



Virginia Register of Regulations

VOL. 25 ISS. 14

PUBLISHED EVERY OTHER WEEK BY THE VIRGINIA CODE COMMISSION

MARCH 16, 2009

TABLE OF CONTENTS

Register Information Page	2567
Publication Schedule and Deadlines	2568
Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed ..	2569
Petitions for Rulemaking	2588
Notices of Intended Regulatory Action	2590
Regulations	2591
4VAC20-270. Pertaining to Crabbing (Emergency)	2591
4VAC20-490. Pertaining to Sharks (Final)	2592
4VAC20-530. Pertaining to American Shad (Emergency)	2596
4VAC20-620. Pertaining to Summer Flounder (Final)	2597
4VAC20-700. Pertaining to Crab Pots (Final)	2598
5VAC5-20. State Corporation Commission Rules of Practice and Procedure (Final)	2598
10VAC5-200. Payday Lending (Final)	2608
12VAC30-40. Eligibility Conditions and Requirements (Notice of Rescission and Withdrawal of Emergency Regulation)	2613
12VAC30-10. State Plan Under Title XIX of the Social Security Act Medical Assistance Program; General Provisions (Final)	2614
12VAC30-20. Administration of Medical Assistance Services (Final)	2614
12VAC30-50. Amount, Duration, and Scope of Medical and Remedial Care Services (Final)	2614
12VAC30-110. Eligibility and Appeals (Final)	2614
12VAC30-120. Waivered Services (Final)	2614
12VAC30-130. Amount, Duration and Scope of Selected Services (Final)	2614
12VAC30-141. Family Access to Medical Insurance Security Plan (Final)	2614
12VAC30-150. Uninsured Medical Catastrophe Fund (Final)	2614
14VAC5-43. Rules Governing Use of Senior-Specific Certifications and Professional Designations in Sale of Life or Accident and Sickness Insurance or Annuities (Proposed)	2636
16VAC25-60. Administrative Regulation for the Virginia Occupational Safety and Health Program (Proposed)	2638
16VAC25-73. Tree Trimming Operations (Proposed)	2642
General Notices/Errata	2677

THE VIRGINIA REGISTER INFORMATION PAGE

THE VIRGINIA REGISTER OF REGULATIONS is an official state publication issued every other week throughout the year. Indexes are published quarterly, and are cumulative for the year. The *Virginia Register* has several functions. The new and amended sections of regulations, both as proposed and as finally adopted, are required by law to be published in the *Virginia Register*. In addition, the *Virginia Register* is a source of other information about state government, including petitions for rulemaking, emergency regulations, executive orders issued by the Governor, 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 on Administrative Rules (JCAR) or the appropriate standing committee of each house of the General Assembly may meet during the promulgation or final adoption process and file an objection with the Registrar and the promulgating agency. The objection will be published in the *Virginia Register*. Within 21 days after receipt by the agency of a legislative objection, the agency shall file a response with the Registrar, the objecting legislative body, and the Governor.

