upon subaqueous beds (mandatory)	\$83.00
Seafood Buyer's License -- For each boat or motor vehicle	\$63.00

# Regulations

Seafood Buyer's License -- For each place of business	\$126.00
Clam Aquaculture Product Owner's Permit	\$10.00
Oyster Aquaculture Product Owner's Permit	\$10.00
Clam Aquaculture Harvester's Permit	\$5.00
Oyster Aquaculture Harvester's Permit	\$5.00
Nonresident Harvester's License	\$444.00
<b>OYSTER HARVESTING AND SHUCKING LICENSES</b>	
For each person taking oysters by hand, or with ordinary tongs	\$10.00
For each single-rigged patent tong boat taking oysters	\$35.00
For each double-rigged patent tong boat taking oysters	\$70.00
Oyster Dredge Public Ground	\$50.00
Oyster Hand Scrape	\$50.00
To shuck and pack oysters, for any number of gallons under 1,000	\$12.00
To shuck and pack oysters, for 1,000 gallons, up to 10,000	\$33.00
To shuck and pack oysters, for 10,000 gallons, up to 25,000	\$74.00
To shuck and pack oysters, for 25,000 gallons, up to 50,000	\$124.00
To shuck and pack oysters, for 50,000 gallons, up to 100,000	\$207.00
To shuck and pack oysters, for 100,000 gallons, up to 200,000	\$290.00
To shuck and pack oysters, for 200,000 gallons or over	\$456.00
<b>BLUE CRAB HARVESTING AND SHEDDING LICENSES, EXCLUSIVE OF CRAB POT LICENSES</b>	
For each person taking or catching crabs by dip nets	\$13.00
For ordinary trotlines	\$13.00
For patent trotlines	\$51.00

For each single-rigged crab-scrape boat	\$26.00
For each double-rigged crab-scrape boat	\$53.00
<u>For up to 100 crab pots</u>	<u>\$48.00</u>
<u>For over 100 but not more than 150 crab pots</u>	<u>\$79.00</u>
<u>For over 150 but not more than 200 crab pots</u>	<u>\$79.00</u>
<u>For over 200 but not more than 300 crab pots</u>	<u>\$79.00</u>
<u>For over 300 but not more than 500 crab pots</u>	<u>\$127.00</u>
For up to <del>300</del> <u>210</u> peeler pots	\$36.00
For up to 20 tanks and floats for shedding crabs	\$9.00
For more than 20 tanks or floats for shedding crabs	\$19.00
For each crab trap or crab pound	\$8.00
<b><u>CRAB POT LICENSES</u></b>	
<u>a. From May 1, 2008, through November 30, 2008, the following crab pot licenses and fees shall be in effect:</u>	
<u>For up to 85 crab pots</u>	<u>\$48.00</u>
<u>For over 85 but not more than 127 crab pots</u>	<u>\$79.00</u>
<u>For over 127 but not more than 170 crab pots</u>	<u>\$79.00</u>
<u>For over 170 but not more than 255 crab pots</u>	<u>\$79.00</u>
<u>For over 255 but not more than 425 crab pots</u>	<u>\$127.00</u>
<u>b. After November 30, 2008, the following crab pot licenses and fees shall be in effect:</u>	
For up to 70 crab pots	\$48.00
For over 70 but not more than 105 crab pots	\$79.00
For over 105 but not more than 140 crab pots	\$79.00
For over 140 but not more than 210 crab pots	\$79.00

For over 210 but not more than 350 crab pots	\$127.00
<del>For up to 210 peeler pots</del>	<del>\$36.00</del>
<b>HORSESHOE CRAB AND LOBSTER LICENSES</b>	
For each person harvesting horseshoe crabs by hand	\$16.00
For each boat engaged in fishing for, or landing of, lobster using less than 200 pots	\$41.00
For each boat engaged in fishing for, or landing of, lobster using 200 pots or more	\$166.00
<b>CLAM HARVESTING LICENSES</b>	
For each person taking or harvesting clams by hand, rake or with ordinary tongs	\$24.00
For each single-rigged patent tong boat taking clams	\$58.00
For each double-rigged patent tong boat taking clams	\$84.00
For each boat using clam dredge (hand)	\$19.00
For each boat using clam dredge (power)	\$44.00
For each boat using hydraulic dredge to catch soft shell clams	\$83.00
For each person taking surf clams	\$124.00
<b>CONCH (WHELK) HARVESTING LICENSES</b>	
For each boat using a conch dredge	\$58.00
For each person taking channeled whelk by conch pot	\$51.00
<b>FINFISH HARVESTING LICENSES</b>	
Each pound net	\$41.00
Each stake gill net of 1,200 feet in length or under, with a fixed location	\$24.00
All other gill nets up to 600 feet	\$16.00
All other gill nets over 600 feet and up to 1,200 feet	\$24.00
Each person using a cast net or throw net or similar device	\$13.00

Each fyke net head, weir, or similar device	\$13.00
For fish trotlines	\$19.00
Each person using or operating a fish dip net	\$9.00
On each haul seine used for catching fish, under 500 yards in length	\$48.00
On each haul seine used for catching fish, from 500 yards in length to 1,000 yards in length	\$146.00
For each person using commercial hook and line	\$31.00
For each person using commercial hook and line for catching striped bass only	\$31.00
On each boat or vessel under 70 gross tons fishing with purse net, per gross ton, but not more than \$249	\$4.00
On each boat or vessel over 70 gross tons fishing with purse net, per gross ton. Provided the maximum license fee for such vessels shall not be more than \$996	\$8.00
For up to 100 fish pots or eel pots	\$19.00
For over 100 but not more than 300 fish pots or eel pots	\$24.00
For over 300 fish pots or eel pots	\$62.00
<b>2. COMMERCIAL GEAR FOR RECREATIONAL USE.</b>	
Crab trotline (300 feet maximum)	\$10.00
One crab trap or crab pound	\$6.00
One gill net up to 300 feet in length	\$9.00
Fish dip net	\$7.00
Fish cast net	\$10.00
Up to two eel pots	\$10.00
<b>3. SALTWATER RECREATIONAL FISHING LICENSE.</b>	
Individual License	\$12.50
Temporary 10-Day License	\$5.00
Recreational boat	\$38.00

# Regulations

Head Boat/Charter Boat, six or less passengers	\$190.00
Head Boat/Charter Boat, more than six passengers plus \$5.00 per person over six	\$190.00
Rental Boat, per boat, with maximum fee of \$635	\$9.00
Commercial Fishing Pier (Optional)	\$571.00
Disabled Resident Lifetime Saltwater License	\$5.00
Reissuance of Saltwater Recreational Boat License	\$5.00
Combined Sportfishing License to fish in all inland waters and tidal waters of the Commonwealth during open season	
Residents	\$24.50
Nonresidents	\$42.50
Combined Sportfishing Trip License to fish in all inland waters and tidal waters of the Commonwealth during open season, for five consecutive days	
Residents	\$10.50
Nonresidents	\$15.50
Individual Lifetime License	\$250.00
Individual Lifetime License age 45 - 50	\$120.00
Individual Lifetime License age 51 - 55	\$90.00
Individual Lifetime License age 56 - 60	\$60.00
Individual Lifetime License age 61 - 64	\$30.00

VA.R. Doc. No. R08-1305; Filed May 1, 2008, 3:51 p.m.

## Final Regulation

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

**Title of Regulation:** **4VAC20-1090. Pertaining to Licensing Requirements and License Fees (amending 4VAC20-1090-30).**

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

**Effective Date:** April 30, 2008.

**Agency Contact:** Jane Warren, Agency Regulatory Coordinator, Marine Resources Commission, 2600

Washington Ave., 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or email betty.warren@mrc.virginia.gov.

### Summary:

*The amendments (i) eliminate all fees pertaining to the crab dredge fishery and eliminate the recreational crab pot gear category; (ii) establish new crab hard pot categories after November 30, 2008; and (iii) amend the peeler pot category from 300 to 210 pots after November 30, 2008.*

### 4VAC20-1090-30. License fees.

The following listing of license fees applies to any person who purchases a license for the purposes of harvesting for commercial purposes, or fishing for recreational purposes, during any calendar year.

1. COMMERCIAL LICENSES.	
Commercial Fisherman Registration License	\$190.00
Commercial Fisherman Registration License for a person 70 years or older	\$90.00
Delayed Entry Registration.	\$190.00
Delayed Entry Registration License for a person 70 years or older	\$90.00
Seafood Landing License for each boat or vessel	\$175.00
For each Commercial Fishing Pier over or upon subaqueous beds (mandatory)	\$83.00
Seafood Buyer's License -- For each boat or motor vehicle	\$63.00
Seafood Buyer's License -- For each place of business	\$126.00
Clam Aquaculture Product Owner's Permit	\$10.00
Oyster Aquaculture Product Owner's Permit	\$10.00
Clam Aquaculture Harvester's Permit	\$5.00
Oyster Aquaculture Harvester's Permit	\$5.00
Nonresident Harvester's License	\$444.00

OYSTER HARVESTING AND SHUCKING LICENSES	
For each person taking oysters by hand, or with ordinary tongs	\$10.00
For each single-rigged patent tong boat taking oysters	\$35.00
For each double-rigged patent tong boat taking oysters	\$70.00
Oyster Dredge Public Ground	\$50.00
Oyster Hand Scrape	\$50.00
To shuck and pack oysters, for any number of gallons under 1,000	\$12.00
To shuck and pack oysters, for 1,000 gallons, up to 10,000	\$33.00
To shuck and pack oysters, for 10,000 gallons, up to 25,000	\$74.00
To shuck and pack oysters, for 25,000 gallons, up to 50,000	\$124.00
To shuck and pack oysters, for 50,000 gallons, up to 100,000	\$207.00
To shuck and pack oysters, for 100,000 gallons, up to 200,000	\$290.00
To shuck and pack oysters, for 200,000 gallons or over	\$456.00
BLUE CRAB HARVESTING AND SHEDDING LICENSES	
For each person taking or catching crabs by dip nets	\$13.00
For ordinary trotlines	\$13.00
For patent trotlines	\$51.00
<del>For each boat used for taking or catching hard crabs with dredges</del>	<del>\$96.00</del>
For each single-rigged crab-scrape boat	\$26.00
For each double-rigged crab-scrape boat	\$53.00
For up to 100 crab pots	\$48.00
For over 100 but not more than 150 crab pots	\$79.00
For over 150 but not more than 200 crab pots	\$79.00

For over 200 but not more than 300 crab pots	\$79.00
For over 300 but not more than 500 crab pots	\$127.00
For up to 300 peeler pots	\$36.00
For up to 20 tanks and floats for shedding crabs	\$9.00
For more than 20 tanks or floats for shedding crabs	\$19.00
For each crab trap or crab pound	\$8.00
<u>After November 30, 2008, the following crab pot licenses and fees shall be in effect:</u>	
<u>For up to 70 crab pots</u>	<u>\$48.00</u>
<u>For over 70 but not more than 105 crab pots</u>	<u>\$79.00</u>
<u>For over 105 but not more than 140 crab pots</u>	<u>\$79.00</u>
<u>For over 140 but not more than 210 crab pots</u>	<u>\$79.00</u>
<u>For over 210 but not more than 350 crab pots</u>	<u>\$127.00</u>
<u>For up to 210 peeler pots</u>	<u>\$36.00</u>
HORSESHOE CRAB AND LOBSTER LICENSES	
For each person harvesting horseshoe crabs by hand	\$16.00
For each boat engaged in fishing for, or landing of, lobster using less than 200 pots	\$41.00
For each boat engaged in fishing for, or landing of, lobster using 200 pots or more	\$166.00
CLAM HARVESTING LICENSES	
For each person taking or harvesting clams by hand, rake or with ordinary tongs	\$24.00
For each single-rigged patent tong boat taking clams	\$58.00
For each double-rigged patent tong boat taking clams	\$84.00
For each boat using clam dredge (hand)	\$19.00

# Regulations

For each boat using clam dredge (power)	\$44.00
For each boat using hydraulic dredge to catch soft shell clams	\$83.00
For each person taking surf clams	\$124.00
<b>CONCH (WHELK) HARVESTING LICENSES</b>	
For each boat using a conch dredge	\$58.00
For each person taking channeled whelk by conch pot	\$51.00
<b>FINFISH HARVESTING LICENSES</b>	
Each pound net	\$41.00
Each stake gill net of 1,200 feet in length or under, with a fixed location	\$24.00
All other gill nets up to 600 feet	\$16.00
All other gill nets over 600 feet and up to 1,200 feet	\$24.00
Each person using a cast net or throw net or similar device	\$13.00
Each fyke net head, weir, or similar device	\$13.00
For fish trotlines	\$19.00
Each person using or operating a fish dip net	\$9.00
On each haul seine used for catching fish, under 500 yards in length	\$48.00
On each haul seine used for catching fish, from 500 yards in length to 1,000 yards in length	\$146.00
For each person using commercial hook and line	\$31.00
For each person using commercial hook and line for catching striped bass only	\$31.00
On each boat or vessel under 70 gross tons fishing with purse net, per gross ton, but not more than \$249	\$4.00
On each boat or vessel over 70 gross tons fishing with purse net, per gross ton. Provided the	\$8.00

maximum license fee for such vessels shall not be more than \$996	
For up to 100 fish pots or eel pots	\$19.00
For over 100 but not more than 300 fish pots or eel pots	\$24.00
For over 300 fish pots or eel pots	\$62.00
<b>2. COMMERCIAL GEAR FOR RECREATIONAL USE.</b>	
Up to five crab pots	\$36.00
Crab trotline (300 feet maximum)	\$10.00
One crab trap or crab pound	\$6.00
One gill net up to 300 feet in length	\$9.00
Fish dip net	\$7.00
Fish cast net	\$10.00
Up to two eel pots	\$10.00
<b>3. SALTWATER RECREATIONAL FISHING LICENSE.</b>	
Individual License	\$12.50
Temporary 10-Day License	\$5.00
Recreational boat	\$38.00
Head Boat/Charter Boat, six or less passengers	\$190.00
Head Boat/Charter Boat, more than six passengers plus \$5.00 per person over six	\$190.00
Rental Boat, per boat, with maximum fee of \$635	\$9.00
Commercial Fishing Pier (Optional)	\$571.00
Disabled Resident Lifetime Saltwater License	\$5.00
Reissuance of Saltwater Recreational Boat License	\$5.00
<b>Combined Sportfishing License to fish in all inland waters and tidal waters of the Commonwealth during open season</b>	
Residents	\$24.50
Nonresidents	\$42.50

Combined Sportfishing Trip License to fish in all inland waters and tidal waters of the Commonwealth during open season, for five consecutive days	
Residents	\$10.50
Nonresidents	\$15.50
Individual Lifetime License	\$250.00
Individual Lifetime License age 45 - 50	\$120.00
Individual Lifetime License age 51 - 55	\$90.00
Individual Lifetime License age 56 - 60	\$60.00
Individual Lifetime License age 61 - 64	\$30.00

VA.R. Doc. No. R08-1285; Filed April 30, 2008, 3:47 p.m.

**Final Regulation**

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

**Title of Regulation:** **4VAC20-1140. Prohibition of Crab Dredging in Virginia Waters (adding 4VAC20-1140-10, 4VAC20-1140-20, 4VAC20-1140-30).**

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

**Effective Date:** April 30, 2008.

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

**Summary:**

*The chapter prohibits crab dredging in Virginia's tidal waters.*

**CHAPTER 1140  
PROHIBITION OF CRAB DREDGING IN VIRGINIA  
WATERS**

**4VAC20-1140-10. Purpose.**

This chapter promotes conservation of the blue crab resource, especially female crabs that constitute mostly all of the crab dredge harvest. The provisions in this chapter are in response to the reduced abundance of the blue crab resource and its overexploitation, especially of female crabs.

**4VAC20-1140-20. Crab dredging prohibited.**

- A. The season to use a dredge for catching crabs is closed.
- B. It shall be unlawful for any person to use a dredge for catching crabs from the waters of the Commonwealth.
- C. The following regulations that pertain to the crab dredge fishery or activities associated with crab dredging are repealed:  
  - 4VAC20-40, "Pertaining to Crab Catch Limits"
  - 4VAC20-90, "Pertaining to Dredging for Crabs"
  - 4VAC20-270-30 C, Daily Time Limits, "Pertaining to Crabbing"
  - 4VAC20-750, "Pertaining to Crab Dredge Sales"
  - 4VAC20-752-30 A, Harvest Restrictions, "Pertaining to Blue Crab Sanctuaries"

4VAC20-1090-30 1, Commercial Licenses: Blue Crab Harvesting and Shedding Licenses--For each boat used for taking or catching hard crabs with dredges. "Pertaining to Licensing Requirements and License Fees"

**4VAC20-1140-30. Penalty.**

As set forth in §28.2-903 of the Code of Virginia, any person violating any provision of this chapter shall be guilty of a Class 3 misdemeanor, and a second or subsequent violation of any provision of this chapter committed by the same person within 12 months of a prior violation is a Class 1 misdemeanor.

VA.R. Doc. No. R08-1297; Filed April 30, 2008, 4:03 p.m.



**TITLE 9. ENVIRONMENT**

**STATE WATER CONTROL BOARD**

**Proposed Regulation**

**Title of Regulation:** **9VAC25-720. Water Quality Management Planning Regulation (amending 9VAC25-720-50).**

**Statutory Authority:** §62.1-44.15 of the Code of Virginia; 33 USC §1313(e) of the Clean Water Act.

**Public Hearing Information:**

June 26, 2008 - 7 p.m. - Department of Environmental Quality, Valley Regional Office, 4411 Early Road, Harrisonburg, VA

**Public Comments:** Public comments may be submitted until 5 p.m. on July 25, 2008.



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# Regulations

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**Agency Contact:** John M. Kennedy, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4312, FAX (804) 698-4116, TTY (804) 698-4021, or email [jmkennedy@deq.virginia.gov](mailto:jmkennedy@deq.virginia.gov).

**Basis:** State mandate in §62.1-44.15(10) of the Code of Virginia is the source of legal authority identified to promulgate these amendments. The promulgating entity is the State Water Control Board.

The scope and purpose of the State Water Control Law is to protect and restore the quality of state waters, safeguard the clean waters from pollution, prevent and reduce pollution, and promote water conservation. The State Water Control Law (§62.1-44.15(10) of the Code of Virginia) mandates the board to adopt such regulations as it deems necessary to enforce the general water quality management program of the board in all or part of the Commonwealth. In addition, §62.1-44.15(14) requires the board to establish requirements for the treatment of sewage, industrial wastes and other wastes that are consistent with the purposes of this chapter. Setting the specific effluent limits needed to meet the water quality goals is within the discretion of the board.

The correlation between the proposed regulatory action and the legal authority identified above is that the amendments being considered are modifications of the current requirements for the treatment of wastewater that will contribute to the protection of Virginia's water quality.

**Purpose:** Necessary and appropriate nutrient allocations are essential to protect the health, safety and welfare of citizens by ensuring protection of water quality in the Chesapeake Bay. The purpose of the regulatory action is to amend total nitrogen (TN) and total phosphorus (TP) waste load allocations (WLAs) in 9VAC25-720 for facilities owned by Frederick-Winchester Service Authority and Merck for the following reasons:

1. The FWSA-Opequon Water Reclamation Facility's current nutrient allocations are based on a permitted design flow of 8.4 MGD. FWSA's October 2006 petition claimed the existing infrastructure for biological treatment is more appropriately classified as 12.6 MGD, meriting higher allocations. The VPDES permit reissued on 7/7/06 stated the design flow of the existing facility is 8.4 MGD. At a 2/9/07 meeting with DEQ, FWSA proposed a revision to their original request. They believe that certainty, now, not later, is so critical that FWSA is willing to compromise on an amendment using a lower TN concentration of 3.0 mg/L, rather than the standard 4.0 mg/L for municipal treatment plants in the Shenandoah Basin, to calculate the revised TN allocation as follows:

a. Current TN WLA (based on 8.4 MGD; concentration of 4.0 mg/L) = 102,281 lbs/yr

b. Requested amendment (based on 12.6 MGD; concentration of 3.0 mg/L) = 115,067 lbs/yr (a 12,786 lb/yr increase)

Since the current TP allocation is already based on state-of-the-art treatment (0.30 mg/L annual average), FWSA requests a revised TP allocation as follows:

a. Current TP WLA (based on 8.4 MGD) = 7,675 lbs/yr

b. Requested amendment (based on 12.6 MGD) = 11,512 lbs/yr (a 3,837 lb/yr increase)

To implement this approach, FWSA also proposed including footnoted language in 9VAC25-720, similar to footnotes for several other facilities, to make the higher allocation contingent upon receiving a certificate to operate for the expanded plant by December 31, 2010.

2. Merck asserts that the current WLAs are not technically feasible to achieve. A January 2007 petition asked for increased WLAs based on discharge levels that Merck claims are technically feasible to achieve with biological nutrient removal technology. Based on a design flow of 1.2 million gallons per day (MGD) for internal outfall 101 (process wastewater only), the facility's current nutrient allocations are 14,619 lbs/yr TN (based on an annual average concentration of 4.0 mg/L) and 1,096 lbs/yr TP (based on an annual average concentration of 0.30 mg/L). Merck requested the WLAs be revised to 43,835 lb/yr (29,216 lb/yr increase; based on an annual average concentration of 12.0 mg/L) and 4,384 lb/year (3,288 lb/yr increase; based on an annual average concentration of 1.20 mg/L).

**Substance:** The amendments modify the nutrient waste load allocations in the Water Quality Management Planning Regulation, 9VAC25-720-50 C (Potomac, Shenandoah River Basin) for total nitrogen (TN) and total phosphorus (TP) for two facilities:

1. Frederick-Winchester S.A.-Opequon WRF (VPDES #VA0065552):

a. Increase the TN waste load allocation from 102,331 to 115,122 pounds per year, and the TP waste load allocation from 7,675 to 11,506 pounds per year.

b. Add a footnote to WLA table: "(10) Opequon WRF – waste load allocations (WLAs) based on a design flow of 12.6 MGD. If plant is not certified to operate at 12.6 MGD design flow by 12/31/10, the WLAs will decrease to TN = 102,331 lbs/yr; TP = 7,675 lbs/yr, based on a design flow of 8.4 MGD."

2. Merck WWTP (VPDES #VA0002178):

a. Increase the TN waste load allocation from 14,619 to 43,835 pounds per year, and the TP waste load allocation from 1,096 to 4,384 pounds per year.

b. Add a footnote to WLA table: "(11) Merck-Stonewall – waste load allocations will be reviewed and possibly modified based on "full-scale" results showing the treatment capability of the 4-stage Bardenpho technology at this facility."

3. Increase the Potomac-Shenandoah total basin TN waste load allocation from 5,156,164 to 5,198,171 lbs/yr, and the total basin TP waste load allocation from 246,634 to 253,753 lbs/yr.

**Issues:** The public will benefit, as the net effect of these amendments (part of the overall point source nutrient control effort) is reduced amounts of discharged nitrogen and phosphorus in the Chesapeake Bay watershed, compared to current nutrient loads reaching tidal waters. This, in turn, will aid in water quality restoration in the bay and its tributary rivers, and assist in meeting the water quality standards necessary for protection of the living resources that inhabit the bay. Merck will benefit, being able to achieve compliance with technically feasible nutrient discharge limitations. The Frederick-Winchester Service Authority will benefit, being able to fully utilize the investment made in nutrient removal capability under a prior upgrade project, and making the basis for the facility's nutrient waste load allocations consistent with the expanded design flow of the facility, expected to be certified for operation by December 31, 2010. There is no disadvantage to the agency or the Commonwealth that will result from the adoption of these amendments.

A pertinent issue of interest to the public, particularly local citizen conservation groups, is that the total delivered nitrogen load (from point and nonpoint sources) under the Shenandoah-Potomac's tributary strategy is already estimated to exceed the state's allocation commitment by about 300,000 pounds per year, and any further increase to individual facility allocations will add to this surplus unless an offset is identified. The baywide total maximum daily load (TMDL) process beginning next year will use an updated, enhanced modeling framework to test standards compliance under the expected nutrient loadings, with the point source loads being the approved WLAs. Nutrient allocations to be established in the baywide TMDL (scheduled for development and EPA approval by 2011) must achieve water quality standards, and include loadings for both point and nonpoint sources.