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

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

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

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

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

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

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

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

STATEMENT

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

CITATION TO THE VIRGINIA REGISTER

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

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

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

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

PUBLICATION SCHEDULE AND DEADLINES

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

March 2009 through December 2009

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
INDEX 1 Volume 25		January 2009
25:14	February 25, 2009	March 16, 2009
INDEX 2 Volume 25		April 2009
25:15	March 11, 2009	March 30, 2009
25:16	March 25, 2009	April 13, 2009
25:17	April 8, 2009	April 27, 2009
25:18	April 22, 2009	May 11, 2009
25:19	May 6, 2009	May 25, 2009
25:20	May 20, 2009	June 8, 2009
INDEX 3 Volume 25		July 2009
25:21	June 3, 2009	June 22, 2009
25:22	June 17, 2009	July 6, 2009
25:23	July 1, 2009	July 20, 2009
25:24	July 15, 2009	August 3, 2009
25:25	July 29, 2009	August 17, 2009
25:26	August 12, 2009	August 31, 2009
FINAL INDEX Volume 25		October 2009
26:1	August 26, 2009	September 14, 2009
26:2	September 9, 2009	September 28, 2009
26:3	September 23, 2009	October 12, 2009
26:4	October 7, 2009	October 26, 2009
26:5	October 21, 2009	November 9, 2009
26:6	November 4, 2009	November 23, 2009
26:7	November 17, 2009 (Tuesday)	December 7, 2009
INDEX 1 Volume 26		January 2010
26:8	December 2, 2009	December 21, 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 Fall 2008 VAC Supplement includes final regulations published through *Virginia Register* Volume 24, Issue 24, dated August 4, 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
Title 1. Administration			
1 VAC 17-10-10 through 1 VAC 17-10-90	Repealed	25:8 VA.R. 1484	1/21/09
1 VAC 17-11-10 through 1 VAC 17-11-110	Added	25:8 VA.R. 1484-1487	1/21/09
1 VAC 30-10-10 through 1 VAC 30-10-70	Repealed	25:8 VA.R. 1487	1/21/09
1 VAC 30-11-10 through 1 VAC 30-11-110	Erratum	25:9 VA.R. 1827	--
1 VAC 30-11-10 through 1 VAC 30-11-110	Added	25:8 VA.R. 1488-1490	1/21/09
1 VAC 30-45-10 through 1 VAC 30-45-860	Added	25:7 VA.R. 1409-1413	1/1/09
1 VAC 30-46-10 through 1 VAC 30-46-210	Added	25:7 VA.R. 1413-1417	1/1/09
1 VAC 50-10-60 through 1 VAC 50-10-150	Repealed	25:2 VA.R. 119	10/29/08
1 VAC 50-11-10 through 1 VAC 50-11-110	Added	25:2 VA.R. 119-122	10/29/08
1 VAC 55-10-10 through 1 VAC 55-10-50	Repealed	25:2 VA.R. 122	10/29/08
1 VAC 55-11-10 through 1 VAC 55-11-110	Added	25:2 VA.R. 122-125	10/29/08
1 VAC 75-10-10 through 1 VAC 75-10-40	Repealed	24:25 VA.R. 3523	9/17/08
1 VAC 75-11-10 through 1 VAC 75-11-110	Added	24:25 VA.R. 3523-3526	9/17/08
Title 2. Agriculture			
2 VAC 5-10-10 through 2 VAC 5-10-70	Repealed	25:3 VA.R. 342	11/12/08
2 VAC 5-11-10 through 2 VAC 5-11-110	Added	25:3 VA.R. 343-345	11/12/08
2 VAC 5-60-10	Amended	25:11 VA.R. 1889	3/4/09
2 VAC 5-190-30	Amended	25:11 VA.R. 1890	3/4/09
2 VAC 5-205-20	Amended	25:11 VA.R. 1890	3/4/09
2 VAC 5-206-10 through 2 VAC 5-206-50	Added	24:25 VA.R. 3527-3531	10/3/08
2 VAC 5-210-20	Amended	25:11 VA.R. 1891	3/4/09
2 VAC 5-230-30	Amended	25:11 VA.R. 1892	3/4/09
2 VAC 5-230-50	Amended	25:11 VA.R. 1892	3/4/09
2 VAC 5-230-60	Amended	25:11 VA.R. 1892	3/4/09
2 VAC 5-300-50	Amended	25:11 VA.R. 1924	3/4/09
2 VAC 5-320-10	Amended	25:11 VA.R. 1892	3/4/09
2 VAC 5-320-10	Erratum	25:13 VA.R. 2565	--
2 VAC 5-325-10	Amended	25:11 VA.R. 1893	3/4/09
2 VAC 5-325-10	Erratum	25:13 VA.R. 2565	--
2 VAC 5-330-10	Amended	25:11 VA.R. 1893	3/4/09
2 VAC 5-330-30	Amended	25:2 VA.R. 126	10/15/08
2 VAC 5-330-30	Erratum	25:13 VA.R. 2565	--
2 VAC 5-335-10 through 2 VAC 5-335-130	Added	25:2 VA.R. 126-129	10/15/08
2 VAC 5-340-140	Amended	25:11 VA.R. 1894	3/4/09
2 VAC 5-340-140	Erratum	25:13 VA.R. 2565	--
2 VAC 5-340-170	Amended	25:11 VA.R. 1895	3/4/09
2 VAC 5-340-170	Erratum	25:13 VA.R. 2565	--
2 VAC 5-340-180	Amended	25:11 VA.R. 1896	3/4/09
2 VAC 5-350-10 through 2 VAC 5-350-60	Amended	25:11 VA.R. 1896-1898	3/4/09