**Requirements More Restrictive than Federal:** Notification was sent February 18, 2005, to the appropriate General Assembly Committees (in accordance with §62.1-44.15(10) of the Code of Virginia) describing provisions of the final regulations adopted by the board in late 2005, which may be more restrictive than applicable federal requirements along with the reason why those provisions were needed. Because EPA has no specific regulation that establishes nutrient effluent limits in permits, some might view the proposals as more stringent than federal requirements and for this reason the General Assembly was notified during the original

rulemaking to ensure the intent of the code was met. The proposed amendments have the effect of increasing the nutrient waste load allocations for the Merck and FWSA-Opequon facilities.

**Localities Particularly Affected:** Frederick County and the City of Winchester are the only localities particularly affected by the proposed amendments. The Frederick-Winchester Service Authority owns and operates the Opequon facility, serving sewer customers in the county and city. Merck is a privately owned industrial facility.

**Public Participation:** In addition to any other comments, the board is seeking comments on the costs and benefits of the proposal, the potential impacts of this regulatory proposal and any impacts of the regulation on farm and forest land preservation. Also, the board is seeking information on impacts on small businesses as defined in §2.2-4007.1 of the Code of Virginia. Information may include (i) projected reporting, recordkeeping and other administrative costs, (ii) probable effect of the regulation on affected small businesses, and (iii) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so at the public hearing or by mail, email or fax to John Kennedy, DEQ Chesapeake Bay Program, P.O. Box 1105, Richmond VA 23218; phone (804) 698-4312; FAX (804) 698-4116; email [jmkenedy@deq.virginia.gov](mailto:jmkenedy@deq.virginia.gov). Comments may also be submitted through the public forum feature of the Virginia Regulatory Town Hall website at [www.townhall.virginia.gov](http://www.townhall.virginia.gov). Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 5 p.m. on the last day of the public comment period.

A public hearing will be held and notice of the public hearing will appear on the Virginia Regulatory Town Hall website ([www.townhall.virginia.gov](http://www.townhall.virginia.gov)) and in the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

**The 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 nutrient waste load allocations in the Water Quality Management Planning Regulation to provide increases for total nitrogen and total phosphorous for the Frederick-Winchester Service Authority-Opequon Water Reclamation Facility and the Merck Wastewater Treatment Plant.

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

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# Regulations

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## Estimated Economic Impact

### Background

In late 2005, the State Water Control Board adopted amendments to the Water Quality Management Planning Regulation (9VAC25-720) that added nutrient waste load allocations (WLAs) for significant dischargers in the Chesapeake Bay watershed. (A WLA is a type of water quality-based effluent limitation. It is the portion of a receiving water's loading or assimilative capacity allocated to one of its existing or future point source discharges.) WLAs were determined by the Department of Environmental Quality (Department) based on each discharger's full design capacity and annual average nutrient concentrations associated with nutrient reduction treatment. According to the Department, the intent of the regulation was to limit nutrient discharge but, in the process, ensure that each facility *could* meet its assigned discharge limit through control measures taken at their own facility, without needing to use the Nutrient Credit Exchange program. The facilities were granted a compliance period until January 1, 2011, after which each facility must be in compliance with their assigned waste load allocation.

### Frederick-Winchester Service Authority (FWSA)-Opequon Water Reclamation Facility (WRF)

Under current regulation, the Opequon WRF has waste load allocations (WLAs) of 102,336 lbs/year of total nitrogen (TN) and 7,675 lbs/year of total phosphorous (TP). Under the proposed amendment, the Opequon WRF would have a TN WLA of 115,122 lbs/year and a TP WLA of 11,506 lbs/year. In sum, this amendment will increase the allowable TN discharge of the Opequon WRF by 12,786 lbs/year and allowable TP discharge by 3,831 lbs/year. The amendment also includes language stating that the (amended) WLAs for Opequon WRF are based on a design flow of 12.6 million gallons per day (MGD) and if the plant is not certified to operate at 12.6 MGD design flow by December 31, 2010, then the discharge limit will revert to the current WLAs of 102,331 lbs/year TN and 7,675 lbs/year TP that are based on a design flow of 8.4 MGD.

The nutrient allocations for the Opequon WRF, like those for other wastewater treatment facilities, are based on the design capacity of the plant and annual average nutrient concentrations associated with nutrient reduction treatment. The current nutrient allocations are based on a permitted design flow of 8.4 MGD and an annual average TN concentration of 4.0 mg/L.<sup>1</sup> In October 2006, FWSA wrote a petition claiming that the existing infrastructure for biological treatment is more appropriately classified as 12.6 MGD, meriting higher waste load allocations. The Opequon WRF had previously operated under a discharge permit containing a dry water flow rating of 8.4 MGD, but in the winter or during peak flows, the facility treated almost 16 MGD. The discharge permit was reissued on July 7, 2006, stating the design flow of the existing facility as 8.4 MGD. Although it

is true that certain units in the facility could handle 12.6 MGD, unless all of the units can handle that amount, the Department will not certify the facility for 12.6 MGD design flow. At a meeting in February 2007, FWSA proposed a revision to their original request; they would hydraulically expand all bottlenecks and be certified to operate at 12.6 MGD by December 31, 2010. FWSA felt so strongly about the higher design flow that they were willing to commit to a lower total nitrogen concentration of 3.0 mg/L, rather than the standard of 4.0 mg/L for municipal treatment plants in the Shenandoah Basin. (The current total phosphorous allocation is already based on state-of-the-art treatment at 0.30 mg/L annual average.)

### Merck Wastewater Treatment Plant (WWTP)

Under current regulation, the Merck WWTP has WLAs of 14,619 lbs/year for TN and 1,096 lbs/year for TP. Under the proposed amendment, the Merck WWTP would have a TN WLA of 43,835 lbs/year and a TP WLA of 4,384 lbs/year. In sum, this amendment will increase the allowable TN discharge of the Merck WWTP by 29,216 lbs/year and allowable TP discharge by 3,288 lbs/year. The amendment also includes language stating that the (amended) WLAs will be reviewed and possibly modified based on "full-scale" results showing the treatment capability of the four-stage Bardenpho technology being installed at this facility.

The discharge control for companies like Merck are usually set not on design flow capacity, but on production values. However, because Merck does operate a biological treatment process, the Department initially set the discharge levels based on a design flow of 1.2 MGD and an annual average concentration of 4.0 mg/L of nitrogen and 3.0 mg/L of phosphorous. In a January 2007 petition, Merck stated that the WLAs are not technically feasible to achieve with available technology and requested that the WLAs be revised. Based on the results of a pilot study conducted by Merck, the Department felt it was apparent that available technology could not treat Merck's unique wastewater to the same concentration levels applied to the municipal plants in the Shenandoah basin. (One exception was that their total phosphorous removal pilot study did not consider the addition of tertiary filtration—another available treatment step—that Merck said they would evaluate in the full-scale study mentioned in the amendment and discussed below.)

Merck's process wastewater has an organic content that is about ten times higher than domestic wastewater<sup>2</sup> and the TN and TP concentrations are 2-3 times higher than a municipal plant would receive for treatment. If you consider the equivalent nutrient reduction treatment levels required at the municipal plants, which is about 85 percent removal, the removal rates of Merck's proposed effluent levels are comparable. However, although Merck made progress in 2007 on a pilot study to test nutrient removal capabilities, their technical staff felt that the study period was too short

and did not consider all of the possible variables to make a firm decision on what the feasible nutrient effluent levels should be. This is why the proposed amendment includes a footnote that Merck's WLAs be reviewed and possibly modified based on the full-scale results showing the treatment capability of the nutrient removal system being installed at the facility. The three-phase installation project is scheduled to be completed by the third quarter of 2010.

### Costs and Benefits

The costs of both of these amendments are in higher levels of nitrogen and phosphorous discharge into the Potomac/Shenandoah River Basin than would be discharged under the current regulation. (It should be noted, however, that even with these proposed amendments, the discharged nutrient loads from the affected facilities will be lower than either current discharges or future loads at full design capacity.) Too much phosphorous or nitrogen can cause excessive growth of algae and rooted aquatic plants, as well as increased turbidity. Phosphorus is usually the primary concern in fresh water areas, but high nitrogen levels can also be a problem; for example, high nitrate levels can impact drinking water sources. The total delivered nitrogen load (from point and nonpoint sources) under the Shenandoah-Potomac's Tributary Strategy is already estimated to exceed the State's allocation commitment by about 300,000 pounds per year, and any further increase to individual facility allocations will add to this surplus unless an offset is identified. The Bay-wide Total Maximum Daily Load (TMDL) process beginning next year will use an updated, enhanced modeling framework to test compliance with water quality standards under the expected nutrient loadings (the point source loads will be the approved WLAs). Nutrient allocations to be established in the Bay-wide TMDL (scheduled for development and EPA approval by 2011) must achieve water quality standards and include loadings for point and non-point sources. In other words, the Department is concerned about the nutrient loading in the Potomac/Shenandoah River Basin and is taking steps to address that concern.

There are a number of benefits to these amendments. First, the Department feels that if they had the information in 2005 that they have now about the Opequon WRF and the Merck WWTP, these requested WLAs would likely have been approved. (And, of course, should Opequon WRF not complete its upgrades as planned or should the final Merck study show that the lower discharge limits are feasible, then the amendments allow the Board to revert to the current WLAs.) The Department feels that the proposed amendments offer both regulatory consistency across facilities and feasibility for the regulated community. The Department believes that if regulations are fair and feasible, compliance will be considerably better. If it is infeasible for Opequon WRF and Merck WWTP to meet the discharge limits in the

current regulation, then changing the limits will improve compliance. This is particularly true for Opequon WRF, which does not have the option of moving out of Virginia.

If the discharge limits are infeasible and the Merck facility is forced to be non-compliant, then it is possible that Merck will choose to set up a plant elsewhere. A plant closing could cost Virginians jobs and negatively affect economic activity in the region. The long-run economic benefit of this amendment, then, is in creating discharge limits that are environmentally protective, yet reasonable for facilities to achieve. This will help ensure the long-run economic and environmental viability of Virginia's communities.

If non-compliance or moving are not options for Merck or Opequon WRF, their other option is to buy nutrient credits using the Nutrient Credit Exchange Program. (There is no system, technologically, that Merck can install to meet the current total nitrogen and total phosphorous allocations at its design flow, and Opequon is agreeing to install state-of-the-art treatment in a larger plant, so if the amendment is not accepted, both facilities would have to rely on the Nutrient Credit Exchange program.) Since the nutrient credits run about \$2/lb for nitrogen and \$4/lb for phosphorous, Merck would have to spend about \$58,432<sup>3</sup> on nitrogen credits and \$13,152<sup>4</sup> on phosphorous credits per year, for a total annual cost of \$71,584. FWSA would have to spend about \$25,572<sup>5</sup> on nitrogen credits and \$15,324<sup>6</sup> on phosphorous credits per year, for a total annual cost of \$40,896. According to the Department, however, the intent behind this regulation was to assign waste load allocations that a facility can meet without relying on the Nutrient Credit Exchange program. Then, if the facility chooses to expand and discharge more, they will have to rely on the Exchange program.

In sum, it will benefit Virginians to have discharge limits that are feasible (and fair). It is also important, however, to maintain the integrity of the Shenandoah River Basin and the tidal waters of the Bay and its tributaries. Although the costs and benefits are difficult to quantify, given the information that the Department has received about the feasibility of the current discharge limits, given its intent with the regulation, and given the TMDL process that will begin in the spring to ensure that the water body meets state and federal environmental standards, we can conclude that the benefits of these regulatory amendments outweigh the costs.

**Businesses and Entities Affected.** The businesses and entities that are affected most directly are Merck—a large pharmaceutical producer and industrial discharger—and the Frederick-Winchester Service Authority (FWSA). Merck plans to spend about \$18 million to install a nutrient reduction system and about \$1 million in additional annual operation and maintenance costs for their wastewater treatment facility due to the installation of nutrient reduction technology.<sup>7</sup> On the one hand, the proposed amendment should benefit Merck, since their discharge limits are being increased. On the other

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# Regulations

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hand, if the existing waste load allocations are infeasible and the alternative to this amendment is non-compliance or a move of the facility out of state, it is difficult to assess the costs and benefits of this amendment to Merck. The construction project for upgrading and expanding the Opequon facility to meet the amended nutrient WLAs has had an apparent low bid of \$50.7 million. With state cost share, the localities of Frederick County and the City of Winchester will have to pay \$39.3 million for the upgrade.<sup>8</sup> Again, if the alternative to the amendment is non-compliance it is difficult to assess the costs and benefits arising from this specific amendment to FWSA.

In addition, all entities in the vicinity of these facilities will be affected by these amendments, both in terms of potential economic losses should the Merck facility leave the area, or in the economic fallout for business, tourism, and quality of life, should high nutrient concentration in the Potomac, Shenandoah River Basin not be addressed.

**Localities Particularly Affected.** Frederick County and the City of Winchester are particularly affected by this amendment. Secondly, all Virginia counties and localities surrounding the Potomac-Shenandoah River Basin could be affected by this amendment, including Frederick, Rockingham, Shenandoah, and parts of Augusta, Page, and Warren Counties.

**Projected Impact on Employment.** Should this amendment avert the loss of jobs from the Merck facility, it would have a positive (or non-negative) impact on employment. In addition, should the amendment increase the likelihood of compliance with the regulation, it could improve water quality in the region, thereby potentially boosting recreational and tourist activities, fishing, and/or other economic activities that are positively affected by better water quality. On the other hand, should the amendment negatively impact water quality by increasing waste load allocations, the amendment could have a negative impact on employment in the region. The net impact is unknown.

**Effects on the Use and Value of Private Property.** The increase in discharge limits for the Merck facility will increase the value of that facility, thereby having a positive effect on the value of private property.

This amendment could increase the value of private property in the region if it averts the loss of jobs and if it increases regulatory compliance, thereby improving water quality. However, if the amendment results in a deterioration of water quality from what it would have been under the current regulation, then the effect on the value of private property could be negative.

**Small Businesses: Costs and Other Effects.** No small businesses are directly affected by these amendments. However, the amendment could help small business in the region if it increases Merck's regulatory compliance, thereby

improving water quality and helping industry that relies on the water, such as fishing or tourism. However, if the amendment results in a deterioration of water quality from what it would have been under the current regulation, then it could have a negative effect on small business. The net impact is unknown.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** No alternative methods would reduce cost while still achieving the desired policy goals.

**Real Estate Development Costs.** This amendment could have an effect on real estate development costs by affecting the price of the land in the area surrounding the Shenandoah River Basin. If nutrient levels are higher than they would have been, the price of the land might be reduced due to the quality of the water for recreation or drinking. On the other hand, if this amendment keeps the Merck facility—and the economic activity that accompanies it—in the area, then the amendment might avert a future drop in the price of land. The net impact of the amendment is difficult to quantify.

**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.

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<sup>1</sup> The equation is  $WLA = \text{Design Flow} \times \text{concentration} \times 8.344 \times 365$ , where the design flow is measured in MGD, concentration is measured in mg/L, 8.344 is the conversion for mg/L into lbs/day, and 365 is the number of days in a year. So, the current nitrogen WLA for Opequon WRF is:  $8.4 \times 4.0 \times 8.344 \times 365 = 102,331$  lbs/year

<sup>2</sup> Domestic wastewater is wastewater from residential connections to the sewer system and is usually sent to a publicly owned treatment works to be treated.

<sup>3</sup> Calculation: 29,216\*\$2

<sup>4</sup> Calculation: 3,288\*\$4

<sup>5</sup> Calculation: 12,786\*\$2

<sup>6</sup> Calculation: 3,831\*\$4

<sup>7</sup> Source: Department of Environmental Quality

<sup>8</sup> Source: Department of Environmental Quality

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Department has

reviewed the economic impact analysis prepared by the Department of Planning and Budget and has no comment.

Summary:

*The proposed amendments provide increases for total nitrogen (TN) and total phosphorus (TP) for two facilities:*

1. *Frederick-Winchester S.A.-Opequon WRF (VPDES #VA0065552).*

2. *Merck WWTP (VPDES #VA0002178).*

**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
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

# Regulations

11.	Pleasant Run	TMDL Development for Mill Creek and Pleasant Run	Rockingham	B27R	Phosphorus	0.00	LB/YR
12.	Linville Creek	Total Maximum 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
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	Augusta	B14R	Sediment	145	T/YR

## Regulations

		Impaired Streams in the Middle River and Upper South River Watersheds, Augusta County, VA					
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
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	Fauquier	A19R	Phosphorus	0.038	T/YR



# Regulations

Run, Virginia							
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
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

## Regulations

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
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
52.	Potomac Creek	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and	Stafford	A29E	PCBs	0.556	G/YR

# Regulations

		their tidal tributaries					
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

## 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 <sub>5</sub>	11.4	KG/D
VAV-B08R	VA0065552	Opequon Water Reclamation Facility	001	Opequon Creek	32.66	BOD <sub>5</sub> , JUN-NOV	207	KG/D
		AKA Winchester - Frederick Regional				CBOD <sub>5</sub> , DEC-MAY	1514	KG/D
VAV-B14R	VA0025291	Fishersville Regional STP	001	Christians Creek	12.36	BOD <sub>5</sub>	182	KG/D
VAV-B23R	VA0060640	North River WWTF	001	North River	15.01	CBOD <sub>5</sub> , JAN-MAY	700	KG/D
	7.23.04	AKA Harrisonburg - Rockingham Reg. Sewer Auth.				CBOD <sub>5</sub> , 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 <sub>5</sub>	272	KG/D
VAV-	VA0025151	Waynesboro STP	001	South River	23.54	CBOD <sub>5</sub>	227	KG/D

## Regulations

B32R						CBOD <sub>5</sub> , JUN-OCT	113.6	KG/D
VAV-B32R	VA0028037	Skyline Swannanoa STP	001	South River UT	2.96	BOD <sub>5</sub>	8.5	KG/D
VAV-B35R	VA0024732	Massanutten Public Service STP	001	Quail Run	5.07	BOD <sub>5</sub>	75.7	KG/D
VAV-B37R	VA0002178	Merck & Company	001	S.F. Shenandoah River	88.09	BOD <sub>5</sub> AMMONIA, AS N	1570 645.9	KG/D KG/D
VAV-B49R	VA0028380	Stoney Creek Sanitary District STP	001	Stoney Creek	19.87	BOD <sub>5</sub> , JUN-NOV	29.5	KG/D
VAV-B53R	VA0020982	Middletown STP	001	Meadow Brook	2.19	CBOD <sub>5</sub>	24.0	KG/D
VAV-B58R	VA0020532	Berryville STP	001	Shenandoah River	24.23	CBOD <sub>5</sub>	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) (11)	VA0002178	<del>14,619</del> 43,835	<del>1,096</del> 4,384
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

# Regulations

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 (10)	VA0065552	<del>102,336</del> 115,122	<del>7,675</del> 11,506
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:		<del>5,156,169</del> 5,198,171	<del>246,635</del> 253,753

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, 2010, 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 = 914lbs/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.

(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, 2010, 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) Opequon WRF – waste load allocations (WLAs) based on a design flow of 12.6 MGD. If the plant is not certified to operate at 12.6 MDG design flow by December 31, 2010, the WLAs will decrease to TN = 102,331 lbs/yr; TP = 7,675 lbs/yr, based on a design flow of 8.4 MGD.

(11) Merck-Stonewall – waste load allocations will be reviewed and possibly modified based on "full-scale" results showing the treatment capability of the 4-stage Bardenpho technology at this facility.

VA.R. Doc. No. R07-128; Filed May 7, 2008, 11:24 a.m.

**TITLE 12. HEALTH**

**STATE BOARD OF HEALTH**

**Final Regulation**

**Title of Regulation:** 12VAC5-90. Regulations for Disease Reporting and Control (adding 12VAC5-90-370).

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

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

**Agency Contact:** Diane Woolard, PhD, Director, Disease Surveillance, Department of Health, 109 Governor St., Richmond, VA 23219, telephone 804-864-8124, or email diane.woolard@vdh.virginia.gov.

**Summary:**

*The amendment identifies the process acute care hospitals shall use in reporting healthcare-associated infections to the Centers for Disease Control and Prevention and the Board of Health. The type of infection and the methods and timing of reporting are defined.*

**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.

**Part XIII**

**Report of Healthcare-Associated Infections**

**12VAC5-90-370. Reporting of healthcare-associated infections.**

**A. Definitions.** The following words and terms when used in this part shall have the following meanings unless the context clearly indicates otherwise:

**"Acute care hospital"** means a hospital as defined in §32.1-123 of the Code of Virginia that provides medical treatment for patients having an acute illness or injury or recovering from surgery.

**"Adult"** means a person 18 years of age or more.

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# Regulations

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"Central line-associated bloodstream infection" means a primary bloodstream infection identified by laboratory tests, with or without clinical signs or symptoms, in a patient with [ a ] central line [ infusion ] device, and meeting the current Centers for Disease Control and Prevention (CDC) surveillance definition for laboratory-confirmed primary bloodstream infection.

"Central line device" means a vascular infusion device that terminates at or close to the heart or in one of the greater vessels. The following are considered great vessels for the purpose of reporting central line infections and counting central line days: aorta, pulmonary artery, superior vena cava, inferior vena cava, brachiocephalic veins, internal jugular veins, subclavian veins, external iliac veins, and common femoral veins.

"Healthcare-associated infection" (or nosocomial infection) means a localized or systemic condition resulting from an adverse reaction to the presence of an infectious agent(s) or its toxin(s) that (i) occurs in a patient in a healthcare setting (e.g., a hospital or outpatient clinic), (ii) was not found to be present or incubating at the time of admission unless the infection was related to a previous admission to the same setting, and (iii) if the setting is a hospital, meets the criteria for a specific infection site as defined by CDC.

"National Healthcare Safety Network" (NHSN) means a surveillance system created by the CDC for accumulating, exchanging and integrating relevant information on infectious adverse events associated with healthcare delivery.

## B. Reportable infections and method and timing of reporting.

1. Acute care hospitals shall collect data on the following healthcare-associated infection in the specified patient population: central line-associated bloodstream infections in adult intensive care units, including the number of central-line days in each population at risk, expressed per 1,000 catheter-days.

2. All acute care hospitals with adult intensive care units shall (i) participate in CDC's National Healthcare [ and ] Safety Network by July 1, 2008, (ii) submit data on the above named infection to the NHSN according to CDC protocols and ensure that all data from July 1, 2008, to December 31, 2008, are entered into the NHSN by January 31, 2009, and (iii) enter data quarterly thereafter according to a schedule established by the department.

3. All acute care hospitals reporting the information noted above shall authorize the department to have access to hospital-specific data contained in the NHSN database.

C. Liability protection and data release. Any person making such report as authorized herein shall be immune from liability as provided by §32.1-38 of the Code of Virginia. Infection rate data may be released to the public by the

department upon request. Data shall be aggregated to ensure that no individual patient may be identified.

VA.R. Doc. No. R07-116; Filed April 30, 2008, 10:22 a.m.

## **Final Regulation**

**REGISTRAR'S NOTICE:** Item 291(f) of Chapter 847 of the 2007 Acts of Assembly exempts the Special Supplemental Nutrition Program for Women, Infants, and Children from the Administrative Process Act.

**Title of Regulation: 12VAC5-195. Virginia WIC Program (adding 12VAC5-195-10 through 12VAC5-195-670).**

**Statutory Authority:** §32.1-12 of the Code of Virginia; 7 CFR Part 246.

**Effective Date:** May 26, 2008.

**Agency Contact:** Anne Massey, Policy Analyst, Department of Health, 109 Governor St., Richmond, VA 23219, telephone (804) 864-7800 ext: 7797, or email [anne.massey@vdh.virginia.gov](mailto:anne.massey@vdh.virginia.gov).

### Summary:

*This regulatory action addresses all facets of Virginia WIC Program operations, from the intake and certification process to food delivery systems to program abuse and sanctions by both participants and retail stores. Significant emphasis is placed on procedures to be used by applicants, participants and stores to appeal actions of the state agency that may adversely impact upon them. Sections of the regulations that pertain to program participants and applicants include detail on eligibility requirements, proof of identity and residency, proxy and caretaker, certification, nutritional risk priority system, food instruments, alternative office hours, sanctions, claims against participants, interruption of benefits, conflict of interest, and emergency situations. Sections of the regulations that pertain to retail stores and applicants participating in the Virginia WIC Program include, but are not limited to, authorization requirements, adequate participant access, competitive pricing and price verification, selection decisions, training and education, performance and administrative monitoring, sanctions and administrative actions, and fines and disqualification.*

## **CHAPTER 195 VIRGINIA WIC PROGRAM**

### **Part I General Provisions**

#### **12VAC5-195-10. General authority.**

The Special Supplemental Nutrition Program for Women, Infants and Children (WIC) was authorized as part of the Child Nutrition Act of 1966, Section 17 (42 USC §1786), to provide supplemental foods and nutrition education to

pregnant, postpartum and breastfeeding women, infants and young children from families with inadequate income. The Virginia WIC Program is regulated by federal regulations published in the Code of Federal Regulations, 7 CFR Part 246, Special Supplemental Nutrition Program for Women, Infants and Children. The state regulations shall serve as a supplement to 7 CFR Part 246.

The WIC Farmers' Market Nutrition Program was established in 1992 as P. L. 102-314 to provide resources in the form of fresh, nutritious, unprepared foods (fruits, vegetables and cut herbs) from farmers' markets to WIC participants and to expand the awareness, use of and sales at farmers' markets. The Virginia WIC Farmers' Market Nutrition Program is regulated by federal regulations published in the Code of Federal Regulations, 7 CFR Part 248.

## **12VAC5-195-20. Purpose.**

A. The Virginia WIC Program serves women who are breastfeeding, pregnant or have just given birth; infants less than one year old; and children less than five years old. WIC participants must be Virginia residents and meet the financial and nutritional requirements.

B. The Virginia WIC Program provides special supplemental foods to eligible participants through a retailer delivery system (7 CFR 246.12). Food benefits are issued by local agencies to eligible participants using food instruments (7 CFR 246.10). Participants redeem their food instruments at any authorized retailer or entity. The state agency enters into an agreement with authorized stores (7 CFR 246.12(h)). This agreement identifies the obligations, rights and responsibilities of both the authorized retail store and the state agency. Retailers deposit these food instruments into their bank account. The state agency pays authorized retailers a reasonable dollar amount for the foods purchased, as listed on the deposited food instruments (7 CFR 246.12(h)(2)(3)).

C. The state agency shall promulgate policies, guidelines, manuals and training resources to facilitate operations of the Virginia WIC Program in accordance with its contractual agreement with Food Nutrition Service (FNS) (7 CFR 246.3); the guidelines and instructions issued by FNS in policy letters; and management evaluations and audits and the WIC Program State Plan of Operations.

## **12VAC5-195-30. Definitions.**

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

"Administrative appeal" means the procedure through which applicants and/or retail stores may appeal a state agency's administrative action, including program disqualification, denied authorization and other termination reasons.

"Annualized income" means income amount covering a 12-month period used to determine financial eligibility for the WIC Program.

"Applicant" or "retail store applicant" means a sole proprietorship, a partnership, cooperative association or a corporation that is not currently authorized to accept WIC food instruments.

"Approved food list" means a brochure or method used by the WIC Program to communicate to eligible participants, retailers, local agencies and other interested parties which authorized supplemental foods may be purchased using WIC food instruments. The approved food list is a guide and must be used with the printed food instrument, which may identify specific brands or additional products not stated on the approved food list that may be purchased by participants.

"Authorization" means the process by which the state agency assesses, selects and enters into an agreement with stores that apply or subsequently reapply to be authorized.

"Automated clearinghouse" or "ACH credit" or "direct deposit" means a method used to reimburse stores for certain types of processed food instruments (i.e., "Over FI Max."). A credit is made to the store's designated bank account and routing number using the automated clearinghouse process.

"Business economic areas" or "BEAs" mean a categorization method established by the United States Department of Commerce – Bureau of Economic Analysis and used by the state agency to identify geographically similar trade and economic communities. Some more populated BEAs are further broken down into smaller subsets or peer groupings, based upon number of unique participants served by authorized stores.

"Caretaker" means a person designated by a parent or legal guardian to certify an infant/child, obtain and redeem food instruments and attend nutrition education. A caretaker may be any person who has detailed knowledge of the nutritional needs and eating habits of the infant/child. A parent or legal guardian may designate one caretaker per family ID number.

"Caseload" means the number of WIC participants assigned to a local agency by the state agency.

"Cash value food benefits" means a special food instrument that has been issued to eligible participants for a specific dollar amount that must be used to purchase fruits and vegetables. Unless stated otherwise, all references to food instruments include cash value food benefits, as well as food and formula food instruments.

"Enrollment" means the process all applicants and authorized stores must complete in order for a store to be eligible to accept WIC food instruments.



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# Regulations

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"Food instrument type" or "FI type" means a grouping of certain foods and formula together that is used for reimbursement purposes in a paper-based system.

"Image replacement document" or "IRD" means a legal copy of a deposited food instrument that is created and transmitted by a store's depository bank to the WIC Program's backend processor for payment consideration.

"Informal settlement meeting" means a meeting held with an authorized store or applicant representative and the state WIC director whose purpose is to review and clarify outstanding WIC Program administrative issues.

"Leave and earnings statement" or "LES" means the earnings statement for a member of the uniformed service.

"Legal guardian" means an individual who has been appointed by a court of law or the Department of Social Services, or other legal means, to have primary, physical custody of a minor. A legal guardian shall be authorized to provide eligibility information for an applicant, consent to medical treatment of the applicant, and shall be held legally bound if sanctions are imposed.

"Low volume retailer" means authorized stores that service on average a fewer number of participants than the performance standard, as established by the state agency.

"Peer group" means a classification of applicants and authorized stores into groups based on common characteristics or criteria that affect food prices for the purpose of applying appropriate competitive price criteria to stores at authorization and limiting payments for foods at competitive pricing levels.

"Postpayment review" means an analysis of paid food instruments redeemed by authorized retailers in order to determine if pricing and redemption discrepancies exist. Based upon this analysis, a vendor claim against the retail store may be established by the state agency.

"Prepayment edit" means a price adjustment made to the reimbursement level given to retailers. This editing process can be either automated or a manual screening of deposited food instruments done by an independent banking contractor, prior to releasing payment to authorized retail stores.

"Retailer" means a vendor, retail store, commissary or entity authorized by the Virginia WIC Program to accept WIC food instruments for the various types of foods listed on food instruments.

"Retailer agreement" means a written agreement that establishes the respective roles and responsibilities of the program and authorized retailers in complying with federal and state requirements.

"Sanctions" mean a penalty imposed by the state agency upon an authorized retailer for a specific violation outlined in the vendor manual or retailer agreement.

"State agency" means the Division of WIC and Community Nutrition Services that has the administrative responsibility for managing the Virginia WIC Program.

"Termination" means the act of ending a retail store's WIC Program authorization for administrative reasons that include but are not limited to a change of ownership, closed store, voluntary withdrawal, and noncompetitive prices.

"Unique participant" means the number of unduplicated individuals who have redeemed one or more food instruments at a retail store during a specific period.

"United States Department of Agriculture" or "USDA" means the federal agency that provides funding for the WIC Program on behalf of Congress.

"Vendor claim" means the state agency has determined an authorized store committed a violation of the retailer agreement that affects the payment status of one or several food instruments. The state agency may delay payment or establish a claim in the amount of the full purchase price of each food instrument that contained the overcharge or other error. The state agency will bill and recoup the funds paid against these improperly redeemed food instruments.

"Vendor manual" means a series of written documents that communicate administrative policies and procedures for the Virginia WIC Program that affect both authorized retailers and applicants. The Vendor Manual is part of the WIC Program State Plan that must be submitted and approved by USDA.

"Virginia Department of Health" or "VDH" means the state agency that oversees the Virginia WIC Program.

"Waiting list" means a list implemented by the state agency when the maximum caseload is reached.

"Warning" means one or more incidents of noncompliance with program requirements were documented. The state agency sends a written warning letter to the owner or store manager to advise him of any documented violations. A warning letter is not sent to the owner or store manager for selective documented violations that affect the integrity of the investigative process, including but not limited to overcharges, fraud, and forgery.

**12VAC5-195-40. (Reserved)**

**12VAC5-195-50. (Reserved)**

**12VAC5-195-60. (Reserved)**

## Part II

### Participant Requirements

#### **12VAC5-195-70. Eligibility requirements.**

A. Adjunctive financial eligibility requirements. Adjunctive, or automatic income eligibility is determined pursuant to 7 CFR 246.7(d)(2)(vi)(A). Documentation is required as proof

of participation in programs that qualify an applicant for adjunctive financial eligibility. The state agency also allows the following state-administered programs to be used in determining adjunctive income eligibility:

1. Family Access to Medical Insurance Security Plan (FAMIS) and a \$2.00 co-pay level; and
2. FAMIS MOMS program.

B. Local agencies shall serve institutionalized applicants if they meet all eligibility requirements.

C. For determining income eligibility, local agency personnel shall use the applicant's current or annualized income, whichever is the best indication of circumstances.

D. In determining income eligibility, the state agency utilizes all income exclusions listed in 7 CFR 246.7.

E. Applicants who are not adjunctively financially eligible shall have financial eligibility determined using income guidelines equaling the income guidelines established under §9 of the National School Lunch Act for reduced price school meals per 7 CFR 246.7(d)(1).

F. An applicant claiming multiple fetuses shall have the stated number used at the time of certification, but is required to provide written verification by a physician or nurse practitioner working under the supervision of a physician within 90 days of certification.

### **12VAC5-195-80. Proof of identification.**

Applicants shall present proof of identification to obtain all WIC services and benefits. This includes but is not limited to certification and subsequent certification visits, food instrument issuance, special formula issuance, nutrition education and VOC transfers. The local agency shall only accept the following as proof of identification:

1. Valid Medicaid card/letter;
2. Social Security card;
3. Driver's license;
4. Birth certificate;
5. Marriage license;
6. Crib card for newborns;
7. Hospital card for newborns;
8. Military identification card or discharge papers (DD214);
9. Clinic/hospital record or ID;
10. TANF/welfare photo ID;
11. Refugee settlement papers;

12. Immigration or Naturalization Record (e.g., green card);

13. Passport/visa;

14. School records (ID or report card, enrollment or health record); and

15. WIC ID folder for infants of WIC participants at initial certification only.

### **12VAC5-195-90. Proof of residency.**

A. Applicants shall present proof of residency at initial certification and subsequent certification visits. Proof of residency shall be current and include the applicant's name. The local agency shall accept the following as proof of residency:

1. Utility bills;
2. Other business mail with a Virginia address;
3. Deed, mortgage, monthly mortgage statement or residential rental/lease agreement;
4. Valid Virginia drivers license;
5. Valid Medicaid Card or positive, official Medicaid Verification; or
6. TANF/Welfare Photo ID.

B. Proof of residency for military personnel shall be current and include the applicant's name. The local agency shall accept the following as proof of residency for military personnel:

1. A letter from the company commander on official letterhead;
2. Copy of official Department of Defense orders with Virginia installation assignment; or
3. Leave and earning statement (LES) listing Virginia as the service member's home of record.

### **12VAC5-195-100. Proxy.**

A. A participant, parent or legal guardian may have the privilege, but not the right, to designate a maximum of two proxies. A proxy may accept and redeem food instruments. The proxy must attend nutrition education to obtain food instruments. The participant and proxy are not required to be present together when the participant designates the proxy. The parent is encouraged to be the primary recipient of all WIC instruments.

B. Local agency personnel shall only discuss the option of designating a proxy if the participant, parent or legal guardian indicates one of the following situations:

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# Regulations

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1. The participant, parent or legal guardian expresses difficulty with attending the local agency for nutrition education WIC instruments;

2. The local agency determines difficulty with the participant, parent or legal guardian attending the local agency through objective methods such as the no show reports, missed appointments, or frequently rescheduled appointments; or

3. The local agency determines difficulty with the participant, parent or legal guardian attending the local agency during established alternative hours.

## **12VAC5-195-110. Caretaker.**

A. A parent or legal guardian may have the privilege, but not the right, to designate one caretaker per family ID number to certify an infant or child, to obtain and redeem food instruments, and to attend nutrition education. The caretaker assumes all of the rights and responsibilities of the parent or legal guardian who designates them. A caretaker shall be designated only when the local agency cannot accommodate the needs of the parent to attend the local agency to obtain WIC benefits. Reasons supporting the designation of a caretaker shall be documented and become part of the participant's record. The authority to implement the caretaker policy will be granted individually to local agencies. The parent is always encouraged to be the primary recipient of all WIC benefits.

B. Local agency personnel shall only discuss the option of designating a caretaker if the participant, parent or legal guardian indicates one of the following situations:

1. The participant, parent or legal guardian expresses difficulty with attending the local agency for nutrition education WIC benefits;

2. The local agency determines difficulty with the participant, parent or legal guardian attending the local agency through objective methods such as the no show reports, missed appointments, or frequently rescheduled appointments; or

3. The local agency determines difficulty with the participant, parent or legal guardian attending the local agency during established alternative hours.

## **12VAC5-195-120. Certification.**

A. The certification process begins when an applicant contacts the local agency to make an oral or written request for WIC benefits.

B. A local agency may choose to serve participants who live outside of their local agency geographic area, but within the state, in cases of hardship.

C. Breastfeeding women shall be certified up to the last day of the month in which her infant turns one year old or until the woman ceases breastfeeding, whichever occurs first.

D. Infants shall be certified up to their first birthday.

## **12VAC5-195-130. Nutritional risk priority system.**

The state agency places pregnant, breastfeeding, or postpartum women, infants and children who are at nutritional risk solely because of homelessness and migrancy in Priority VII, per 7 CFR 246.7. The state agency does not expand or adjust any other priority level listed in 7 CFR 246.7.

## **12VAC5-195-140. Food instruments.**

A. Food instrument issuance. All food instruments shall be issued through the automated system after eligibility has been documented and only when the participant, parent or legal guardian, caretaker or proxy is physically present at the local agency to pick up their food instrument. Failure by the participant, parent, legal guardian, caretaker or proxy to attend the initial nutrition education appointment may result in reduced WIC benefits for that month.

B. Lost food instruments. Replacement of lost, valid, not redeemed food instruments shall only occur once within the entire duration of the participant, parent, caretaker or legal guardian's receipt of WIC services, unless approval is obtained from the state agency. Lost food instruments shall only be replaced for one of the following situations:

1. A participant leaving home because of family violence;

2. A change in full legal custody, including when infants/children are removed from home and placed in foster care or parental custody is changed; or

3. An event out of the control of participant, such as a fire or natural disaster that is publicly documented.

C. Stolen food instruments. Food instruments reported as stolen shall only be replaced when a police report is provided that states that the valid, not redeemed, WIC food instruments were the stolen items. Stolen food instruments shall not be replaced without a police report, unless costs are associated with the police report and a waiver is granted by the state agency. Stolen food instruments shall only be replaced once within the entire duration of the participant, parent, caretaker or legal guardian's receipt of WIC services, unless approval is obtained from the state agency.

D. Mailing WIC food instruments. Food instruments shall only be mailed with prior approval from the competent professional authority for individual participants if the participant has already received the required secondary nutrition education contact or if the participant will be able to receive nutrition education at the next visit within the certification period. Justification for mailing food instruments to individuals, families and groups includes:

1. Illness or disability as documented by medical records and meeting the Americans with Disabilities Act criteria (28 CFR Part 35) for physically unable to be present;

2. Imminent childbirth as documented by medical records;

3. Distance to travel, especially in rural areas with a minimum 60-mile roundtrip travel distance between home and the local WIC clinic, as approved by local WIC coordinator;

4. Other travel distance for participants with unique transportation challenges;

5. Computer failure at the local agency site;

6. Natural disasters; and

7. Complete systemwide failure of automated system.

### **12VAC5-195-150. Alternative office hours.**

Alternative office hours shall be offered outside of the regular operating hours of Monday through Friday, between 8 a.m. and 5 p.m. to address barriers in accessing WIC services for current and potential applicants and participants. The local agency shall provide documentation to the state agency that the alternative hours accommodate the needs of the current client caseload.

### **12VAC5-195-160. Waiting lists.**

The state agency shall provide local agencies with approval before waiting lists are implemented.

### **12VAC5-195-170. Termination.**

Participants who fail to obtain food instruments for 90 days after the last date to spend during a certification period shall be automatically terminated from the WIC Program.

### **12VAC5-195-180. Fair hearing.**

A. The Virginia WIC Program is a federally administered program. The following fair hearing procedures are a federal process with which the state agency must comply. Pursuant to 7 CFR 246.9(a), the state agency shall provide a hearing procedure through which any individual may appeal a state or local agency action that results in a claim against the individual for repayment of the cash value of improperly issued benefits or results in the individual's denial of participation or disqualification from the program.

B. The local agency shall inform each individual in writing of the right to a fair hearing at the time of a claim against an individual for improperly issued benefits or at the time of participation denial or of disqualification from the program.

C. A fair hearing shall be requested within 60 days of the written notification date of program denial, termination of benefits or claim against an individual for improperly issued benefits. The request shall be made in any clear expression to present the case to a higher authority.

D. Participants who appeal the termination of benefits within 60 days must continue to receive WIC benefits until the hearing officer reaches a decision, the participant becomes categorically ineligible, or the certification period expires, whichever comes first.

E. Applicants who are denied WIC benefits at the initial certification or because of the expiration of their certification may appeal the denial but shall not receive benefits while awaiting the hearing decision.

F. The local agency shall:

1. Accept a fair hearing request verbally or in writing;

2. Contact the applicant or participant to schedule a preliminary conference within 10 calendar days of the fair hearing request; and

3. Inform the applicant or participant that a fair hearing will be conducted if the issue is not resolved at a preliminary conference.

If the issue is resolved at the conference, the applicant or participant shall sign a statement indicating that a formal fair hearing is no longer requested. If the issue is not resolved at the conference, the local agency shall contact the state agency to schedule a fair hearing.

G. A fair hearing will be held within 21 days of the request, unless delayed pursuant to subsection I or J, or by mutual agreement of the parties.

H. The state agency shall provide 10 days advanced written notice of the date, time and place of the hearing, which shall be held in the local agency at which the participant or applicant receives WIC Program services.

I. The participant or applicant must appear at the fair hearing in person, but may be accompanied by a representative such as a relative, friend, legal counsel or other spokesperson. The applicant or participant must indicate whether or not they will be represented by an attorney when the fair hearing request is made. The applicant or participant must also provide the state agency with copies of any written information to be used during the hearing and names of witnesses that will be called at least five days prior to the scheduled fair hearing. Failure to notify the state agency of these items may result in a rescheduled date and time for the fair hearing or the exclusion of documents and witnesses from the fair hearing.

J. The participant or applicant will have one opportunity to reschedule the fair hearing's date or time. All requests to reschedule the meeting date or time must be submitted in writing at least 24 hours before the scheduled meeting date unless an emergency occurs, as determined at the discretion of the state WIC director or designee.

K. If the participant or applicant is more than 45 minutes late from the agreed upon hearing start time, then this will be

# Regulations

considered a "no show" unless they can provide documentation the state WIC director determines justifies the participant's or applicant's tardiness or failure to appear. This outcome means that the participant or applicant has forfeited his rights to a fair hearing.

L. Pursuant to 7 CFR 246.9(j), the state or local agency shall provide the participant, applicant, or representative an opportunity to:

1. Examine, prior to and during the hearing, the documents and records presented to support the decision under appeal, which will be sent to the applicant or participant 10 days prior to the fair hearing;
2. Be assisted or represented by an attorney or other persons;
3. Bring witnesses;
4. Advance arguments without undue interference;
5. Question or refute any testimony or evidence, including an opportunity to confront and cross examine adverse witnesses; and
6. Submit evidence to establish all pertinent facts and circumstances in the case.

M. The hearing officer shall hear evidence and testimony and reach a decision. The hearing officer shall notify the applicant or participant, the state WIC director, and the district health director of the decision in writing within 45 days of the date of the fair hearing request.

1. Applicants denied benefits may be enrolled upon receipt of a favorable decision.
2. Participants whose benefits were previously denied or discontinued may receive or reapply for WIC benefits upon receipt of a favorable decision by the hearing officer.

N. The local agency and state agency shall keep the results of the hearing on file for five years.

## **12VAC5-195-190. Fair hearing request denial or dismissal.**

Per 7 CFR 246.9(f), the state and local agencies shall not deny or dismiss a request for a hearing unless:

1. The request is not received within the time limit set by the state agency;
2. The request is withdrawn in writing by the appellant or a representative of the appellant;
3. The appellant or representative fails, without good cause, to appear at the scheduled hearing; or
4. The appellant has been denied participation by a previous hearing and cannot provide evidence that circumstances relevant to program eligibility have changed in such a way as to justify a hearing.

## **12VAC5-195-200. Program abuse and sanctions.**

A. The state agency determines program abuse and sanctions that may be issued to applicants and participants. When more than one abuse is involved at a time, the sanction shall be based on the more serious abuse.

B. If an abuse occurs more than 12 months after the last abuse, the local agency shall process the abuse as a first offense.

C. When more than three abuses in a 12-month period occur, the local agency shall issue a three-month temporary disqualification.

D. Program abuses and assigned sanctions are as follows:

Abuse	Number of Offenses	Sanction
<b>Class I</b>		
<u>Any deliberate misrepresentation of income, name, residence, family size, medical data, or date of birth to obtain WIC benefits</u>	<u>All</u>	<u>Three-month disqualification</u>
<u>Dual participation – redeeming food instruments from two programs/agencies in same month</u>	<u>All</u>	<u>One-year disqualification</u>
<u>Assessed claim for \$100 or more</u>	<u>All</u>	<u>One-year disqualification</u>
<u>Assessed second or subsequent claim for any amount</u>	<u>2nd or subsequent</u>	<u>One-year disqualification</u>
<u>Attempting to steal or actually stealing food instruments from the local agency or another participant, if under \$100</u>	<u>All</u>	<u>Three-month disqualification</u>
<u>Selling, exchanging or giving away food instruments, food, or formula</u>	<u>All</u>	<u>Three-month disqualification</u>
<u>Redeeming WIC food instruments reported as lost or stolen, if under \$100</u>	<u>All</u>	<u>Three-month disqualification</u>
<u>Attempting to redeem or</u>	<u>All</u>	<u>Three-month</u>

<u>redeeming WIC food instruments for nonfood items (i.e., diapers, wine, cigarettes)</u>		<u>disqualification</u>	<u>Deliberately damaging or destroying WIC food instruments</u>	<u>1st</u> <u>2nd</u> <u>3rd</u>	<u>Warning letter</u> <u>Two-month disqualification</u> <u>Three-month disqualification</u>
<u>Physically abusing the WIC or store staff (An incidence of physical abuse of WIC or store staff/property should be reported to the police)</u>	<u>All</u>	<u>Three-month disqualification</u>	<u>Redeeming WIC food instruments before or after valid spend dates</u>	<u>1st</u> <u>2nd</u> <u>3rd</u>	<u>Warning letter</u> <u>One-month disqualification</u> <u>Two-month disqualification</u>
<u>Accepting cash or credit from a store in connection with a WIC transaction</u>	<u>1st</u> <u>2nd</u> <u>3rd</u>	<u>One-month disqualification</u> <u>Two-month disqualification</u> <u>Three-month disqualification</u>	<u>Attempting to redeem or redeeming food instruments at unauthorized stores</u>	<u>1st</u> <u>2nd</u> <u>3rd</u>	<u>Warning letter</u> <u>One-month disqualification</u> <u>Two-month disqualification</u>
<u>Alteration of WIC food instruments (includes date, quantities, types of food)</u>	<u>1st</u> <u>2nd</u> <u>3rd</u>	<u>One-month disqualification</u> <u>Two-month disqualification</u> <u>Three-month disqualification</u>	<b><u>12VAC5-195-210. Collection of improperly issued instruments/claims against participants.</u></b>  <u>The state agency may establish a claim against a participant for the full value of benefits improperly obtained or disposed of and any fees or additional expenses incurred. These improper acts include, but are not limited to:</u>  <u>1. Inaccurate certification information;</u> <u>2. Dual participation violations;</u> <u>3. Proxy abuses; or</u> <u>4. Retention of future food instruments after disqualification.</u>		
<b><u>Class II</u></b>					
<u>Creating a public nuisance at the local agency or the store (i.e., verbally abusing, harassing, or threatening WIC or store staff, destroying store merchandise, or disrupting normal local agency or store activities)</u>	<u>1st</u> <u>2nd</u> <u>3rd</u>	<u>Warning letter</u> <u>Two-month disqualification</u> <u>Three-month disqualification</u>	<b><u>12VAC5-195-220. Interruption of benefits.</u></b>  <u>A. The state agency may discontinue benefits to participants due to funding shortages.</u>  <u>B. Local agencies shall only implement an interruption of benefits as specified by written direction from the state agency.</u>  <u>C. The state agency shall exercise its federal authority to limit participation to high priorities in the case of funding shortages.</u>		
<u>Attempting to redeem or redeeming WIC food instruments for unauthorized food, formula or food amounts</u>	<u>1st</u> <u>2nd</u> <u>3rd</u>	<u>Warning letter</u> <u>Two-month disqualification</u> <u>Three-month disqualification</u>	<b><u>12VAC5-195-230. Conflict of interest.</u></b>  <u>A. Individuals involved in administering the WIC Program may not:</u>  <u>1. Act as a proxy for a participant; or</u>  <u>2. Have a financial interest in an authorized WIC retail store.</u>		
<u>Allowing unauthorized person(s) to use the WIC ID Folder to pick-up and/or redeem WIC food instruments</u>	<u>1st</u> <u>2nd</u> <u>3rd</u>	<u>Warning letter</u> <u>Two-month disqualification</u> <u>Three-month disqualification</u>			

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# Regulations

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B. Individuals involved in administering the WIC Program shall not certify or issue food instruments to themselves or relatives. Relatives include spouses, parents, children, brothers, sisters, aunts, uncles, nephews, nieces, grandparents and grandchildren.

## **12VAC5-195-240. Emergency situations.**

Local agencies shall follow emergency procedures in the event of an emergency situation. Procedures to continue WIC benefits shall be incorporated by the local agency into the district Office Emergency and Business Recovery Plan.

## **12VAC5-195-250. (Reserved)**

## **12VAC5-195-260. (Reserved)**

## **12VAC5-195-270. (Reserved)**

### Part III

### Vendor Requirements

## **12VAC5-195-280. Enrollment procedures.**

A. The state agency accepts applications from new store applicants year round.

B. Stores seeking authorization shall sell a range and variety of staple foods and WIC-approved formulas at a permanent fixed location, as specified in the retailer agreement and application package. Only one authorization approval will be granted by the state agency to each eligible location selected for program authorization. Stand-alone pharmacies and any other types of entities that cannot meet all of the general requirements outlined in this section will be denied WIC Program authorization.

C. Store applicants shall complete the following requirements to become authorized for WIC Program participation:

1. Submit all applications, including pricing updates, using an electronic, Internet-based method that has been approved by the WIC Program;

2. Submit prices for all mandatory food and formula items, a signed retailer agreement, supplemental informational form, direct deposit ACH form, and other required forms as deemed necessary to evaluate a retailer's or applicant's qualifications;

3. Pass a competitiveness price assessment completed by the WIC Program. The state agency shall determine that the prices submitted as part of the new store application process are price competitive when compared to other stores located in the store's assigned peer group;

4. Provide documentation to the state agency, upon request, that a satisfactory business integrity record exists. None of the store's current owners, officers, or managers shall have been convicted of or had a civil judgment

entered against them for conduct demonstrating a lack of business integrity, within the past six years;

5. Pass an unannounced onsite visit to determine if the store has the minimum stocking requirement, has available for sale the variety and selection of foods as stated on the supplemental informational form, and has posted prices that are not higher than prices submitted as part of the application process. The visit shall also verify that the store's hours of operation were accurately reported;

6. Pass an onsite visit to determine if the type and variety of foods sold would qualify the store to earn more than 50% of its annual sales solely from the WIC Program. If the store is likely to be an above 50% vendor, then it shall be denied authorization;

7. Attend a mandatory new store training session conducted by either state agency staff or a certified corporate trainer within 30 calendar days after the retail store passes a stocking and price verification visit. Provide documentation to the state agency that this mandatory training has been completed. Store applicants shall provide to the state agency this documentation within 30 calendar days after meeting all other enrollment requirements;

8. Provide training to store personnel and cashiers on proper WIC food instrument handling procedures; and

9. Receive from the state agency an authorization acknowledgement letter granting WIC Program authorization, a Vendor Manual for the Virginia WIC Program, a WIC window decal, and an authorization stamp.

D. Newly authorized stores shall begin accepting WIC food instruments within 15 calendar days after receiving their program authorization stamp and final acknowledgment letter. Authorized stores are required to contact the state agency in writing if the store will be unable to meet this program requirement. Failure to begin accepting WIC food instruments within the established time frame may lead to the state agency's withdrawing its authorization decision.

## **12VAC5-195-290. Communications.**

A. Authorized stores shall contact the state agency or their assigned agency representative rather than local WIC agency staff for all questions related to WIC Program participation including, but not limited to, retail store selection and authorization requirements and decisions, reimbursement questions, participant's food instrument prescriptions, and complaints.

B. Authorized stores shall provide at least 15 calendar days written notice if the retailer desires to terminate its participation in the WIC Program or when the retailer ceases operation, changes ownership, or for any other circumstances that impacts service delivery including, but not limited to, relocations, renovations, permanent or temporary closures.

C. The state agency regularly communicates policy and procedural changes, training issues, WIC food instrument processing tips, cashier reminders and alerts affecting retail stores in an informational newsletter. Annually, a newsletter is published and sent to all authorized retail stores to update store personnel on major program changes. The program posts, if applicable, approved policy changes on its external webpage. Authorized stores shall be held accountable for complying with all policy changes communicated in writing by the state agency.

D. Written correspondence retained in the state agency's centralized files located in Richmond, Virginia, pertaining to, but not limited to, a store's authorization status, application documentation or WIC and food stamps compliance history is confidential and is protected under federal regulations (7 CFR 246.26(e)). The state agency shall maintain stores' compliance history and background information for at least a three-year period or the contract period, whichever is longer. For civil judgments and food stamp administrative documentation issued against a specific authorized retailer, the state agency will retain this documentation for six years.

### **12VAC5-195-300. General requirements and conditions for authorization.**

A. Once enrolled, a store or applicant shall obtain authorization to operate as a WIC-authorized store from the state agency before accepting or redeeming food instruments.

B. To obtain authorization and remain authorized, retailers shall:

1. Be food stamp authorized at the time of application or reauthorization and remain in good standing;
2. Be currently WIC-authorized or eligible for authorization after meeting a WIC disqualification requirement, if applicable;
3. Be in operation as a business at the time of application or within 45 calendar days of application;
4. Meet all local, state and federal requirements, including sanitation and building code regulations;
5. Be necessary as determined by the state agency to ensure adequate participant access;
6. Submit prices to the WIC Program using an electronic, Internet-based method at least twice a year or as requested by the state agency;
7. Remain price competitive when compared to other authorized stores that are located in the same peer group;
8. Maintain a minimum number of unique participants served after one year of continuous program authorization;

9. Meet the mandatory minimum stocking requirement at all times and keep such stock in the customer shopping area or immediately available onsite;

10. Be located at the store address indicated in the state agency's application or authorization record; this address shall be the sole location at which WIC customers purchase supplemental foods and formulas;

11. Be open for business at least 50 hours per week;

12. Meet all business integrity criteria as defined in Policy 14.1, effective August 1, 2003, of the Vendor Manual for the Virginia WIC Program;

13. Provide supporting documentation to the state agency including, but not limited to, annual food sales information or tax records that will be used to ensure that not more than 50% of the store's total food sales were derived from WIC sales;

14. Comply with all financial and corrective actions identified from prior WIC authorization, if applicable;

15. Purchase contract and special formula from a distributor, supplier, wholesaler or retail store whose name is listed by the Virginia WIC Program as approved to sell formula; and

16. Participate in the WIC Program's direct deposit (ACH) process used for reimbursement purposes.

### **12VAC5-195-310. Above 50% vendor screening.**

A. The state agency shall not authorize any applicant or retail store that is likely to derive 50% or more of its annual food sales from the sale of supplemental foods to WIC participants. Stores already authorized by the program whose annual WIC food sales rise to 50% or more of their total food sales will have their authorization status terminated.

B. Newly authorized stores with six months of redemption history shall have their status reviewed to determine if they qualify as an above 50% vendor (7 CFR 246.12(g)(4)(i)(B)). If the state agency's assessment determines the store qualifies as an above 50% vendor, the store's WIC Program authorization status shall be terminated.

### **12VAC5-195-320. Retailer agreement.**

A. The retailer agreement does not constitute a license or a property right. If an authorized store wishes to continue to be authorized beyond the current agreement period, the store must reapply for authorization. All stores must be selected under the current selection and authorization criteria being used by the state agency (7 CFR 246.12(h)(xxi)).

B. Authorized retail stores and military commissaries shall use a single uniform retailer agreement. The maximum duration of the retailer agreement shall not exceed three years. The duration of the retailer agreement may be for a



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# Regulations

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period that is less than three years, depending upon when a county or location is selected to undergo the regional authorization and selection process.

C. A fully executed retailer agreement shall be signed by both an authorized store representative and state agency representative to be enforceable. The state agency shall provide the store or designated contact person a copy of its signed retailer agreement or authorization acknowledgement letter once all selection and authorization requirements have been met.

D. A signed retailer agreement must be on file for any store to be paid for a redeemed WIC food instrument.

E. Revisions, amendments or modifications to the provisions of the retailer agreement shall be made in writing. The retailer agreement shall be automatically amended upon notice from the state agency should federal, state laws or regulations require amendments.

F. Authorized stores shall keep a copy of the updated Vendor Manual, including a copy of the Approved Food list and Cashier Training Guide, at the store location authorized to accept WIC food instruments.

G. The state agency reserves the right to extend the current retailer agreement up to six months during the reauthorization evaluation process. If the state agency uses this option, it shall provide written notice to authorized stores affected by this administrative decision.

## **12VAC5-195-330. Adequate participant access.**

A. The state agency shall ensure that adequate participant access exists so that eligible participants may redeem the food instruments issued to them. The state agency uses a retailer limiting criteria to determine adequate participant access (7 CFR 246.12(g)(2)). The state agency has the sole authority to define adequate participant access criteria.

B. The number of authorized stores or retailer slots available is based on two factors:

1. Number of WIC participants living in a specific city or county in which the retail store is physically located; and
2. Population density of the community where the store is physically located.

C. Population density is calculated by identifying the population that resides in a specific city or county. Population density serves as a proxy indicator used by the program to project how close together retailers and participants are located next to each other. Thus densely populated areas where stores are located closer together require fewer stores to provide adequate participant access.

D. In sparsely populated areas, both population and stores are dispersed over a wider geographical area that directly impacts participant access. More sparsely populated areas

require more authorized stores to adequately serve eligible participants.

E. Participation is managed and monitored by the WIC Program on a monthly basis. For this reason the number of available slots for authorized stores may change frequently. This change will not impact stores already authorized, but may impact a new store applying for authorization in a given area.

F. The number of authorized retailers or retailer slots available is calculated by a store to participant ratio, which is higher for densely populated communities, and lower for sparsely populated counties. Population density data is updated annually by the state agency and is obtained from the United States Census Bureau. The WIC Program uses a single population density indicator to identify which communities have the higher retailer to participant ratio.

G. A specific number of retailer slots will be allocated to each city/county. A listing of retailer slots available and allocated to each city and county will not be published and distributed to authorized stores, since this figure may change frequently.

## **12VAC5-195-340. Competitive pricing.**

A. Authorized stores and applicants shall submit pricing information to the state agency. Item pricing data is obtained from authorized stores and applicants from prices that have been entered into a WIC-approved Internet-based application.

B. The state agency collects pricing information for specific food items at least twice a year (7 CFR 246.12(g)(4)(ii)(B)). Prices may be collected more frequently from authorized stores including, but not limited to, the following reasons:

1. A store's prices are determined to be noncompetitive;
2. A store is designated a high risk retailer;
3. A competitive pricing analysis is needed in order to consider an applicant's qualifications;
4. An administrative review is being conducted as part of a compliance investigation, participant access analysis, inventory audit or post payment analysis; or
5. Other operational considerations that may occur including, but not limited to, a change in contract formula company, food industry price fluctuations, manufacturer's price increases for "rebateable" products, such as contract formula and infant cereal.

C. Applicants whose prices are determined to be noncompetitive when compared with other authorized stores assigned to the same peer group shall be denied WIC Program authorization. These applicants shall not be given a second opportunity to resubmit their prices, unless the state agency determines that inadequate participant access would exist.

D. The state agency uses nine business economic areas (BEAs) to initially define peer groups based on location and economic variations. For more densely populated BEAs, a second criterion used to further define peer groups is the number of unique participants served (7 CFR 246.12(g)(4)(ii)(A)). Each authorized store or applicant is assigned to a single peer group.

<u>Business Economic Areas (ID) (# of Unique Participants Served, if applicable)</u>	<u>Peer Group</u>	<u>Cities &amp; Counties Located in each BEA</u>			<u>Dinwiddie, Essex, Fluvanna, Goochland, Greene, Greensville, Hanover, Henrico, King and Queen, King William, Lancaster, Louisa, Lunenburg, Mecklenburg, Middlesex, Nelson, New Kent, Northumberland, Nottoway, Powhatan, Prince Edward, Prince George, Richmond &amp; Sussex</u>
<u>49</u>	<u>10</u>	<u>Accomack &amp; Northampton Counties</u>			
<u>66</u>	<u>11</u>	<u>Cities: Danville, Galax City, &amp; Martinsville and Counties: Carroll, Grayson, Henry, Patrick &amp; Pittsylvania</u>	<u>138 (0 – 100 participants)</u>	<u>25</u>	<u>Cities: Bedford, Clifton Forge, Covington, Lynchburg, Radford, Roanoke &amp; Salem and Counties: Alleghany, Amherst, Appomattox, Bedford, Bland, Botetourt, Campbell, Craig, Floyd, Franklin, Giles, Montgomery, Pulaski, Roanoke &amp; Wythe</u>
<u>71</u>	<u>12</u>	<u>Cities: Buena Vista, Harrisonburg, Lexington, Staunton &amp; Waynesboro and Counties: Augusta, Bath, Highland, Page, Rockbridge &amp; Rockingham</u>	<u>138 (251 and up participants)</u>	<u>27</u>	
<u>81</u>	<u>13</u>	<u>Cities: Bristol &amp; Norton and Counties: Buchanan, Dickerson, Lee, Russell, Scott, Smyth, Tazewell, Washington &amp; Wise</u>	<u>173 (0 – 100 participants)</u>	<u>35</u>	<u>Cities: Chesapeake, Franklin, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach &amp; Williamsburg and Counties: Gloucester, Isle of Wight, James City, Mathews, Southampton, Surry &amp; York</u>
<u>133</u>	<u>14</u>	<u>Halifax County</u>	<u>173 (101 – 250 participants)</u>	<u>36</u>	
<u>137 (0 – 100 participants)</u>	<u>15</u>	<u>Cities: Charlottesville, Colonial Heights, Emporia, Hopewell, Petersburg, &amp; Richmond and Counties: Albemarle, Amelia, Brunswick, Buckingham, Caroline, Charles City, Charlotte, Chesterfield, Cumberland,</u>	<u>173 (251 and up participants)</u>	<u>37</u>	
<u>137 (101 – 250 participants)</u>	<u>16</u>		<u>174 (0 – 100 participants)</u>	<u>45</u>	<u>Cities: Alexandria, Fairfax, Falls Church, Fredericksburg, Manassas, Manassas Park &amp; Winchester and Counties: Arlington, Clarke, Culpeper, Fairfax,</u>
<u>137 (251 and up participants)</u>	<u>17</u>		<u>174 (101 – 250 participants)</u>	<u>46</u>	
			<u>174 (251 and up participants)</u>	<u>47</u>	

# Regulations

participants)		<u>Fauquier, Frederick, King George, Loudoun, Madison, Orange, Prince William, Rappahannock, Shenandoah, Spotsylvania, Stafford, Warren &amp; Westmoreland</u>
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<u>Description</u>	<u>Price Comparison Range</u>	<u>Pricing Point Value</u>
<u>Best Pricing</u>	<u>Peer Group Average, minus 10% or more</u>	<u>100</u>
<u>Highly Competitive</u>	<u>Peer Group Average, minus 5.1 - 9.9%</u>	<u>80</u>
<u>More Competitive Pricing</u>	<u>Peer Group Pricing Average, plus or minus 5.0%</u>	<u>60</u>
<u>Competitive</u>	<u>Peer Group Pricing Average, plus 5.1 - 9.9%</u>	<u>40</u>
<u>Noncompetitive</u>	<u>Peer Group Pricing Average, plus 10.0 or higher</u>	<u>20</u>

E. For newly authorized stores the peer group designation assigned during the first three months is determined by the first criterion only; specifically the store's BEA default location. This default location, if applicable, is the peer group that services 0-100 unique participants. Authorized stores' peer group designation may change, based upon increases or decreases in the monthly average number of unique WIC participants being served by the store.

### **12VAC5-195-350. Price verification.**

A. Authorized stores and applicants must submit prices for all mandatory foods and formulas as defined by the state agency. Once prices have been submitted to the WIC Program, they must remain valid for at least a 30-day period and are subject to random onsite verification by the state agency. Posted prices that are significantly above what was submitted to the state agency may affect the store's or applicant's authorization selection status.

B. A store or applicant's submitted price shall be compared by the state agency to other authorized stores assigned to the same peer group in order to determine if the prices submitted are competitive. Prices shall be submitted and validated as competitive for specific food items and formulas eligible for payment to the authorized store location.

C. Authorized stores and applicants shall have a pricing point value that is 40 or higher in order to remain eligible for program authorization.

D. Authorized stores whose prices are identified as noncompetitive when compared with other authorized stores assigned to the same peer group within a BEA may have their WIC Program authorization terminated, unless inadequate participant access would exist.

E. Authorized stores that fail to submit a price for optional food and formula items may have redeemed food instruments selected as ineligible for payment as part of the postpayment review process. These improperly redeemed food instruments may be identified as a vendor claim and be subject to repayment of the full amount paid for all of the items prescribed on the food instrument.

### **12VAC5-195-360. Selection decisions.**

A. All retailers and applicants will compete equally for available slots located within a specific city/county or zip code, if applicable. The state agency reviews the qualifications of authorized stores and applicants located in a specific BEA or city/county within a BEA to make authorization selection decisions. Retail stores' and applicants' mandatory women and infant food and formula items used for pricing analysis purposes must qualify under the price competitive category of 40 or higher in order to be selected for authorization (7 CFR 246.12(g)(4)).

Low volume retailers will not be considered for reauthorization unless slots remain available after all qualified applicants and stores are selected for authorization and the low volume retailers have a competitive price score of 100. Low volume retailers will not be included in the ranking of the applicants and stores.

The state agency shall rank all stores that have a pricing point value of 40 or higher in ascending order, or lowest price to highest price. The stores that have the lowest total prices

are considered the best qualified stores. Applicant's and store's ranking will be used to select applicants and stores for all available slots located within a specific BEA or city/county within a BEA.

B. When multiple stores have equal rankings and there are not enough slots to authorize all such stores, rankings will be further differentiated based on the following criteria in order of their application:

1. Five bonus points are given for retailers that are certified by the Department of Minority Business Enterprise as a minority or women-owned business or have met their annual federally mandated training requirement by completing all modules of an agency-sponsored online (E-Learning) WIC Program training course.
2. When equal rankings still occur, stores with the lowest prices for selective special formulas that are eligible to be sold to WIC participants will be offered any available slots.
3. If rankings continue to be equal, the state agency shall offer available slots to the authorized store or applicant with the highest number of unique participants who reside in the zip code where the store is located.
4. If rankings continue to be equal, square footage, excluding storage space, will be used to determine which stores will be offered available slots.

After selecting all of the best qualified stores and applicants, if slots are still available, then low volume retailers whose total pricing score is 100 – Best Pricing will be offered any available slots.

C. If a retail store or applicant is not competitively selected for program authorization, then the store may apply again no sooner than six months after being denied authorization.

D. The state agency shall send all authorized stores and applicants a written notice pertaining to their selection status. All stores and applicants being denied WIC Program authorization shall also receive information that explains their right to appeal the state agency's administrative decision.

E. The state agency does not maintain an applicant waiting list.

**12VAC5-195-370. Authorization exception decisions.**

The state agency may adjust the number of retail stores authorized to ensure that adequate participant access exists. Only the state agency shall determine what constitutes adequate participant access. The state agency may make authorization exceptions to ensure that adequate access exists based on one or several of the following criteria:

1. Provide reasonable access;

2. Provide safe access due to a physical barrier or impediment including, but not limited to, a multilane highway, river, bridge; physical terrain (i.e., mountains);

3. Provide a best pricing or highly competitive alternative store location to eligible participants to purchase WIC-approved food, when compared to other available stores located within a given city and/or county;

4. Promote competition in a trade area previously identified as not having a price competitive authorized retail store location available;

5. Improve customer service or remove an existing service barrier, i.e., language, cultural;

6. Improve WIC customer access due to the fact that the store is within a safe and reasonable walking distance and is located in close proximity to one or several low income housing units where WIC participants reside; or

7. Provide supporting documentation that the store's draw area is broader than the store's immediate trade area. The store's draw area includes cities and counties that cross geographical boundaries.

**12VAC5-195-380. Low volume performance standard.**

A. After six months of continuous authorization, authorized retailers shall serve a monthly average of at least 60 unique participants. Retail stores that fail to meet this low volume performance standard will be notified annually. An authorized store that has an average number of unique participants served that is lower than the standard will be considered a low volume retailer.

B. Authorized stores that demonstrate a consistent pattern of failing to meet the low volume performance standard shall be denied WIC Program authorization when their selection status is evaluated for future program authorization, unless inadequate participant access would exist. Previously authorized stores that are not selected due to low volume will receive a written letter of this administrative decision, which will provide a termination effective date.

C. Store applicants that were denied WIC Program authorization due to being designated a low volume retailer from a previous authorization period shall not be approved for authorization in a city/county that has slots available unless objective data is available that qualifies the store under one of the authorization exception criteria.

**12VAC5-195-390. Approved food list.**

A. A copy of the current Virginia WIC Program's Approved Food List (effective January 1, 2007) must be stored at each cash register where WIC transactions are handled. A copy of the Approved Food List must also be stored in the Vendor Manual that shall be kept onsite at the authorized store location.

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# Regulations

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B. The Approved Food List is used in conjunction with the WIC food instrument to identify foods that are eligible for purchase by WIC participants. The food instrument may state specific manufacturers or brands that must be purchased by program participants that are not covered by the general description used in the Approved Food List.

## **12VAC5-195-400. Authorization stamp – assignment and usage.**

A. The state agency assigns a unique stamp number to stores that are authorized and eligible to receive reimbursement for deposited food instruments. The store's authorization number is imprinted on a rubber stamp, which shall be used on every food instrument deposited by the authorized store location. Failure by the retail store to use the issued authorization stamp may result in denied payment for redeemed WIC food instruments.

B. Authorized stores must obtain any needed replacement stamps from the stamp supplier approved by the state agency. The state agency will provide a maximum of three stamps to an authorized store per contract period at no charge. Failure to purchase an approved stamp from the designated stamp supplier may lead to deposited food instruments being rejected and returned unpaid by the state agency.

## **12VAC5-195-410. Change of ownership.**

A. Authorized retail stores shall provide the state agency with advance written notice of at least 15 calendar days prior to any change of ownership as outlined in 7 CFR 246.12(h)(3)(xvii).

B. A change of ownership occurs for reasons including, but not limited to, the principal owner or owners, corporate officers of the business or corporation have legally or permanently changed.

C. A store's authorization will become null and void upon a change of ownership. The rights and obligations established under a signed retailer's agreement with the WIC Program may not be transferred or assigned by the retail store or corporate owner to any other third party.

D. The new owner or store manager of the business/corporation shall apply for WIC Program authorization and submit their qualifications and a new application for evaluation based on the most current retailer selection and authorization criteria.

E. The state agency shall terminate the authorization status of any store that has undergone a change of ownership and failed to notify the state agency in accordance with the requirements outlined in the signed Retailer Agreement, effective July 1, 2008.

## **12VAC5-195-420. Change of location.**

A. Authorized WIC retail stores shall provide the state agency written notice of a store's relocation plans within 15

calendar days prior to scheduled move date. Failure to notify the state agency in writing of such actions may result in the state agency taking administrative action including terminating for cause the store's program authorization.

B. Relocation of a retail store is defined as:

1. The store's physical location changes within the same geographical area or county/city and there is no change in ownership or pricing structure. The store meets one of the following criteria:

a. New store location is two miles or less from the former location; or

b. Majority of management and store personnel will move to the new location. If the new location is greater than two miles, the WIC Program will evaluate on a case-by-case basis to determine whether the new location is an alternative location and qualifies as a relocation versus a new store authorization;

2. The store will be open for business within 15 calendar days or less after moving to a different physical location; and

3. The former store location will be permanently closed for business.

C. The state agency shall ensure that the new location still meets the selection criteria as outlined in the Retailer Selection and Authorization Policy (Policy 14.0 of the Virginia WIC Program Retailer Manual, effective April 1, 2008) including being price competitive. Failure to meet all selection criteria may lead to the store's authorization being terminated, unless inadequate participant access exists. Authorized stores that meet all selection criteria will be permitted by the state agency to continue their authorization without experiencing any disruption in their authorization status. The state agency must assign a new WIC authorization ID to the new store location.

## **12VAC5-195-430. Change due to closure.**

A. Authorized retail stores shall give the state agency written notice of a store's permanent or temporary closure within 15 calendar days before the actual closing date. A temporary closure is defined as a store location being closed to the public for more than 15 consecutive calendar days. Stores closed to the public for any reason greater than 30 consecutive calendar days will have their WIC Program authorization terminated.

B. Failure to notify the state agency in writing of either permanent or temporary closure may result in the state agency taking administrative action, including terminating for cause the store's WIC authorization status.

**12VAC5-195-440. Voluntary withdrawal.**

Authorized retail stores shall give the state agency at least 15 calendar days written notice if the store owner or manager decides to discontinue participation in the Virginia WIC Program.

**12VAC5-195-450. Complaints.**

A. The state agency shall maintain a system of receiving, documenting and investigating all complaints submitted by retail stores, participants, proxies, caretakers, parents, and the general public. From submitted complaints, the state agency may sanction or issue a written warning to participants and retail stores that abuse or misuse program benefits as outlined in the State Plan and Vendor Manual (Attachment to Policy 15.0, Sanction Classification System - Violation Schedule, effective May 26, 2008).

B. The state agency shall forward complaints of both alleged discrimination and civil rights violations to the Secretary of Agriculture as required by federal regulations.

**12VAC5-195-460. Conflict of interest.**

Authorized retail store management shall ensure that no conflict of interest exists between any store personnel employed by the retailer and any local, state, or federal WIC agency. This includes, but may not be limited to, store employees or spouses of store owners who are also employees of a local, state, or federal WIC agency.

**12VAC5-195-470. Incentives.**

Authorized stores may not provide incentives to local agency staff or participants to entice or promote shopping at a specific store location, unless approved in writing by the state agency.

**12VAC5-195-480. Participant confidentiality.**

A. Participant information shall remain confidential to ensure compliance with federal regulations and to protect the right to privacy of WIC participants (7 CFR 246.26(a)).

B. Confidentiality requirements apply to information provided by a participant and that is based on direct observation by store personnel. Confidentiality requirements include, but are not limited to:

1. The prohibition of retailers from collecting personal information from WIC participants;
2. Making personal contacts with WIC participants after the WIC transaction has occurred; or
3. Sharing information on participant identification with third parties. Third parties do not include WIC Program state, local and federal agency representatives who have a legitimate business interest in the services provided to participants.

**12VAC5-195-490. Retailer confidentiality.**

A. Background and pricing information collected by the state agency related to evaluating the authorization status of a store or collected from food instruments redeemed by an authorized store is confidential (7 CFR 246.26(e)) and can be released only to:

1. The store itself;
2. The parent corporation; or
3. Other governmental agencies responsible for ensuring program integrity, i.e., Food Stamp Program, Office of Inspector General, United States Department of Agriculture.

B. Upon receiving a written request from a store or their parent corporation, the state agency shall only release background and pricing information that has been provided by or pertains to the requestor. Under no circumstances will the state agency release confidential information about the authorization status or redemption revenue paid to stores owned by other corporations.

C. Authorized stores' peer group designation is confidential and is restricted from disclosure to persons and entities not directly associated with the authorized store location.

D. The state agency's inadequate participant access results completed for administrative purposes are considered confidential and not subject to review by the retail store or its agent, since this profile contains information protected by WIC Program regulations. Upon request, a copy of this work document can be released with any confidential information removed. This document in its entirety will be made available to appropriate governmental bodies that are responsible to ensure that the state agency has fully complied with any mandated WIC Program requirements.

**12VAC5-195-500. Sales tax and coupons.**

Authorized retail stores shall ensure that no sales tax is charged to the WIC Program. Store coupons, manufacturer coupons and loyalty card discounts may be used for WIC-approved purchases. When a WIC participant uses a coupon or discount card in conjunction with a food instrument and an item is provided free, then sales tax shall be collected directly from the participant.

**12VAC5-195-510. Solicitation.**

A. Authorized stores shall not:

1. Initiate behavior that may be deemed aggressive or intimidating by a reasonable person in approaching potential WIC participants in order to promote that participant's shop at a specific store location; or
2. Use any state or local agency facilities and property to post or distribute materials advertising their store location.

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# Regulations

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B. If the state agency documents that an authorized store violates either of these prohibitions, then the store's authorization may be subject to termination by the program.

## **12VAC5-195-520. Training and education.**

A. Training of applicants or authorized stores may be conducted by state agency staff. The state agency may also delegate full authority to individuals who have been certified as corporate trainers. Certified trainers shall attend at least one mandatory training class annually in order to remain certified.

B. The state agency shall provide mandatory annual training for previously authorized stores. The annual training requirement may be met by:

1. Submitting a newsletter training acknowledgement form;
2. Successfully completing an agency-sponsored Internet training course offered by the WIC Program; or
3. Attending an instructor-led, interactive training class.

C. Reauthorization training shall be required for previously authorized stores that have been selected under a new contract period.

D. Authorized stores can request remedial training at any time by contacting the state agency.

E. All authorized stores are required to have at least one store representative participate in annual training provided by either the state agency or a certified corporate trainer (7 CFR 246.12(h)(xi)).

F. Failure of an authorized store to meet any mandatory training requirement shall result in sanctions being imposed and the possible termination of the store's program authorization, unless inadequate participant access would exist.

## **12VAC5-195-530. Use of acronym and logo.**

A. Authorized stores shall post a "WIC Accepted Here" window decal in the store's front entrance or in a conspicuously visible location that identifies to the general public that the store location participates in the WIC Program. Authorized stores may use alternative signage if approved by the state agency prior to being used.

B. Retail stores, food manufacturers, distributors and suppliers shall receive written approval from the state agency prior to producing or distributing window decals, channel strips or shelf talkers that use either the WIC acronym or logo.

C. Retail stores or applicants shall not use either the acronym "WIC," "W.I.C." or the WIC logo, including close facsimiles thereof, in total or in part, either in their official

name in which the store is registered or in the name under which it does business, if different.

D. Retail stores, food manufacturers, distributors and suppliers shall not use the WIC acronym or logo in the packaging of their products. Retail stores, food manufacturers, distributors and suppliers shall receive written approval from the state agency before using either the WIC acronym or logo for any business or public relations purpose.

## **12VAC5-195-540. Vendor manual for the Virginia WIC Program.**

All authorized stores must keep a current copy of the Vendor Manual for the Virginia WIC Program, Cashier Training Guide, and an Approved Food List at the store location authorized to participate in the program. A current copy of the Virginia Approved Food List must be kept at each cash register used to process WIC transactions.

## **12VAC5-195-550. High risk stores.**

A. The state agency classifies each authorized store as either high risk, probationary, or nonhigh risk. In accordance with federal regulations (7 CFR 246.12(j)(3)), high risk stores have demonstrated from prior authorization history a pattern of noncompliance with documented vendor management policies or violations documented from covert, undercover buys. The state agency may also change a store's designation to high risk based upon noncompliance documented from onsite monitoring visits.

The state agency may select stores for compliance monitoring based on statistical trends documented from a retail store's redemption pattern. A store's designation being changed to high risk will only occur as result of documented violations identified from compliance investigations or other types of objective monitoring practices used by the state agency.

All stores classified as high risk will receive written notification from the state WIC Program to advise them of the store's status change prior to the change becoming effective. Stores shall be designated high risk for a minimum one-year period and will have their status periodically evaluated by the state agency.

B. Authorized stores designated as high risk will be selected for more frequent onsite and covert monitoring investigations.

## **12VAC5-195-560. Nonhigh risk stores.**

Authorized stores that have participated in the WIC Program for more than one continuous year and have demonstrated an acceptable level of compliance in meeting program requirements are considered nonhigh risk stores.

## **12VAC5-195-570. Probationary stores.**

Newly authorized stores with less than one year of continuous program authorization shall be designated a

probationary retailer. During a probationary store's first year it will be more frequently monitored through both unannounced and onsite monitoring visits, as well as being selected for at least one compliance investigation.

**12VAC5-195-580. Performance and administrative monitoring.**

A. All applicants must successfully pass an unannounced stocking visit prior to being authorized. Applicants will receive a written letter from the state agency advising them the store has been selected for further authorization consideration. The applicant will receive a copy of the minimum stocking requirement and the letter sent to the store will identify the consequences associated with failing to meet this program standard.

B. The state agency monitors authorized store's performance throughout the contract period in order to ensure the best qualified stores are authorized. The type and level of monitoring conducted by the state agency depends upon the store's authorization status. Stores designated as high volume retailers, high risk retailers, and probationary stores are more likely to be selected for unannounced monitoring visits by the WIC Program.

C. Authorized stores that fail to consistently meet any of the general requirements and conditions for authorization may be terminated. Specific areas the state agency monitors include, but are not limited to:

1. Number of unique participants served;
2. Number of paid and rejected food instruments;
3. Prices charged for WIC-approved foods and formula;
4. Level of compliance in following program requirements; and
5. Use of approved wholesalers and suppliers in purchasing WIC-approved foods and formulas.

D. The state agency shall establish and communicate to all authorized stores and applicants the minimum stocking requirement.

E. Each federal fiscal year, a sample of authorized stores shall be selected for one or more unannounced onsite monitoring visits.

F. State agency personnel may conduct an unannounced monitoring visit to ensure that authorized stores or applicants meet all program requirements. Authorized stores and applicants shall have available onsite the minimum stocking requirement at all times as established by the state agency. The specific foods, contract formulas and administrative procedures associated with meeting this requirement are outlined in Policy 10, Minimum Stocking Requirement, effective May 1, 2007, of the Vendor Manual.

G. Authorized stores with more than one year of continuous participation in the program may request in writing to the state agency that an exception be granted for one or more items that are part of the minimum stocking requirement. The state agency shall provide a written decision to the store's exception request within 30 calendar days after receipt. The exception to the minimum stocking requirement for a required item shall expire upon the presentation to the store, on behalf of a participant, of a WIC food instrument for the purchase of that required food item. The authorized store shall provide the food item within 48 hours after presentation of the WIC food instrument.

H. The state agency may conduct other types of unannounced onsite monitoring visits to a retail store's location including, but not limited to, random, price verification, high volume, formula audits, and high risk.

I. During the unannounced onsite monitoring visit, the state agency representative may perform, but not be limited, to the following:

1. Observe and document the level of compliance with general program requirements;
2. Validate if the minimum stocking requirement has been met;
3. Collect and confirm prices submitted by retail stores;
4. Confirm prices are posted on or in close proximity to WIC-approved foods;
5. Review purchase or invoice records;
6. Conduct formula inventory analysis;
7. Educate the retailer about program changes;
8. Provide educational materials and supplies; and
9. Provide technical consultation.

J. During the unannounced onsite monitoring visits, store management may receive the following:

1. Answers to technical or procedural questions;
2. Updated program information;
3. Additional training materials and supplies;
4. Opportunity to correct documented deficiencies, if needed;
5. Opportunity to provide shelf prices of WIC-approved items, if applicable; and
6. Opportunity to confirm results documented by the state agency representative during the monitoring visit.

K. The results from these onsite visits are documented and kept on file at the Richmond, Virginia, state agency office.



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# Regulations

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L. Each federal fiscal year, a sample of authorized stores shall be selected for one or more announced onsite formula monitoring visits. The state agency shall ensure that authorized stores purchase and sell WIC-approved formulas from a legitimate source. This outcome is accomplished by state agency personnel reviewing formula purchasing records and invoices, comparing formula redemption data from WIC sales and completing a pre- and postphysical inventory of formula available at the store location during a specific analysis period. Stores whose purchase records do not support the quantity of WIC sales volume for a selective formula item based upon redeemed food instruments may be issued sanctions, fined or disqualified from the WIC Program. The results from a formula monitoring visit are documented and a written assessment is sent to the store once the state agency has completed its analysis.

M. Authorized stores that do not remain price competitive, fail to maintain the minimum stocking requirement or fail to adhere to the retailer agreement may be fined or have their authorization terminated, unless inadequate participant access exists. Depending upon the service delivery impact, the state agency may waive terminating a store that fails to comply with any of these requirements until an alternative store located in the same area can be authorized. The state agency will evaluate and document the reasons for making any authorization exception decisions.

## **12VAC5-195-590. Reimbursement and payments.**

A. The state agency shall use a prepayment edit process to screen all deposited food instruments. For each processed food instrument, the state agency shall either:

1. Pay as submitted;
2. Make a price adjustment, if applicable; or
3. Deny payment of the deposited food instrument.

B. The state agency's reimbursement responsibilities in making payments against deposited and undeposited food instruments include, but are not limited to:

1. Ensuring payments are made to authorized stores that have a signed retailer agreement with the Virginia WIC Program. Unauthorized stores will not be paid for any mistakenly accepted and deposited food instruments;
2. Ensuring the maximum reimbursement levels used by its banking contractor, based upon peer groups, are reasonable for the food and formula items prescribed for purchase by participants;
3. Reconsidering for payment WIC food instruments not paid or partially paid provided the food instruments are submitted to the state agency within 50 calendar days of the first date printed on the food instrument;
4. Making price adjustments to the reimbursement amount paid to retail stores in order to ensure individual store's

reimbursement levels remain eligible for authorization, based upon competitive prices charged by similar stores;

5. Collecting bank account and routing numbers from applicants and authorized stores in order to process direct deposit payments using an Automated Clearinghouse (ACH);

6. Ensuring prompt ACH credits are made to the retailer's bank account when appropriate;

7. Collecting retailer's prices using an electronic, Internet-based application;

8. Identifying retailers whose prices are noncompetitive and take administrative actions including possible termination of the retailer's authorization;

9. Complying with all federal regulations and guidelines that require administrative approval by USDA prior to making payments, as applicable;

10. Providing written communications to all authorized stores containing the procedures used by the program to pay or deny payments for all deposited food instruments; and

11. Recouping overpayments due to banking or procedural errors, if applicable, from authorized stores.

C. Authorized stores must deposit food instruments within 14 calendar days of the last date printed on the food instrument.

D. Food instruments or image replacement documents (IRDs) rejected for payment due to "unreadable vendor stamp" or "no vendor stamp" error messages must be corrected and redeposited within 30 calendar days of the last date printed on the food instrument.

E. Food instruments or IRDs rejected for payment or undeposited FIs that require WIC Program review and exception payment consideration must be submitted by the authorized store to the state agency within 30 calendar days of the last date printed on the food instrument.

F. A maximum allowable reimbursement amount for each peer group and food item combination is established using pricing data (7 CFR 246.12(h)(3)(viii)). Each food item combination is identified by a unique food instrument type identifier. More than 4,000 unique food combinations exist with different reimbursement maximum amounts. Authorized stores that submit prices determined to be noncompetitive will not have their prices used when the state agency computes the maximum allowable reimbursement amount used for making price adjustments.

G. A maximum reimbursement amount will be established for cash value food instruments used by participants to purchase fruits and vegetables. The retailer must allow participants to spend up to the maximum payable amount

printed on each of these types of food instruments. If the total dollar value being purchased exceeds the cash value, then the participant must be allowed to pay up to \$ .99 per food instrument above the printed value.

H. The food instrument type/peer group pricing maximum amount may be adjusted monthly by the state agency, depending upon external factors including, but not limited to, wholesale price increases. The reimbursement maximum used for the various food instrument types peer group combinations are not distributed to authorized stores prior to being used by the banking contractor.

I. Food instruments or IRDs that are ineligible for payment and are rejected will be returned to the store's depository bank by the state agency's banking contractor. These returned food instruments will be stamped with a descriptive error message.

J. The state agency may make payment exceptions for food instruments that would normally be denied payment by its banking services contractor. The authorized store shall submit all such requests in writing within 30 calendar days from the last date printed on the food instrument. The state agency will send a payment disposition decision to the requestor within 30 calendar days, after receipt.

K. The state agency shall use a postpayment review process to prospectively evaluate the reimbursement amount paid against redeemed food instruments in order to identify excessive or improperly redeemed food instruments in accordance with federal regulations (7 CFR 246.12(k)(1)-(3)). From the postpayment review process, the state agency may determine that one or more payments already made to a retail store were noncompliant with the vendor management policies and procedures (Policy 9.0, Reimbursement of Paid and Returned WIC Food Instruments, effective May 26, 2008, of the Vendor Manual) including the signed retailer agreement. The state agency reserves the right to bill and recoup payments of these ineligible payments, which will be referred to as a vendor claim (7 CFR 246.12(h)(3)(ix)). The state agency shall not bill an authorized store if the vendor claim amount is less than \$10.

L. A retail store that is not authorized to participate in the Virginia WIC Program that accepts a food instrument will not be reimbursed for any food instruments redeemed by a WIC participant.

**12VAC5-195-600. Sanctions and administrative actions.**

A. Each federal fiscal year, the state agency shall conduct compliance investigations on a minimum of 5.0% of authorized stores (7 CFR 246.12(j)(4)), including completing investigations of all high risk stores, all probationary stores and selective nonhigh risk stores. The state agency will conduct at least two compliance buys at each store selected for an investigation.

B. The state agency will provide written notification to the authorized store of the investigation results, including the store's violation of any statutes or regulations governing its participation in the WIC Program unless fraudulent activities, such as overcharging the program, have been documented. Once an investigation has been closed, stores with documented violations will receive a final written report of the agency's findings. The final report will identify what administrative action will be taken by the state agency against the authorized store.

C. Violations are categorized as either state agency or federally mandated. For federally mandated violations, a pattern consisting of four documented incidents of the same violation must occur during a single investigation. State agency violations do not require a pattern of noncompliance before administrative action is taken (7 CFR 246.12(l)).

D. For federally mandated violations that include, but are not limited to, fraud, trafficking, sale of alcohol or alcoholic beverages or tobacco products, sale of detergent, kitchen items, and overcharging the WIC Program, the state agency will not provide the store with prior written notice that a violation or violations were documented before imposing administrative sanctions.

E. For selective state agency violations that include, but are not limited to, forgery or overcharge discrepancies, the state agency shall not provide prior written notice that the violation has occurred, in order to ensure the integrity of the investigative process.

F. The type of documented violation dictates the administrative action taken including, but not limited to:

1. Provision of a written warning;
2. Imposition of a technical penalty fine;
3. Assessment of a civil monetary penalty (CMP) in lieu of disqualification; or
4. Disqualification of an authorized store.

G. The state agency uses a multitier sanction schedule that consists of:

<u>Class:</u>	<u>Description:</u>	<u>Description:</u>	<u>Administrative Actions:</u>
<u>A</u>	<u>Technical program violations</u>	<u>Represents procedural and food instrument handling errors.</u>	<u>\$100 fine assessed per documented incident, including repeat incidents of the same violation, plus a written warning sent to the store.</u>

# Regulations

B	<u>Serious program violations</u>	<u>Represents noncompliance errors documented either from compliance investigations or noncompliance with provisions outlined in the retailer agreement.</u>	<u>Eight or more technical program violations within a consecutive 12-month period of time; or</u> <u>One-year disqualification, if a pattern of noncompliance is required and met. Otherwise, a \$100 technical fine per incident shall be assessed for all federally mandated violations that do not meet the pattern threshold requirement.</u>
C	<u>Critical program violations</u>	<u>Represents mandatory federal sanctions that require a pattern of noncompliance, i.e., overcharging.</u>	<u>Three documented incidents during a single investigation – Three-year disqualification.</u> <u>A \$100 technical fine per incident shall be assessed for all federally mandated violations that do not meet the pattern threshold requirement.</u>
D	<u>Major program violations</u>	<u>Represents mandatory federal sanctions, i.e., administrative finding of trafficking</u>	<u>Six-year disqualification—only one documented incident is required.</u>
E	<u>Warning</u>	<u>Represents a documented violation, but does not warrant points being assessed and/or a fine being charged.</u>	<u>Written warning sent to the retail store.</u>

H. All documented overcharges or payments for ineligible food items identified during a compliance investigation will be considered a vendor claim and be subject to repayment.

I. Copies of any investigative evidence collected by the state agency from an open compliance investigation will be available to the authorized store, upon request, once the

investigation has been closed and the store is notified in writing of the final compliance investigation results.

## **12VAC5-195-610. Participant access.**

A. Prior to taking disqualification actions against an authorized store, the state agency shall complete a participant access assessment (7 CFR 246.12(l)(ix)). This type of assessment is completed for denied authorizations if an informal settlement meeting or full administrative review is requested by a store applicant. Participant convenience is not a valid consideration for the state agencies in making any adequate access decisions.

B. Participant access will be a factor considered by the state agency in deciding if a store shall be assessed a civil monetary penalty in lieu of disqualification or when a store applicant is eligible as an authorization exception.

C. The state agency shall use the same criteria established for making authorization exceptions in deciding if adequate participant access exists.

D. The participant access analysis completed by the state agency contains confidential information. A copy of this internal work document shall not be given to retail stores or their representatives.

## **12VAC5-195-620. Participant impact.**

Participant impact may be an additional factor considered by the state agency in deciding if a store shall be assessed a civil monetary penalty in lieu of disqualification. For stores whose average number of unique participants is deemed high may be retained in lieu of disqualification. The state agency will take into consideration customer service impact and competitive pricing issues in making any administrative exception decisions.

## **12VAC5-195-630. Retained in lieu of disqualification.**

A. An authorized store with documented administrative findings that warrant WIC Program disqualification actions may be retained in lieu of disqualification if the state agency determines that inadequate participant access would exist. The state agency will evaluate the impact on participants and the preventive procedures the store intends to take in order to decide if the store will be allowed to pay a civil monetary penalty fine rather than being disqualified.

B. The state agency shall notify the authorized store in writing if it will be retained in lieu of disqualification and the civil monetary penalty fine that has been assessed (7 CFR 246.12(l)(x)).

## **12VAC5-195-640. Civil monetary penalty (CMP) fines.**

A. A civil monetary penalty (CMP) fine may be assessed for documented state agency and federally mandated violations (7 CFR 246.12(l)(x)).

B. The state agency uses a federally mandated formula to calculate both state and federally mandated CMPs that are assessed. The maximum civil monetary penalty assessed shall comply with federal requirements as outlined in 7 CFR 246.12(l)(2). The state agency is unable to make any reductions in the maximum CMP amount due since this formula is defined in federal regulations.

C. The same formula is used to calculate the civil monetary penalty fine for stores retained in lieu of disqualification due to documented state agency sanctions. The state agency has the authority to reduce the fine amount being assessed against the store by no more than 50%. The state agency must document in its records the specific factors supporting this administrative decision.

D. A CMP shall be paid in full or based upon an agreed installment plan. Failure of the authorized store to pay any scheduled installments in a timely manner will lead to the store's disqualification for the original disqualification period.

E. Payments shall be made by certified check, cashier check or money order. Payments shall be made out to the Virginia WIC Program and mailed to the address identified on the penalty fine statement.

F. The state agency will process all past due obligations for any of the following including penalty fines, vendor claims, civil monetary penalty fines or overcharges assessed against authorized stores in accordance with the Office of the Comptroller's Policies and Procedures, Section Number 20500 (Accounts Receivable), dated June 2004. The state agency will also process all past due financial obligations in accordance with the Virginia Debt Collection Act (§2.2-4800 et seq. of the Code of Virginia).

G. The state agency shall notify the Food Stamp Program in writing within 15 calendar days after assessing a CMP against an authorized store being retained in lieu of disqualification.

### **12VAC5-195-650. Disqualification administrative actions.**

A. Voluntary withdrawal or nonrenewal in lieu of disqualification is not permitted for documented mandatory federal violations. The state agency may use voluntary withdrawal or nonrenewal for state agency sanctions only.

B. The state agency shall disqualify an authorized store for any of the following reasons:

1. Failure to comply with general requirements and conditions as established in the retailer agreement;
2. Failure to meet program requirements as documented from the compliance investigation process;
3. Reciprocal administrative action due to the store being disqualified from the Food Stamp Program (FSP);
4. Failure to pay a CMP or vendor claim within 30 calendar days after being assessed;

5. Provision of false, incomplete, inaccurate or misleading information that affects the store's selection status;

6. Repeated failure to maintain the minimum stocking requirement; or

7. Failure to take documented remedial corrective actions.

C. The state agency shall notify the food stamp office of any WIC Program disqualifications and termination actions taken against an authorized store location.

D. Authorized stores that are being disqualified due primarily to documented overcharges that have participated in a full administrative review and the adjudication officer's findings confirm that the disqualification actions being taken by the state agency are appropriate, then a fine will be assessed. A maximum fine of \$999 shall be assessed for two or more documented overcharges during a single investigation. If only one overcharge incident was documented during a single investigation, then a maximum fine of \$500 shall be assessed. If the disqualification action does not involve any documented overcharges, then no fine will be assessed.

### **12VAC5-195-660. Informal settlement meetings.**

A. An informal settlement meeting may be requested by an authorized store or applicant. Authorized stores may request an informal settlement meeting for any adverse action or program decision impacting a store. A store applicant may request an informal settlement meeting related to a denied authorization decision. During this meeting, the state agency will be represented by the state WIC director or designee.

B. The retail store or applicant has 15 calendar days from the date of receipt of the denial notice or adverse action to postmark a written request for an informal settlement meeting.

C. The request for the informal settlement meeting can be hand delivered, mailed by US mail, UPS or FedEx, sent by facsimile transmission or sent via email to the vendor manager.

D. Upon receipt of the retail store's or applicant's request for an informal settlement meeting, the state agency will confirm a date, time, place and method for the informal settlement meeting. The meeting may take place either through a face-to-face meeting or through video conference. Failure to attend the scheduled meeting on the agreed upon date and time will lead to the retail store forfeiting its rights to any further informal settlement meetings.

E. The retail store or applicant will have one opportunity to reschedule the informal settlement meeting time or date established with the state agency. All requests to reschedule the meeting must be submitted in writing at least 24 hours before the scheduled meeting date, unless an emergency

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# Regulations

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occurs, as determined at the discretion of the state WIC director or designee.

F. If the retail store representative is more than 45 minutes late from the agreed upon meeting start time, then this will be considered a "no show" unless he can provide documentation that the state WIC director or designee determines justifies his tardiness or failure to appear. This outcome means that the retail store has forfeited its rights to the informal settlement meeting.

G. If an authorized store is being considered for possible program disqualification or other adverse actions, the state agency shall schedule an optional informal settlement meeting with store management prior to taking administrative action. The state WIC director or designee shall be in attendance. The purpose of the informal settlement meeting is to:

1. Identify areas of noncompliance;
2. Provide a forum for the store to submit information about the impact of the potential disqualification on WIC participants;
3. Review the inadequate participant access results and the civil monetary penalty fine for stores being retained in lieu of disqualification; and
4. Provide information to the store regarding its appeal rights.

H. Informal settlement meetings are primarily held in Richmond, Virginia. A store may request that the informal settlement meeting be held using videoconferencing technology. This option will be available to the store if traveling to Richmond will create an undue hardship on the owner or store representative. Undue hardship is defined as travel distance greater than a three-hour drive one way or any other situation determined at the discretion of the state WIC director or designee. The authorized store or applicant would be required to travel to a local agency that has videoconferencing equipment available.

I. After the informal settlement meeting is held, the state agency shall send within 15 days a written summary of the meeting's results to a designated store representative. If the resolution offered from the informal settlement meeting is unacceptable to the retail store, then the retail store or applicant may request a full administrative review in writing. This written request must be submitted to the vendor manager within 15 calendar days from the date of receipt of the informal settlement meeting summary. The vendor manager will identify if the store's request qualifies under federal regulations for a full administrative review. If the store's request is not eligible, then the store will receive a written response from the vendor manager of this decision.

J. An authorized store or applicant may elect not to participate in an informal settlement meeting and request a

full administrative review. This option is available if it qualifies under federal regulations (7 CFR 246.18) for a full administrative review and is submitted within 15 days after receiving an official notice of the adverse actions from the state agency.

## **12VAC5-195-670. Full administrative review.**

A. Authorized retail stores and applicants shall be offered an opportunity to request a full administrative review for only the adverse action cited in subsection O of this section.

B. The retail store or applicant has 15 calendar days from the date of receipt of the denial notice, either by letter or an electronic format, or disqualification letter to request a full administrative review.

C. The request for the full administrative review can be mailed by US mail, sent by facsimile transmission or sent via email to the vendor manager. If the request is mailed, it must be postmarked within 15 calendar days from the date of receipt of letter or electronic notification from the state agency, whichever comes first.

D. The retail store or applicant must indicate whether or not he will be represented by an attorney when the full administrative review request is made. The retail store or applicant must also provide the state agency with copies of any written information to be used during the review and names of witnesses that will be called at least five days prior to the scheduled full administrative review. Failure to notify the state agency of these items may result in a rescheduled date and time for the full administrative review or the exclusion of documents and witnesses from the full administrative review.

E. Upon receipt of the retail store's or applicant's request for a full administrative review, the state agency will confirm a date, time, and place for the review within 30 days. For authorized stores, the review must be scheduled to take place within 60 calendar days after the written request is received by the state agency unless otherwise agreed to by the parties involved.

F. Failure to attend the scheduled review on the agreed upon date and time will lead to the retail store forfeiting its rights to any further administrative reviews.

G. The retail store or applicant will have one opportunity to reschedule the full administrative review's date or time. All requests to reschedule the review date or time must be submitted in writing at least 24 hours before the scheduled review date, unless an emergency occurs, as determined at the discretion of the state WIC director or designee. Rescheduled reviews shall take place within four weeks of the originally scheduled date unless the parties mutually agree on a later date.

H. If the retail store representative is more than 45 minutes late from the agreed upon review start time, then this will be

considered a "no show" unless he can provide documentation that the WIC director or designee determines justifies his tardiness or failure to appear. This outcome means that the retail store has forfeited its rights to a full administrative review.

I. A full administrative review is conducted by an adjudication officer who is employed by the Virginia Department of Health. The adjudication officer shall ensure that administrative actions taken by the WIC Program are consistently and fairly applied and that those administrative actions comply with established policies, procedures and federal and state regulations. A representative from the state agency will present its case to the adjudication officer and retail store or applicant representative. Conversely, the storeowner or designated representative, which may include legal counsel, will present its case to the adjudication officer.

J. All full administrative reviews are held in Richmond, Virginia.

K. After a full administrative review is held, the state WIC director shall provide written notification of the adjudication officer's decision, including the basis for the decision, within 90 calendar days of the date of receipt of the full administrative appeal review request.

L. Authorized retail stores being disqualified may continue to deposit WIC food instruments until a decision has been rendered from the full administrative review. The adverse action effective date shall be postponed by the state agency pending the outcome of the review.

M. In accordance with 7 CFR 246.18(b)(2), if an authorized store does not request a full administrative review, then disqualification becomes effective 15 calendar days after the retailer receives the state agency's written disqualification letter.

N. An authorized retailer being retained in lieu of disqualification may elect to voluntarily withdraw from the WIC Program rather than pay a mandated civil monetary penalty fine. If the retailer voluntarily withdraws and does not pay a civil monetary penalty fine that previously had been imposed by the program, then a disqualification status will be documented in the state agency's records. The disqualification period may range from one to six years, depending on the type of sanctions and violations documented by the state agency.

O. The state agency shall provide a full administrative review to retail stores or applicants for the following adverse actions pursuant to 7 CFR 246.18(a)(1)(i) and (ii):

1. Denial of authorization based on the vendor selection criteria for competitive price or for minimum variety and quantity of authorized supplemental foods (7 CFR 246.12(g)(3)(i) and (ii)) or on a determination that the

vendor is attempting to circumvent a sanction (7 CFR 246.12(g)(4));

2. Denial of authorization based upon the vendor selection criteria for business integrity or for a current Food Stamp Program disqualification or civil money penalty for hardship (7 CFR 246.12(g)(3)(iii) and (iv));

3. Denial of authorization based on a state agency established vendor selection criteria if the basis of the denial is a vendor sanction or a Food Stamp Program withdrawal of authorization or disqualification;

4. Denial of authorization based on the state agency's retailer limiting criteria (7 CFR 246.12(g)(2));

5. Denial of authorization because a vendor submitted its application outside the timeframes during which applications are accepted or processed as established by the state agency under 7 CFR 246.12(g)(7);

6. Termination of a retailer agreement because of a change in ownership or location or cessation of operations (7 CFR 246.12(h)(3)(xvii));

7. Termination of a retailer agreement for cause;

8. Disqualification based on documented WIC Program violations;

9. Disqualification based on a trafficking conviction (7 CFR 246.12(l)(1)(i));

10. Disqualification based on the imposition of a Food Stamp Program civil monetary penalty for hardship (7 CFR 246.12(l)(2)(ii));

11. Disqualification or civil monetary penalty imposed in lieu of disqualification based on a mandatory sanction imposed by another WIC state agency (7 CFR 246.12(l)(2)(iii)); or

12. Imposition of a fine or a civil monetary penalty in lieu of disqualification.

P. The state agency shall not provide a full administrative review to retail stores that appeal the following actions pursuant to 7 CFR 246.18(a)(1)(iii):

1. The validity or appropriateness of the state agency's vendor limiting or selection criteria (7 CFR 246.12(g)(2) and (3));

2. The validity or appropriateness of the state agency's vendor peer group criteria and the criteria used to identify vendors that are above 50% vendors or comparable to above 50% vendors;

3. The validity or appropriateness of the state agency's participant access criteria and the state agency's participant access determinations;

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# Regulations

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4. The state agency's determination whether a vendor had an effective policy and program in effect to prevent trafficking and that the ownership of the vendor was not aware of, did not approve of, and was not involved in the conduct of the violation (7 CFR 246.12(l)(1)(i)(B));

5. Denial of authorization if the state agency's vendor authorization is subject to the procurement procedures applicable to the state agency;

6. The expiration of the retailer's agreement;

7. Disputes regarding food instrument payments and vendor claims other than the opportunity to justify or correct a vendor overcharge or other error as permitted by 7 CFR 246.12(k)(3); or

8. Disqualification of a vendor as a result of disqualification from the Food Stamp Program (7 CFR 246.12(l)(1)(vii)).

Q. A full administrative review request shall not be denied or dismissed unless:

1. The request to the state agency is not postmarked within 15 calendar days of the applicant or authorized store's receipt of the notice of disqualification or adverse action;

2. The request to the state agency was submitted by an individual who does not have the legal or delegated authority to represent the owner;

3. The retailer or authorized representative withdraws the request in writing;

4. The retailer or authorized representative fails without good cause to appear at the scheduled review date and time; or

5. The request for a full administrative review is not eligible for this consideration based on the specific exclusion criteria outlined in subsection P of this section.

## DOCUMENTS INCORPORATED BY REFERENCE

Virginia WIC Program Retailer Manual (Vendor Manual), Department of Health;

Policy 9.0, Reimbursement of Paid and Returned WIC Food Instruments, effective May 26, 2008.

Policy 10.0, Minimum Stocking Requirement, effective May 1, 2007.

Policy 14.0, Retailer Selection and Authorization, effective April 1, 2008.

Policy 14.1, Business Integrity, effective August 1, 2003.

Attachment to Policy 15.0, Sanction Classification System–Violation Schedule, effective May 26, 2008.

Virginia WIC Program Approved Food List, effective January 1, 2007, Virginia Department of Health.

Retailer Agreement, effective July 1, 2008, Virginia Department of Health.

Volume No. 1 – Policies & Procedures, Function No. 20000–General Accounting, Section No. 20500–Accounts Receivable, dated June 2004, Office of the Comptroller, Commonwealth of Virginia.

VA.R. Doc. No. R08-1023; Filed May 6, 2008, 11:34 a.m.

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## TITLE 20. PUBLIC UTILITIES AND TELECOMMUNICATIONS

### STATE CORPORATION COMMISSION

#### Proposed Regulation

REGISTRAR'S NOTICE: The State Corporation Commission is exempt from the Administrative Process Act in accordance with §2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

Title of Regulation: **20VAC5-315. Regulations Governing Net Energy Metering (amending 20VAC5-315-10, 20VAC5-315-20, 20VAC5-315-40, 20VAC5-315-50).**

Statutory Authority: §§12.1-13 and 56-594 of the Code of Virginia.

Public Hearing Information: A public hearing will be scheduled upon request.

Public Comments: Public comments may be submitted until 5 p.m. on June 26, 2008.

Agency Contact: Kelli Gravely, Utilities Analyst, Division of Energy Regulation, State Corporation Commission, P.O. Box 1197, 1300 East Main Street, Richmond, VA 23218, telephone (804) 371-9765, FAX (804) 371-9350, or email kelli.gravely@scc.virginia.gov.

#### Summary:

*Pursuant to Chapters 877, 888, and 933 of the 2007 Acts of Assembly, §56-594 of the Code of Virginia was amended to (i) increase the allowable total aggregate generation capacity of net metering customers in each utility's Virginia service territory from 0.1% to 1.0% of the utility's adjusted Virginia peak-load forecast in the previous year; and (ii) require each utility, upon written request of a net metering customer (i.e., eligible customer-generator), to enter into a contract to purchase the generation that exceeds the customer's own usage for the 12-month net metering period at a rate approved by the commission, unless the parties agree to a higher rate.*

*The proposed amendments to the rules reflect the statutory increase of allowable total aggregate generation capacity of net metering customers and establish a framework for eligible customer-generators to contract with their electric distribution company for sale of generation exceeding their usage, and make a technical correction to 20VAC5-315-50.*

AT RICHMOND, MAY 1, 2008

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUE-2008-00008

Ex Parte: In the matter of amending regulations governing net energy metering

ORDER ESTABLISHING PROCEEDING

The Regulations Governing Net Energy Metering, 20 VAC 5-315-10 et seq. ("Net Energy Metering Rules"), adopted by the State Corporation Commission ("Commission") pursuant to § 56-594 of the Virginia Electric Utility Restructuring Act, Chapter 23 (§ 56-576 et seq.) of Title 56 of the Code of Virginia ("Restructuring Act"), establish the requirements for participation by an eligible customer-generator in net energy metering in the Commonwealth. The Net Energy Metering Rules include conditions for interconnection and metering, billing, and contract requirements between net metering customers, electric distribution companies, and energy service providers.<sup>1</sup>

Chapters 877, 888, and 933 of the 2007 Acts of Assembly amended § 56-594 of the Code<sup>2</sup> to: (1) increase the allowable total aggregate generation capacity of net metering customers in each utility's Virginia service territory from 0.1% to 1% of the utility's adjusted Virginia peak-load forecast in the previous year; and (2) require each utility, upon written request of a net metering customer (i.e., eligible customer-generator), to enter into a contract to purchase the generation that exceeds the customer's own usage for the 12-month net metering period at a rate approved by the Commission, unless the parties agree to a higher rate.<sup>3</sup> The current Net Energy Metering Rules thus must be revised to reflect the increase of allowable total aggregate generation capacity of net metering customers and to establish the framework for eligible customer-generators to contract with their electric distribution company for the sale of generation exceeding their usage.

In addition to changes to reflect statutory amendments described above, a technical correction to 20 VAC 5-315-50 is also needed.

NOW THE COMMISSION, upon consideration of the matter, is of the opinion and finds that a proceeding should be established to amend the Net Energy Metering Rules to reflect the statutory increase of allowable total aggregate

generation capacity of net metering customers and to establish the framework for eligible customer-generators to contract with their electric distribution company for sale of generation exceeding their usage and to make a technical correction to 20 VAC 5-315-50. To initiate this proceeding, the Commission Staff has prepared proposed rules ("Proposed Rules") which are appended to this Order. We will direct that notice of the Proposed Rules be given to the public and that interested persons be provided an opportunity to file written comments on, propose modifications or supplements to, or request a hearing on the Proposed Rules. We will further direct that each Virginia electric distribution company within the meaning of 20 VAC 5-315-20 serve a copy of this Order upon each of their respective net metering customers and file a certificate of service. Individuals should be specific in their comments, proposals, or supplements to the Proposed Rules and address only those issues pertaining to the amendment of § 56-594 of the Code of Virginia pursuant to Chapters 877, 888, and 933 of the 2007 Acts of Assembly and the proposed technical correction to 20 VAC 5-315-50. Issues outside the scope of implementing these amendments and the technical correction will not be open for consideration.

Accordingly, IT IS ORDERED THAT:

(1) This case is docketed and assigned Case No. PUE-2008-00008.

(2) The Commission's Division of Information Resources shall forward a copy of this Order Establishing Proceeding to the Registrar of Regulations for publication in the Virginia Register of Regulations.

(3) On or before May 30, 2008, the Commission's Division of Information Resources shall publish the following notice as classified advertising in newspapers of general circulation throughout the Commonwealth of Virginia:

NOTICE TO THE PUBLIC OF A PROCEEDING TO AMEND REGULATIONS FOR NET ENERGY METERING PURSUANT TO § 56-594 OF THE CODE OF VIRGINIA

CASE NO. PUE-2008-00008

The Regulations Governing Net Energy Metering, 20 VAC 5-315-10 et seq. ("Net Energy Metering Rules"), adopted by the State Corporation Commission ("Commission") pursuant to § 56-594 of the Virginia Electric Utility Restructuring Act, Chapter 23 (§ 56-576 et seq.) of Title 56 of the Code of Virginia ("Restructuring Act"), establish the requirements for participation by an eligible customer-generator in net energy metering in the Commonwealth. The Net Energy Metering Rules include conditions for interconnection and metering, billing, and contract requirements between net metering customers, electric distribution companies, and energy service providers.



Chapters 877, 888, and 933 of the 2007 Acts of Assembly amended § 56-594 of the Code of Virginia to: (1) increase the allowable total aggregate generation capacity of net metering customers in each utility's Virginia service territory from 0.1% to 1% of the utility's adjusted Virginia peak-load forecast in the previous year; and (2) require each utility, upon written request of a net metering customer (i.e., eligible customer-generator), to enter into a contract to purchase the generation that exceeds the customer's own usage for the 12-month net metering period at a rate approved by the Commission, unless the parties agree to a higher rate. In addition to these statutory amendments, the Commission Staff is proposing a technical correction to 20 VAC 5-315-50 of the Net Energy Metering Rules.

The Commission has established a proceeding and published Staff's proposed amendments to the Net Energy Metering Rules to reflect the changes required by the revision of § 56-594 of the Code of Virginia ("Proposed Rules") and the technical correction to 20 VAC 5-315-50 of the Net Metering Rules. Interested persons are encouraged to obtain a copy of the Commission Order and the proposed amendments in this proceeding. Copies are available for public inspection at the Commission's Document Control Center, Tyler Building, First Floor, 1300 East Main Street, Richmond, Virginia 23219, Monday through Friday, 8:15 a.m. to 5:00 p.m., or may be downloaded from the Commission's website: <http://www.scc.virginia.gov/case>.

On or before June 26, 2008, any interested person may file an original and fifteen (15) copies of any written comments on or propose modifications or supplements to the Proposed Rules with the Clerk of the Commission at the address set forth below. Interested persons desiring to submit comments electronically may do so by following the instructions available at the Commission's website. Individuals should be specific in their comments, proposals, or supplements to the Proposed Rules and address only those issues pertaining to the amendment of Va. Code § 56-594 pursuant to Chapter 877, 888, and 933 of the 2007 Acts of Assembly and the technical correction proposed. Issues outside the scope of implementing this amendment and technical correction will not be open for consideration.

On or before June 26, 2008, any interested person may file an original and fifteen (15) copies of any requests for hearing with the Clerk of the Commission at the address set forth below. Any request for hearing shall state with specificity why the issues raised in the request for hearing cannot be adequately addressed in written comments. If sufficient request for hearing is not received, the Commission may enter an order based upon the papers filed. Persons expecting to participate as a respondent in any hearing that may be scheduled shall include with their

request for hearing an original and fifteen (15) copies of a notice of participation in accordance with 5 VAC 5-20-80 of the Commission Rules of Practice and Procedure, 5 VAC 5-20-10 et seq.

All filings in this proceeding shall be directed to Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, and shall refer to Case No. PUE-2008-00008.

### STATE CORPORATION COMMISSION

(4) On or before May 21, 2008, each Virginia electric distribution company shall serve a copy of this Order upon each of their respective net metering customers and file a certificate of service no later than May 27, 2008, consistent with the findings above.

(5) On or before June 26, 2008, any interested person may comment on, propose modifications or supplements to, or request a hearing on the Proposed Rules by filing an original and fifteen (15) copies of such comments or requests with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Individuals should be specific in their comments, proposals, or supplements to the Proposed Rules and address only those issues pertaining to the amendment of § 56-594 of the Code of Virginia pursuant to Chapters 877, 888, and 933 of the 2007 Acts of Assembly and the technical correction to 20 VAC 5-315-50. Issues outside the scope of implementing this amendment and technical correction will not be open for consideration. Any request for hearing shall state with specificity why the issues raised in the request for hearing cannot be adequately addressed in written comments. If a sufficient request for hearing is not received, the Commission may consider the matter and enter an order based upon the papers filed herein. Interested parties shall refer in their comments or requests to Case No. PUE-2008-00008. Interested persons desiring to submit comments electronically may do so by following the instructions available at the Commission's website: <http://www.scc.virginia.gov/case>.

(6) This matter is continued for further orders of the Commission.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to all persons on the official Service List in this matter. The Service List is available from the Clerk of the State Corporation Commission, c/o Document Control Center, 1300 East Main Street, First Floor, Tyler Building, Richmond, Virginia 23219.

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<sup>1</sup> On September 25, 2006, the Commission amended the Commission's Net Energy Metering Rules to: expand the definition of eligible customer-generator; expand the types of permissible fuels for the subject electrical generating facility;

and require that the generator located on the customer's premises must also be connected to the customer's wiring on the customer's side of its interconnection with the distributor. These amendments reflect the statutory changes enacted by Chapter 470 of the 2006 Acts of Assembly, which amended § 56-594 of the Restructuring Act (Case No. PUE-2006-00073, Order Adopting Final Regulations).

<sup>2</sup> The 2007 amendments to § 56-594 divided former subsection D into present subsections D and E where the language of the 2007 amendments are found.

<sup>3</sup> The net metering contract is available to eligible customer-generators on a first-come, first-served basis in each electric distribution company's Virginia service area until the rated generating capacity owned and operated by eligible customer-generators in the state reaches one percent of each electric distribution company's adjusted Virginia peak-load forecast for the previous year (§ 56-594 E of the Code).

### **20VAC5-315-10. Applicability and scope.**

These regulations are promulgated pursuant to the provisions of §56-594 of the Virginia Electric Utility Restructuring Act (§56-576 et seq. of the Code of Virginia). They establish requirements intended to facilitate net energy metering for customers owning and operating, or contracting with persons to own or operate, or both, an electrical generator that uses renewable energy, as defined by §56-576 of the Code of Virginia as its total fuel source. These regulations will standardize the interconnection requirements for such facilities and will govern the metering, billing, payment and contract requirements between net metering customers, electric distribution companies and energy service providers.

### **20VAC5-315-20. Definitions.**

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

"Billing period" means, as to a particular customer, the time period between the dates on which the electric distribution company or energy service provider, as the case may be, issues the customer's bills.

"Electric distribution company" means the entity that owns and/or operates the distribution facilities delivering electricity to the net metering customer's premises.

"Energy service provider" means the entity providing electric energy to a net metering customer, either as a tariffed, competitive, or default service pursuant to §56-585 of the Code of Virginia.

"Excess generation" means the amount by which electricity generated by the renewable fuel generator exceeds the electricity consumed by the net metering customer for the net metering period.

"Net metering customer" means a customer owning and operating, or contracting with other persons to own or operate, or both, a renewable fuel generator under a net metering service arrangement.

"Net metering period" means each successive 12-month period beginning with the first meter reading date following the date of final interconnection of the renewable fuel generator with the electric distribution company's facilities.

"Net metering service" means measuring the difference, over the net metering period between electricity supplied to a net metering customer from the electric grid and the electricity generated and fed back to the electric grid by the net metering customer, using a single meter or, as provided in 20VAC5-315-70, additional meters.

"Person" means any individual, corporation, partnership, association, company, business, trust, joint venture, or other private legal entity and the Commonwealth or any municipality.

"Renewable fuel generator" means an electrical generating facility that:

1. Has an alternating current capacity of not more than 10 kilowatts for residential customers and not more than 500 kilowatts for nonresidential customers;
2. Uses renewable energy, as defined by §56-576 of the Code of Virginia, as its total fuel source;
3. The net metering customer owns and operates, or has contracted with other persons to own or operate, or both;
4. Is located on the customer's premises and is connected to the customer's wiring on the customer's side of its interconnection with the distributor;
5. Is interconnected pursuant to a net metering arrangement and operated in parallel with the electric distribution company's facilities; and
6. Is intended primarily to offset all or part of the net metering customer's own electricity requirements.

### **20VAC5-315-40. Conditions of interconnection.**

A. A prospective net metering customer may begin operation of his renewable fuel generator on an interconnected basis when:

1. The net metering customer has properly notified both the electric distribution company and energy service provider (in accordance with 20VAC5-315-30) of his intent to interconnect;
2. If required by the electric distribution company's net metering tariff, the net metering customer has installed a lockable, electric distribution company accessible, load breaking manual disconnect switch;

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## Regulations

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3. A licensed electrician has certified, by signing the commission-approved notification form, that any required manual disconnect switch has been installed properly and that the renewable fuel generator has been installed in accordance with the manufacturer's specifications as well as all applicable provisions of the National Electrical Code;

4. The vendor has certified, by signing the commission-approved notification form, that the renewable fuel generator being installed is in compliance with the requirements established by Underwriters Laboratories or other national testing laboratories in accordance with IEEE Standard 1547, Standard for Interconnecting Distributed Resources with Electric Power Systems, July 2003;

5. In the case of static inverter-connected renewable fuel generators with an alternating current capacity in excess of 10 kilowatts, the net metering customer has had the inverter settings inspected by the electric distribution company. The inspecting electric distribution company may impose a fee on the net metering customer of no more than \$50 for such inspection;

6. In the case of nonstatic inverter-connected renewable fuel generators, the net metering customer has interconnected according to the electric distribution company's interconnection guidelines and the electric distribution company has inspected all protective equipment settings. The inspecting electric distribution company may impose a fee on the net metering customer of no more than \$50 for such inspection.

7. In the case of renewable fuel generators with an alternating current capacity greater than 25 kilowatts, the following requirements shall be met before interconnection may occur:

a. Electric distribution facilities and customer impact limitations. A renewable fuel generator shall not be permitted to interconnect to distribution facilities if the interconnection would reasonably lead to damage to any of the electric distribution company's facilities or would reasonably lead to voltage regulation or power quality problems at other customer revenue meters due to the incremental effect of the generator on the performance of the electric distribution system, unless the customer reimburses the electric distribution company for its cost to modify any facilities needed to accommodate the interconnection.

b. Secondary, service, and service entrance limitations. The capacity of the renewable fuel generator shall be less than the capacity of the electric distribution company-owned secondary, service, and service entrance cable connected to the point of interconnection, unless the customer reimburses the electric distribution company for its cost to modify any facilities needed to accommodate the interconnection.

c. Transformer loading limitations. The renewable fuel generator shall not have the ability to overload the electric distribution company transformer, or any transformer winding, beyond manufacturer or nameplate ratings, unless the customer reimburses the electric distribution company for its cost to modify any facilities needed to accommodate the interconnection.

d. Integration with electric distribution company facilities grounding. The grounding scheme of the renewable fuel generator shall comply with IEEE 1547, Standard for Interconnecting Distributed Resources with Electric Power Systems, July 2003, and shall be consistent with the grounding scheme used by the electric distribution company. If requested by a prospective net metering customer, the electric distribution company shall assist the prospective net metering customer in selecting a grounding scheme that coordinates with its distribution system.

e. Balance limitation. The renewable fuel generator shall not create a voltage imbalance of more than 3.0% at any other customer's revenue meter if the electric distribution company transformer, with the secondary connected to the point of interconnection, is a three-phase transformer, unless the customer reimburses the electric distribution company for its cost to modify any facilities needed to accommodate the interconnection.

B. A prospective net metering customer shall not be allowed to interconnect a renewable fuel generator if doing so will cause the total rated generating alternating current capacity of all interconnected renewable fuel generators within that customer's electric distribution company's Virginia service territory to exceed ~~0.1%~~ 1.0% of that company's Virginia peak-load forecast for the previous year. In any case where a prospective net metering customer has submitted a notification form required by 20VAC5-315-30 and that customer's interconnection would cause the total rated generating alternating current capacity of all interconnected renewable fuel generators within that electric distribution company's service territory to exceed ~~0.1%~~ 1.0% of that company's Virginia peak-load forecast for the previous year, the electric distribution company shall, at the time it becomes aware of the fact, send written notification to such prospective net metering customer and to the commission's Division of Energy Regulation that the interconnection is not allowed. In addition, upon request from any customer, the electric distribution company shall provide to the customer the amount of capacity still available for interconnection pursuant to §56-594 D of the Code of Virginia.

C. Neither the electric distribution company nor the energy service provider shall impose any charges upon a net metering customer for any interconnection requirements specified by this chapter, except as provided under

subdivisions A 5 and 6 of this section, and 20VAC5-315-50 as related to off-site metering.

D. The net energy metering customer shall immediately notify the electric distribution company of any changes in the ownership of, operational responsibility for, or contact information for the generator.

**20VAC5-315-50. Metering, billing, payment and tariff considerations.**

Net metered energy shall be measured in accordance with standard metering practices by metering equipment capable of measuring (but not necessarily displaying) power flow in both directions. Each contract or tariff governing the relationship between a net metering customer, electric distribution company or energy service provider shall be identical, with respect to the rate structure, all retail rate components, and monthly charges, to the contract or tariff under which the same customer would be served if such customer was not a net metering customer with the exception that time of use metering is not permitted. Said contract or tariff shall be applicable to both the electric energy supplied to, and consumed from, the grid by that customer.

In instances where net metering customers' metering equipment is of a type for which meter readings are made off site and where this equipment has, or will be, installed for the convenience of the electric distribution company, the electric distribution company shall provide the necessary additional metering equipment to enable net metering service at no charge to the net metering customer. In instances where a net metering customer has requested, and where the electric distribution company would not have otherwise installed, metering equipment which is intended to be read off site, the electric distribution company may charge the net metering customer its actual cost of installing any additional equipment necessary to implement net metering service.

If electricity generated by the net metering customer and fed back to the electric grid exceeds the electricity supplied to the net metering customer from the ~~grid~~ grid during a net metering period, the net metering customer shall receive no compensation from the electric distribution company nor the energy service provider unless that net metering customer has entered into a ~~purchase~~ power purchase agreement contract with the electric distribution company and/or the energy service provider.

If the electric distribution company is also the energy service provider of the net metering customer, the electric distribution company, upon the written request of the net metering customer, shall enter into a power purchase agreement for the excess generation for net metering periods that begin on or after July 1, 2007. For net metering periods beginning during the time period July 1, 2007, through December 31, 2008, the written request of the net metering customer shall be submitted prior to the end of the net

metering period. For net metering periods beginning on or after January 1, 2009, the written request of the net metering customer shall be submitted prior to the beginning of the net metering period. The power purchase agreement shall be consistent with this chapter and obligate the electric distribution company to purchase the excess generation for requested net metering periods at a price equal to the systemwide PJM Interconnection, L.L.C. (PJM) day-ahead annual, simple average LMP (locational marginal price), as published by the PJM Market Monitoring Unit, for the most recent calendar year ending on or before the end of each net metering period, unless the electric distribution company and the net metering customer mutually agree to a higher price or unless, after notice and opportunity for hearing, the commission establishes a different price or pricing methodology. The electric distribution company shall make full payment annually to the net metering customer within 30 days following the latter of the end of the net metering period or the PJM Market Monitoring Unit's publication of the applicable calendar-year systemwide PJM day-ahead annual, simple average LMP (locational marginal price). The option of a net metering customer to request payment for excess generation for the net metering period and the corresponding price or pricing formula applicable to such excess generation shall be clearly delineated in the net metering tariff of the electric distribution company. A copy of such tariff shall be provided to each customer requesting interconnection of a renewable fuel generator.

If electricity generated by the net metering customer and fed back to the electric grid exceeds the electricity supplied to the net metering customer from the grid during any billing period (billing period credit), the net metering customer shall be required to pay only the nonusage sensitive charges for that billing period. Such billing period credits shall be accumulated, carried forward and applied at the first opportunity to any billing periods having positive net consumptions. However, any accumulated billing period credits remaining unused at the end of a net metering period shall be carried forward into the next net metering period only to the extent that such accumulated billing period credits carried forward do not exceed the net metering customer's ~~positive net billed~~ consumption for the current net metering period, adjusted to exclude accumulated billing period credits carried forward and applied from the previous net metering period.

VA.R. Doc. No. R08-1264; Filed May 6, 2008, 11:37 a.m.



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# GOVERNOR

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## EXECUTIVE ORDER NUMBER 65 (2008)

### **DECLARATION OF A STATE OF EMERGENCY FOR THE COMMONWEALTH OF VIRGINIA DUE TO SEVERE WEATHER THROUGHOUT THE COMMONWEALTH**

On April 28, 2008, I verbally declared a state of emergency to exist for the Commonwealth of Virginia based on high winds, flash flooding, and tornadoes throughout the state. These conditions have caused significant property damage and personal injury.

The health and general welfare of the citizens of the Commonwealth require that state action be taken to help alleviate the conditions caused by this situation. The effects of this situation constitute a natural disaster wherein human life and public and private property were imperiled, as described in §44-146.16 of the Code of Virginia.

Therefore, by virtue of the authority vested in me by §44-146.17 of the Code of Virginia, as Governor and as Director of Emergency Management, and by virtue of the authority vested in me by Article V, Section 7 of the Constitution of Virginia and by §44-75.1 of the Code of Virginia, as Governor and Commander-in-Chief of the armed forces of the Commonwealth, and subject always to my continuing and ultimate authority and responsibility to act in such matters, I hereby confirm, ratify, and memorialize in writing my verbal orders issued April 28, 2008 wherein I proclaim that a state of emergency exists and direct that appropriate assistance be rendered by agencies of both state and local governments to respond to the impacts of the situation, to alleviate any conditions resulting from significant damages, and to implement recovery and mitigation operations and activities so as to return impacted areas to pre-event conditions insofar as possible.

In order to marshal all public resources and appropriate preparedness, response and recovery measures to meet this potential threat and recover from its effects, and in accordance with my authority contained in §44-146.17 of the Emergency Services and Disaster Laws, I hereby order the following protective and restoration measures:

A. The full implementation by agencies of the state and local governments of Volume 1 (Basic Plan), and Volume 2 (Disaster Recovery Plan) of the Virginia Emergency Operations Plan, as amended, along with other appropriate state agency plans.

B. Full activation of the Virginia Emergency Operations Center (VEOC) and Virginia Emergency Response Team (VERT) employees. Furthermore, I am directing that the VEOC and VERT coordinate state operations in support of potential affected localities and the Commonwealth, to include issuing mission assignments to agencies designated in the Commonwealth of Virginia Emergency Operations Plan

(COVEOP) and others that may be identified by the State Coordinator of Emergency Management, in consultation with the Secretary of Public Safety, which are needed to provide for the preservation of life, protection of property, and implementation of recovery activities.

C. The activation, implementation and coordination of appropriate mutual aid agreements and compacts, including the Emergency Management Assistance Compact (EMAC), and the authorization of the State Coordinator of Emergency Management to enter into any other supplemental agreements, pursuant to §§44-146.18(E) and 44-146.28:1 of the Code of Virginia, to provide for the evacuation and reception of injured and other persons and the exchange of medical, fire, police, public utility, reconnaissance, welfare, transportation and communications personnel, and equipment and supplies. The State Coordinator of Emergency Management is hereby designated as Virginia's authorized representative within the meaning of the Emergency Management Assistance Compact, §44-146.28:1 of the Code of Virginia.

D. The authorization of the Departments of State Police, Transportation and Motor Vehicles to grant temporary overweight, over width, registration, or license exemptions to all carriers transporting essential emergency relief supplies or providing restoration of utilities (electricity, gas, phone, water, wastewater, and cable) in and through any area of the Commonwealth in order to support the disaster response and recovery, regardless of their point of origin or destination.

The axle and gross weights shown below are the maximum allowed, unless otherwise posted.

Any One Axle	24,000 Pounds
Tandem Axles (more than 40 inches but not more than 96 inches spacing between axle centers)	44,000 Pounds
Single Unit (2 Axles)	44,000 Pounds
Single Unit (3 Axles)	54,500 Pounds
Tractor-Semitrailer (4 Axles)	64,500 Pounds
Tractor-Semitrailer (5 or more Axles)	90,000 Pounds
Tractor-Twin Trailers (5 or more Axles)	90,000 Pounds
Other Combinations (5 or more Axles)	90,000 Pounds
Per Inch of Tire Width in Contact with Road Surface	850 Pounds

All over width loads, up to a maximum of 12 feet, must follow Virginia Department of Motor Vehicles (DMV) hauling permit and safety guidelines.

In addition to described overweight/over width transportation privileges, carriers are also exempt from registration with the

Department of Motor Vehicles. This includes the vehicles en route and returning to their home base. The above-cited agencies shall communicate this information to all staff responsible for permit issuance and truck legalization enforcement.

This authorization shall apply to hours worked by any carrier when transporting passengers, property, equipment, food, fuel, construction materials and other critical supplies to or from any portion of the Commonwealth for purpose of providing relief or assistance as a result of this disaster, pursuant to §52-8.4 of the Code of Virginia.

The foregoing overweight/over width transportation privileges as well as the regulatory exemption provided by §52-8.4.A of the Code of Virginia, and implemented in §19 VAC 30-20-40.B of the "Motor Carrier Safety Regulations," shall remain in effect for 30 days from the onset of the disaster, or until emergency relief is no longer necessary, as determined by the Secretary of Public Safety in consultation with the Secretary of Transportation, whichever is earlier.

E. The discontinuance of provisions authorized in paragraph D above may be implemented and disseminated by publication of administrative notice to all affected and interested parties by the authority I hereby delegate to the Secretary of Public Safety, after consultation with other affected Cabinet-level Secretaries.

F. The authorization of appropriate oversight boards, commissions and agencies to ease building code restrictions, and to permit emergency demolition, hazardous waste storage or treatment prior to proper disposal, debris removal, emergency landfill siting and operations and other activities necessary to address immediate health and safety needs without regard to time-consuming procedures or formalities and without regard to application or permit fees or royalties. This state of emergency constitutes a major medical emergency under the Rules and Regulations of the Board of Health Governing Emergency Medical Services, pursuant to Article 3.01 (§32.1-111.1 et seq.) of Chapter 4 of Title 32.1 of the Code of Virginia, Statewide Emergency Medical Services System and Services, and exemptions specified in the Rules and Regulations regarding patient transport and provider certification in disasters apply.

G. The authorization of a maximum of \$100,000 for matching funds for the Individuals and Households Program, authorized by The Stafford Act (when presidentially authorized), to be paid from state funds.

H. The implementation by public agencies under my supervision and control of their emergency assignments as directed in the COVEOP without regard to normal procedures pertaining to performance of public work, entering into contracts, incurring of obligations, or other logistical and support measures of the Emergency Services and Disaster Laws, as provided in §44-146.28 (b) of the Code of Virginia.

I. Upon my approval, the costs incurred by state agencies and other agencies in performing mission assignments through the VEOC of the Commonwealth as defined herein and in Section 44-146.28 of the Code of Virginia, in performing these missions shall be paid from state funds. In addition, up to \$150,000 shall be made available for state response and recovery operations and incident documentation with the Department of Planning and Budget overseeing the release of these funds.

J. Designation of members and personnel of volunteer, auxiliary and reserve groups including search and rescue (SAR), Virginia Associations of Volunteer Rescue Squads (VAVRS), Civil Air Patrol (CAP), member organizations of the Voluntary Organizations Active in Disaster (VOAD), Radio Amateur Civil Emergency Services (RACES), volunteer fire fighters, and others identified and tasked by the State Coordinator of Emergency Management for specific disaster related mission assignments as representatives of the Commonwealth engaged in emergency services activities within the meaning of the immunity provisions of §44-146.23 (a) of the Code of Virginia, in the performance of their specific disaster-related mission assignments.

This Executive Order shall be effective April 28, 2008 and shall remain in full force and effect until June 30, 2009 unless sooner amended or rescinded by further executive order. Termination of the Executive Order is not intended to terminate any Federal-type benefits granted or to be granted due to injury or death as a result of service under this Executive Order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 28th Day of April, 2008.

/s/ Timothy M. Kaine  
Governor

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# GENERAL NOTICES/ERRATA

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## STATE AIR POLLUTION CONTROL BOARD

### Air Quality Plan, Regional Haze

Purpose of notice: The Department of Environmental Quality (DEQ) is seeking comments and announcing a public hearing on a proposed permit to limit air pollution emitted by a facility in Bedford County, Virginia. If adopted, the Commonwealth intends to submit the permit as a revision to its state implementation plan (SIP) in accordance with the requirements of §110(a) of the federal Clean Air Act.

Public comment period: May 2, 2008, to June 3, 2008.

Public hearing: The Obenshain Room, DEQ West Central Regional Office, 3019 Peters Creek Road, Roanoke, Virginia, at 5:30 p.m. on June 3, 2008. A question and answer period will be held one half hour prior to the beginning of the public hearing (5 p.m.).

Permit name: State operating permit issued by DEQ under the authority of the State Air Pollution Control Board.

Name, address and registration number: Georgia Pacific Big Island, 9363 Lee Jackson Highway, Big Island, Virginia 24526, Registration No. 30389.

Description of proposal: The proposed revision consists of the control of emissions of particulate matter (PM), nitrogen oxides (NO<sub>x</sub>), and sulfur dioxide (SO<sub>2</sub>) to the atmosphere from certain units at the above-listed facility.

Virginia's regional haze regulation is found in Article 52 (9VAC5-40-7550 et seq.) of 9VAC5-40, Existing Stationary Sources. This regulation provides guidance for determining best available retrofit technology (BART). BART is required for any BART-eligible source that emits any air pollutant that may reasonably be anticipated to cause or contribute to visibility impairment in any federal Class I area. BART is an emission limitation based on the degree of reduction achievable through application of the best system of continuous emission reduction for each visibility-impairing pollutant emitted by an existing stationary facility established on a case-by-case basis. Georgia Pacific Big Island is subject to these requirements, and has undergone BART analyses resulting in the proposed application of BART controls.

In essence, the proposed revision will consist of a determination as to BART for the control of emissions of particulate matter (PM), nitrogen oxides (NO<sub>x</sub>), and sulfur dioxide (SO<sub>2</sub>) to the atmosphere from two power boilers located at the Georgia Pacific Big Island mill, Units #4 and #5. The proposed BART determinations are being made pursuant to Article 52 (9VAC5-40-7550 et seq.) of the Regulations for the Control and Abatement of Air Pollution (9VAC5-40, Existing Sources). For Unit #4, the proposed BART is (i) for PM, an electrostatic precipitator or alternative control device with equivalent reductions; (ii) for NO<sub>x</sub>, low NO<sub>x</sub> burners, or an alternative control technology with

equivalent reductions; and (iii) for SO<sub>2</sub>, a caustic scrubber designed to remove at a minimum 90% of the SO<sub>2</sub> from the boiler exhaust, or an alternative control device with equivalent reductions. For Unit #5, the proposed BART is (i) for PM, an electrostatic precipitator or alternative control device with equivalent reductions; (ii) for NO<sub>x</sub>, an overfire air system, or an alternative control technology with equivalent reductions; and (iii) for SO<sub>2</sub>, limiting the use of coal to no more than 10% of the annual capacity factor for the boiler.

A state operating permit is to be issued as the administrative mechanism to ensure compliance with the BART requirements for the facility. The permit is being issued pursuant to Article 52 (9VAC5-40-7550 et seq.) of 9VAC5-40 (Existing Stationary Sources) and Article 5 (9VAC5-80-800 et seq.) of 9VAC5-80 (Permits for Stationary Sources) of state regulations and are federally enforceable upon issuance. The permit will establish emission limits for control of PM, NO<sub>x</sub>, and SO<sub>2</sub>.

Federal information: This notice is also being given to satisfy the public participation requirements of federal regulations (40 CFR 51.102). The proposal will be submitted as a revision to the Commonwealth of Virginia SIP under §110(a) of the federal Clean Air Act in accordance with 40 CFR 51.104.

Consultation with federal land managers (FLMs): As provided in 40 CFR 51.302(b)(2), the FLMs were given the opportunity to comment on this permit on December 7, 2007. No comments were received, and no meeting was requested.

How to comment: DEQ accepts written comments by email, facsimile transmission and postal mail. In order to be considered, written comments must include the full name, address and telephone number of the person commenting and be received by DEQ by 5 p.m. on the last day of the comment period. Due to problems with the quality of facsimile transmissions, commenters are encouraged to provide the signed original by postal mail within one week. Both oral and written comments are accepted at the public hearing. DEQ prefers that comments be provided in writing, along with any supporting documents or exhibits. All testimony, exhibits and documents received are part of the public record. Please note this proposed permit is being concurrently reviewed by the U.S. Environmental Protection Agency.

To review proposal: The proposal and any supporting documents are available on the DEQ Air Public Notices for Plans website: <http://www.deq.virginia.gov/air/permitting/planotes.html>. The documents may also be obtained by contacting the DEQ representative named below. The public may review the documents between 8:30 a.m. and 5 p.m. of each business day until the close of the public comment period at the following locations: (i) DEQ Main Street Office, 8th Floor, 629 E. Main

Street, Richmond, Virginia, 804-698-4070, and (ii) DEQ West Central Regional Office, 3019 Peters Creek Road, Roanoke, Virginia, 540-562-6700.

Contact Information: Lillian Alexander, Department of Environmental Quality, 3019 Peters Creek Road, Roanoke, VA 24019, telephone (540) 562-6783, FAX (540) 562-6725, or email [ljalexander@deq.virginia.gov](mailto:ljalexander@deq.virginia.gov).

### **Proposed Revision to the State Implementation Plan (SIP)**

**Notice of action:** The Department of Environmental Quality (DEQ) is announcing an opportunity for public comment on a proposed revision to the Commonwealth of Virginia state implementation plan (SIP). The SIP is a plan developed by the Commonwealth in order to fulfill its responsibilities under the federal Clean Air Act to attain and maintain the ambient air quality standards promulgated by the U.S. Environmental Protection Agency (EPA) under the Act. If adopted, the Commonwealth intends to submit the regulation or a portion thereof to the EPA as a revision to the SIP in accordance with the requirements of §110(a) of the federal Clean Air Act.

**Regulations affected:** The regulations of the board affected by this action are Maintenance Areas (9VAC5-20-203) and Nonattainment Areas (9VAC5-20-204), Revision I07.

**Purpose of notice:** DEQ is seeking comment on the issue of whether the regulation amendments should be submitted as a revision to the SIP.

**Public comment period:** May 1, 2008, to June 2, 2008.

**Public hearing:** A public hearing may be conducted if a request is made in writing to the contact listed below. In order to be considered, the request must include the full name, address and telephone number of the person requesting the hearing and be received by DEQ by 5 p.m. on the last day of the comment period. Notice of the date, time, and location of any requested public hearing will be announced in a separate notice, and another 30-day comment period will be conducted.

**Public comment stage:** The regulation amendments are exempt from the state administrative procedures for adoption of regulations contained in Article 2 (§2.2-4006 et seq.) of the Administrative Process Act by the provisions of §2.2-4006 A 4 c of the Administrative Process Act because they are necessary to meet the requirements of the federal Clean Air Act and do not differ materially from the pertinent EPA regulations. Since the amendments are exempt from administrative procedures for the adoption of regulations, DEQ is accepting comment only on the issue cited above under "purpose of notice" and not on the content of the regulation amendments.

**Description of proposal:** In essence, the proposed revision will consist of amendments to existing regulation provisions

concerning the redesignation of ozone nonattainment areas to maintenance areas. The major provisions of the proposal are summarized as follows: (i) the Hampton Roads 8-hour Ozone Nonattainment Area (Counties of Gloucester, Isle of Wight, James City, and York; Cities of Chesapeake, Hampton, Newport News, Portsmouth, Poquoson, Norfolk, Suffolk, Virginia Beach, and Williamsburg) has been replaced by the Hampton Roads 8-hour Ozone Maintenance Area; and (ii) the Richmond 8-hour Ozone Nonattainment Area (Counties of Charles City, Chesterfield, Hanover, Henrico, and Prince George; Cities of Colonial Heights, Hopewell, Petersburg, and Richmond) has been replaced by the Richmond 8-hour Ozone Maintenance Area.

**Federal information:** This notice is being given to satisfy the public participation requirements of federal regulations (40 CFR 51.102) and not any provision of state law. It is planned to submit all provisions of the proposal as a revision to the Commonwealth of Virginia SIP.

**How to comment:** DEQ accepts written comments by email, facsimile transmission and postal mail. In order to be considered, comments must include the full name, address and telephone number of the person commenting and be received by DEQ by 5 p.m. on the last day of the comment period. Due to problems with the quality of facsimile transmissions, commenters are encouraged to provide the signed original by postal mail within one week. All testimony, exhibits and documents received are part of the public record.

**To review regulation documents:** The proposal and any supporting documents are available on the DEQ Air Public Notices for Plans website (<http://www.deq.state.va.us/air/permitting/planotes.html>). The documents may also be obtained by contacting the DEQ contact named below. The public may review the documents between 8:30 a.m. and 5 p.m. of each business day until the close of the public comment period at the following locations: (i) DEQ Main Street Office, 8th Floor, 629 E. Main Street, Richmond, Virginia, 804-698-4070, (ii) DEQ Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia, 804-527-5020, and (iii) DEQ Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, Virginia, 757-518-2000.

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



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# General Notices/Errata

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## STATE CORPORATION COMMISSION

### Bureau of Insurance

May 1, 2008

Administrative Letter 2008-06

To: All Risk Retention Groups and Risk Purchasing Groups Registered to do Business in Virginia, All Surplus Lines Insurers Approved to do Business in Virginia, and All Surplus Lines Brokers Licensed to do Business in Virginia

Re: Use of Automobile Standard Forms

Withdrawal of Administrative Letter 1995-4

The Bureau of Insurance (Bureau) has determined that surplus lines insurers, risk retention groups not chartered in Virginia, and licensed insurers transacting the business of insurance with risk purchasing groups not domiciled in Virginia are only required to use Virginia automobile standard forms if the insurer, on behalf of its insured, files an SR-22 or FR-44 with the Virginia Department of Motor Vehicles in order to comply with Virginia's financial responsibility laws. Consequently, the Bureau is withdrawing Administrative Letter 1995-4, which required surplus lines insurers to use the automobile standard forms without exception.

Please keep in mind, however, that the following entities must always use Virginia automobile standard forms, and any additional provisions or coverages more favorable than those in the automobile standard forms used by these entities must be approved by the Bureau as set forth in §38.2-2223 of the Code of Virginia:

1. A risk retention group chartered in Virginia; or
2. A licensed insurer that transacts the business of insurance with a risk purchasing group domiciled in Virginia.

If you have any questions regarding this administrative letter, please contact Carol Howard, Supervisor of Consumer Services, at (804) 371-9185.

/s/ Alfred W. Gross  
Commissioner of Insurance

## Bureau of Insurance

April 30, 2008

Administrative Letter 2008-07

To: All Title Insurers, Title Agencies and Agents and Other Interested Parties

Re: Title Insurance Legislation Enacted by the 2008 Virginia General Assembly

During the 2008 legislative session the Virginia General Assembly made certain changes to the Virginia Insurance Code as it relates to the licensing of title insurance agents and the Consumer Real Estate Settlement Protection Act as it relates to the financial responsibility requirements of settlement agents.

House Bill 431, <http://leg1.state.va.us/cgi-bin/legp504.exe?081+ful+CHAP0250>, amends §38.2-1814.1 of the Code of Virginia by requiring applicants who wish to sit for a title license examination on or after July 1, 2008, to have completed a 16 hour preparatory pre-licensing education course.

Title licensing candidates WILL NOT be allowed to sit for the title examination unless they bring to the testing site the requisite notarized affidavit certifying pre-licensing education of 16 hours along with the course instructor's certification. The affidavit can be found on the Bureau's website <http://www.scc.virginia.gov/division/boi/webpages/boilicensinprocedures.htm>, the Virginia Insurance Licensing Candidate Handbook <http://www.asivcs.com/indhome.asp?CPCat=1253INS>, or the Pearson VUE website <http://www.pearsonvue.com>.

The pre-licensing education course may be comprised of, or include, any form of classroom education or distance education in accordance with the examination content outline in the Virginia Insurance Licensing Candidate Handbook.

Information regarding preparatory pre-licensing courses can be obtained by contacting the Virginia Land Title Association (VLTA) at 800-929-8730 or <http://vlta.org>; or a licensed title insurer with whom you are employed or appointed.

The second bill, Senate Bill 149, amends subsection D 3 of §6.1-2.21 of the Consumer Real Estate Protection Act by increasing the surety bond coverage requirement from \$100,000 to \$200,000. This means that on or before July 1, 2008, all registered title settlement agents/agencies must submit either an original surety bond of not less than \$200,000 or a rider to the current bond increasing the amount of the bond to \$200,000.

Questions relating to matters of pre-licensing education courses should be directed to: Agents Licensing Section, Virginia Bureau of Insurance, Agent Regulation and Administration Division, P.O. Box 1157, Richmond, Virginia 23218, (804) 371-9631.

Questions relating to matters of surety bond coverage requirements should be directed to: Martha Washington-Lynch, CRESPA Examiner, Virginia Bureau of Insurance, Agent Regulation and Administration Division, P.O. Box 1157, Richmond, Virginia 23218, (804) 371-9558.

/s/ Alfred W. Gross  
Commissioner of Insurance

### STATE BOARD OF EDUCATION

#### Notice of Intent to Revise Mathematics Standards of Learning

The Board of Education intends to revise the Mathematics Standards of Learning. The review will take place from May 2008 through May 2009. The proposed revisions will be posted on the Department of Education website: <http://www.doe.virginia.gov>.

Public hearings will be held in February 2009. The time and location of the hearings will be announced well in advance.

Contact: Dr. Linda M. Wallinger, Assistant Superintendent for Instruction, Virginia Department of Education, P.O. Box 2120, Richmond, VA 23218, telephone (804) 225-2034, or email [linda.wallinger@doe.virginia.gov](mailto:linda.wallinger@doe.virginia.gov)

### DEPARTMENT OF ENVIRONMENTAL QUALITY

#### Notice of Stakeholder Meeting on Development of Freshwater Nutrient Criteria

The Department of Environmental Quality (DEQ) has scheduled a meeting for invited stakeholders and other interested public to provide a briefing on the efforts of agency staff and the Academic Advisory Committee (AAC) on Freshwater Nutrient Criteria and to consult with the stakeholders on these efforts. The meeting will be June 12, 2008, in the training room of the DEQ Piedmont Regional Office, 4949-A Cox Road, Glen Allen, Virginia, from 1:30 p.m. until 3:30 p.m.

The Commonwealth's "Plan for Nutrient Criteria Development," can be found on the DEQ website at <http://www.deq.virginia.gov/wqs/pdf/nutplan2.pdf>. This plan states that during the criteria development phase, the Commonwealth will rely on technical advice/expert opinion from in-house technical staff and an AAC and that a separate general stakeholders group composed of environmentalists, industrial, municipal wastewater and other interested parties will periodically meet with DEQ staff for briefings and opportunity for comment. Information about DEQ's collaborative effort with the AAC can be found on the DEQ website under "Action Rivers and Streams" at <http://www.deq.virginia.gov/wqs/rule.html#NUT2>.

Contact Information: Jean Gregory, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4113, FAX (804) 698-4116, or email [jwgregory@deq.virginia.gov](mailto:jwgregory@deq.virginia.gov).

#### Restore Water Quality - Pigg River and Old Womans Creek watersheds

Public meeting: The Franklin Center, Multipurpose Room, Rocky Mount, Virginia, on Thursday June 5, 2008, from 7 p.m. to 9 p.m.

Directions: From Martinsville, Virginia, take US 220 North to the first Rocky Mount Exit (just past 619 Minute Market). This exit puts you on South Main Street. Follow South Main for 2-3 miles. Once you pass the Courthouse (on the right), look for Randolph Street (on the left). Turn left onto Randolph Street, go to bottom of hill and take right into The Franklin Center parking lot. From Lynchburg and Smith Mountain Lake, Virginia, take Route 122 South to Rocky Mount. Take Right at light and go through town. (You'll pass Lowes, Walmart, on left; Sheetz on right). Continue straight. (You'll pass McDonald's on left, Franklin County High School on left). Go straight through light at high school (you'll pass Hardees on left, DMV on right). Go to top of hill and take a Right onto North Main, then immediate left onto Claiborne Avenue (next to Rocky Mount UMC). Go 1/2 mile to The Franklin Center on left. Address is: 50 Claiborne Avenue, Rocky Mount, VA 24151.

Purpose of notice: The Virginia Department of Environmental Quality and Virginia Department of Conservation and Recreation announce a public meeting to discuss a plan to restore water quality in the Pigg River and Old Womans Creek watersheds.

Description of study: Virginia agencies are working to develop a plan to reduce sources of bacterial pollution in the Pigg River and Old Womans Creek watersheds. The bacteria exceeds water quality standards, which decreases the suitability of the water for swimming, kayaking and other recreational activities involving direct contact with the water.

The following is a list of the "impaired" waters, their location, the length of the impaired segment and the reason for the impairment: Pigg River, Franklin Co. and Pittsylvania Co., 63.98 miles, bacteria; Leesville Lake, Pittsylvania Co., 154 acres, bacteria; Storey Creek, Franklin Co., 11.60 miles, bacteria; Snow Creek, Franklin Co. and Pittsylvania Co., 10.98 miles, bacteria; Old Womans Creek, Campbell Co., 4.86 miles, bacteria; and Big Chestnut Creek, Franklin Co., 12.88 miles, bacteria.

During the study, Virginia agencies will develop an implementation plan, or clean up plan, for the impaired waters. To restore water quality, contamination levels have to be reduced to the total maximum daily load, or TMDL,

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## General Notices/Errata

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amount. The TMDL study was completed and approved by the U.S. Environmental Protection Agency in 2006.

How to comment: 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 July 7, 2008. DEQ also accepts written and oral comments at the public meeting announced in this notice.

Contact for additional information: Mary Dail, Virginia Department of Environmental Quality, West Central Regional Office, 3019 Peters Creek Road, Roanoke, VA 24019, telephone (540) 562-6715, FAX (540) 562-6725, or email [mrddail@deq.virginia.gov](mailto:mrddail@deq.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 April 28, 2008, and May 1, 2008. The orders may be viewed at the State Lottery Department, 900 E. Main Street, Richmond, Virginia, or at the office of the Registrar of Regulations, 910 Capitol Street, 2nd Floor, Richmond, Virginia.

Final Rules for Game Operation:

Director's Order Number Eleven (08)

Virginia's Instant Game Lottery 1045; "Sapphire Blue 7's" (effective 4/27/08)

Director's Order Number Twelve (08)

Virginia's Instant Game Lottery 1046; "Best of 7's" (effective 4/27/08)

Director's Order Number Thirteen (08)

Virginia's Instant Game Lottery 1049; "Mini Ruby Red 7's" (effective 4/24/08)

Director's Order Number Fourteen (08)

Virginia's Instant Game Lottery 1051; "Blackjack" (effective 4/24/08)

Director's Order Number Fifteen (08)

Virginia's Instant Game Lottery 1048; "Pink Panther" (effective 4/24/08)

### DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

#### Implementation of Specialty Drug Reimbursement Methodology

##### LEGAL NOTICE

##### COMMONWEALTH OF VIRGINIA

##### DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

##### NOTICE OF INTENT TO AMEND

(pursuant to §1902(a)(13) of the Act (USC 1396a(a)(13))

##### THE VIRGINIA STATE PLAN FOR MEDICAL ASSISTANCE

The Virginia Department of Medical Assistance Services (DMAS) hereby affords the public notice of its intention to amend the Virginia State Plan for Medical Assistance to provide for changes to the Methods and Standards for Establishing Payment Rates—Other Types of Care, Fee-for-service providers: pharmacy. The department intends to implement a specialty drug reimbursement methodology based upon the wholesale acquisition cost (WAC) of designated specialty drugs. Specialty drug products are products used to treat chronic, high-cost or rare diseases, including drugs for the treatment of certain diseases such as hepatitis-C, and multiple sclerosis, as well as drugs such as growth hormone agents and interferon. These drugs tend to be much higher in cost than standard pharmaceutical products, and this action implements a new methodology to help contain the higher costs associated with these drugs. The new methodology, described in a new subsection (10) of 12VAC30-80-40, is a formula based upon the wholesale acquisition cost (WAC) of these specialty drugs. The methodology computes a price above a given percentage of the WAC for each specified drug. The current percentage value is 4.7%. This change is being made pursuant to the department's authority under Title XIX of the Social Security Act.

This notice is intended to satisfy the requirements of 42 CFR §447.205 and of §1902(a)(13) of the Social Security Act, 42 USC §1396a(a)(13). A copy of this notice is available for public review from Rachel Cain, Health Care Services Division, Pharmacy Unit, DMAS, 600 Broad Street, Suite 1300, Richmond, VA 23219, and this notice is available for public review on the Regulatory Town Hall ([www.townhall.com](http://www.townhall.com)). Comments or inquiries may be submitted, in writing, within 30 days of this notice publication to Ms. Cain and such comments are available for review at the same address.

Contact Information: Rachel Cain, Health Care Services Division, Pharmacy Section, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300,

Richmond, VA 23219, telephone (804) 371-0918, FAX (804)786-1680, or email [rachel.cain@dmas.virginia.gov](mailto:rachel.cain@dmas.virginia.gov).

## STATE WATER CONTROL BOARD

### Proposed Consent Order - Five Star Property Holdings, LLC

Purpose of notice: To seek public comment on a proposed consent order from the Department of Environmental Quality for a facility in Richmond, Virginia.

Public comment period: May 26, 2008, to June 25, 2008.

Consent order description: The State Water Control Board proposes to issue a consent order to Five Star Property Holdings, LLC, to address alleged violations of UST regulations. The location of the property where the violations occurred is 9210 Jefferson Davis Highway, Richmond, VA. The consent order settles the improper operation and maintenance of five underground storage tanks, failure to provide required information and includes the payment of a civil charge.

How to comment: DEQ accepts comments from the public by email, fax or postal mail. All comments must include the name, address and telephone number of the person commenting and be received by DEQ within the comment period. The public may review the proposed consent order at the DEQ office named below or on the DEQ website at [www.deq.virginia.gov](http://www.deq.virginia.gov).

Contact for public comments, document requests and additional information: Cynthia Akers, Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, telephone (804) 527-5079, FAX (804) 527-5106, or email [ecakers@deq.virginia.gov](mailto:ecakers@deq.virginia.gov).

## VIRGINIA CODE COMMISSION

### Notice to State Agencies

**Mailing Address:** Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219.

### Filing Material for Publication in the Virginia Register of Regulations

Agencies are required to use the Regulation Information System (RIS) when filing regulations for publication in the Virginia Register of Regulations. The Office of the Virginia Register of Regulations implemented a web-based application called RIS for filing regulations and related items for publication in the Virginia Register. The Registrar's office has worked closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory

Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.

The Office of the Virginia Register is working toward the eventual elimination of the requirement that agencies file print copies of regulatory packages. Until that time, agencies may file petitions for rulemaking, notices of intended regulatory actions and general notices in electronic form only; however, until further notice, agencies must continue to file print copies of proposed, final, fast-track and emergency regulatory packages.

## ERRATA

### DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Title of Regulation: **2VAC5-30. Rules and Regulations Pertaining to Reporting Requirements for Contagious and Infectious Diseases of Livestock and Poultry in Virginia.**

Publication: 24:17 VA.R. 2318-2319 April 28, 2008.

Correction to Fast-Track Regulation:

Page 2318, before summary, add:

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

Summary of the Proposed Amendments to Regulation. The Board of Agriculture and Consumer Services (Board) proposes to amend its regulations that govern the reporting of contagious and infectious diseases in livestock and poultry to clarify that these reports can be filed electronically.

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

Estimated Economic Impact. Currently, the Virginia Department of Agriculture and Consumer Services (VDACS) requires veterinarians and labs that process tests for livestock and poultry diseases to file reports between the first and tenth day of the month that list any instances of reportable diseases found during the previous month. Additionally, VDACS requires that a prescribed list of more serious or exotic livestock and poultry diseases be reported by telephone within 24 hours of discovery. Although the regulations that govern monthly reporting requirements are currently silent on how monthly reports must be filed, and these regulations currently require telephonic reporting for more serious diseases, the state veterinarian does currently accept electronically filed reports in both instances.

The Board proposes to update these regulations so that electronic filing is explicitly allowed. Because electronic reports are already accepted, neither VDACS nor the state veterinarian is likely to incur any costs on account of this regulatory change. Interested individuals who may not have

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## General Notices/Errata

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known that reports could be filed electronically will benefit from the clarity that the proposed language will add to these regulations.

**Businesses and Entities Affected.** This proposed regulatory change will affect all veterinarians who work with livestock and poultry as well as all labs that process tests for livestock and poultry diseases. VDACS reports that there are 2345 veterinarians and 5 veterinary diagnostic labs that are currently licensed by the Commonwealth.

**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.

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

VA.R. Doc. No. R08-1025

### PESTICIDE CONTROL BOARD

Title of Regulation: **2VAC20-20. Rules and Regulations for Enforcement of the Virginia Pesticide Law.**

Publication: 24:17 VA.R. 2354-2356 April 28, 2008.

Correction to Fast-Track Regulation:

Page 2355, before summary, add:

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

Summary of the Proposed Amendments to Regulation. The Board of Agriculture and Consumer Services proposes to update the address of the registration office in the regulations, remove references to the repealed sections of the Code of Virginia, and update the revision date of an application form.

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

**Estimated Economic Impact.** The Board of Agriculture and Consumer Services proposes to update the address of the registration office in the regulations, remove references to the repealed sections of the Code of Virginia, and update the revision date of an application form.

None of the proposed changes are expected to create any significant economic impact as the registration materials may already be required from the correct address, the repealed sections of the Code of Virginia are no longer enforced, and the revised form has already been in use. However, the proposed clarifications may result in some potential benefits in terms of reduced costs that may have otherwise occurred from the incorrect regulatory language.

**Businesses and Entities Affected.** These regulations apply to approximately 2,600 licensed pesticide dealers and approximately 26,000 applicators.

**Localities Particularly Affected.** The proposed regulations apply throughout the Commonwealth.

**Projected Impact on Employment.** No effect on employment is expected.

**Effects on the Use and Value of Private Property.** No effect on the use and value of private property is expected.

**Small Businesses: Costs and Other Effects.** About 95 percent of the affected entities are believed to be small businesses.

However, no small business costs or other effects are anticipated.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** No adverse effects on small businesses are expected.

**Real Estate Development Costs.** No real estate development costs are anticipated.

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

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

VA.R. Doc. No. R08-1070

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**Title of Regulation: 2VAC20-40. Regulations Governing Licensing of Pesticide Businesses Operating under Authority of the Virginia Pesticide Control Act.**

**Publication: 24:17 VA.R. 2356-2357 April 28, 2008.**

**Correction to Fast-Track Regulation:**

Page 2357, before summary, add:

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

**Summary of the Proposed Amendments to Regulation.** The Board of Agriculture and Consumer Services proposes to amend its regulations to clarify that licensed pesticide businesses may submit records requested for inspection purposes through electronic means.

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

**Estimated Economic Impact.** Currently, the regulations establish that the Virginia Department of Agriculture and Consumer Services (VDACS) may require records of licensed pesticide businesses submitted for inspection purposes. Although VDACS already accepts electronic submissions of records requested, the regulations do not have specific language stating that the records may be submitted by electronic means. Upon a recommendation made by the Attorney General's Government and Regulatory Reform Task Force, the proposed changes will clarify that the licensed pesticide businesses may submit requested records through electronic means. Because electronic submission of requested records is already allowed, the proposed regulations are not expected to create any significant economic effects other than the potential benefits that may result from the added clarity in the recordkeeping requirements.

**Businesses and Entities Affected.** These regulations apply to approximately 2,476 licensed pesticide businesses.

**Localities Particularly Affected.** The proposed regulations apply throughout the Commonwealth.

**Projected Impact on Employment.** No effect on employment is expected.

**Effects on the Use and Value of Private Property.** No effect on the use and value of private property is expected.

**Small Businesses: Costs and Other Effects.** All of the affected entities are believed to be small businesses. However, no small business costs or other effects are anticipated.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** No adverse effects on small businesses are expected.

**Real Estate Development Costs.** No real estate development costs are anticipated.

**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

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## General Notices/Errata

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to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, §2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

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

VA.R. Doc. No. R08-1071

### **BOARD OF HEALTH**

Title of Regulation: **12VAC5-481. Virginia Radiation Protection Regulations.**

Publication: 24:18 VA.R. 2565-2715 May 12, 2008.

Correction to Final Regulation:

Page 2565, Registrar's Notice, line 7, change "State Air Pollution Control Board" to "Board of Health."