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
2 VAC 5-350-20	Erratum	25:13 VA.R. 2565	--
2 VAC 5-350-80	Amended	25:11 VA.R. 1898	3/4/09
2 VAC 5-360-10	Amended	25:11 VA.R. 1899	3/4/09
2 VAC 5-360-50	Amended	25:11 VA.R. 1900	3/4/09
2 VAC 5-370-10	Amended	25:11 VA.R. 1901	3/4/09
2 VAC 5-370-10	Erratum	25:13 VA.R. 2566	--
2 VAC 5-380-10	Amended	25:11 VA.R. 1901	3/4/09
2 VAC 5-380-10	Erratum	25:13 VA.R. 2566	--
2 VAC 5-380-60	Amended	25:11 VA.R. 1901	3/4/09
2 VAC 5-390-20	Amended	25:11 VA.R. 1902	3/4/09
2 VAC 5-390-20	Erratum	25:13 VA.R. 2566	--
2 VAC 5-390-30	Amended	25:11 VA.R. 1902	3/4/09
2 VAC 5-390-40	Amended	25:11 VA.R. 1903	3/4/09
2 VAC 5-390-60	Amended	25:11 VA.R. 1903	3/4/09
2 VAC 5-390-70	Amended	25:11 VA.R. 1903	3/4/09
2 VAC 5-390-80	Amended	25:11 VA.R. 1904	3/4/09
2 VAC 5-390-80	Erratum	25:13 VA.R. 2566	--
2 VAC 5-390-100	Amended	25:11 VA.R. 1904	3/4/09
2 VAC 5-390-110	Amended	25:11 VA.R. 1904	3/4/09
2 VAC 5-390-120	Amended	25:11 VA.R. 1906	3/4/09
2 VAC 5-390-160	Amended	25:11 VA.R. 1906	3/4/09
2 VAC 5-390-170	Amended	25:11 VA.R. 1906	3/4/09
2 VAC 5-390-180	Amended	25:11 VA.R. 1906	3/4/09
2 VAC 5-400-10	Amended	25:11 VA.R. 1907	3/4/09
2 VAC 5-400-10	Erratum	25:13 VA.R. 2566	--
2 VAC 5-400-30	Amended	25:11 VA.R. 1907	3/4/09
2 VAC 5-400-90	Amended	25:11 VA.R. 1908	3/4/09
2 VAC 5-440-20	Amended	25:11 VA.R. 1909	3/4/09
2 VAC 5-440-20	Erratum	25:13 VA.R. 2566	--
2 VAC 5-440-110	Amended	25:11 VA.R. 1909	3/4/09
2 VAC 5-450-20	Amended	25:11 VA.R. 1909	3/4/09
2 VAC 5-490-10	Amended	25:11 VA.R. 1909	3/4/09
2 VAC 5-490-31	Amended	25:11 VA.R. 1915	3/4/09
2 VAC 5-501-30	Amended	25:11 VA.R. 1917	3/4/09
2 VAC 5-501-60	Amended	25:11 VA.R. 1919	3/4/09
2 VAC 5-501-70	Amended	25:11 VA.R. 1922	3/4/09
2 VAC 5-570-70	Amended	25:11 VA.R. 1923	3/4/09
2 VAC 5-620-20	Amended	25:11 VA.R. 1924	3/4/09
2 VAC 5-620-100	Amended	25:11 VA.R. 1924	3/4/09
2 VAC 15-11-10 through 2 VAC 15-11-120	Repealed	25:4 VA.R. 576	11/26/08
2 VAC 15-12-10 through 2 VAC 15-12-110	Added	25:4 VA.R. 577-579	11/26/08
2 VAC 15-20-90	Amended	25:10 VA.R. 1847	2/18/09
2 VAC 15-20-110	Amended	25:10 VA.R. 1848	2/18/09
2 VAC 15-20-120	Amended	25:10 VA.R. 1848	2/18/09
2 VAC 20-10-10 through 2 VAC 20-10-120	Repealed	25:5 VA.R. 792	12/10/08
2 VAC 20-11-10 through 2 VAC 20-11-110	Added	25:5 VA.R. 792-795	12/10/08
2 VAC 20-20-10	Amended	25:12 VA.R. 2041	3/18/09
2 VAC 20-20-30	Amended	25:12 VA.R. 2041	3/18/09
2 VAC 20-20-120	Amended	25:12 VA.R. 2042	3/18/09
2 VAC 20-30-10	Amended	25:12 VA.R. 2043	3/18/09
2 VAC 20-30-30	Amended	25:12 VA.R. 2043	3/18/09

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
2 VAC 20-30-40	Amended	25:12 VA.R. 2043	3/18/09
2 VAC 20-40-10	Amended	25:12 VA.R. 2044	3/18/09
2 VAC 20-40-90	Amended	25:12 VA.R. 2045	3/18/09
2 VAC 20-51-10 through 2 VAC 20-51-50	Amended	25:3 VA.R. 346-350	12/1/08
2 VAC 20-51-70	Amended	25:3 VA.R. 350	12/1/08
2 VAC 20-51-90	Amended	25:3 VA.R. 351	12/1/08
2 VAC 20-51-100	Amended	25:3 VA.R. 351	12/1/08
2 VAC 20-51-160	Amended	25:3 VA.R. 351	12/1/08
2 VAC 20-51-170	Amended	25:3 VA.R. 352	12/1/08
2 VAC 20-51-200	Amended	25:3 VA.R. 352	12/1/08
2 VAC 20-51-210	Amended	25:3 VA.R. 352	12/1/08
Title 3. Alcoholic Beverages			
3 VAC 5-10	Erratum	25:9 VA.R. 1826	--
3 VAC 5-10-480	Repealed	25:6 VA.R. 1173	12/24/08
3 VAC 5-11-10 through 3 VAC 5-11-110	Added	25:6 VA.R. 1175-1178	12/24/08
3 VAC 5-50-40	Amended	25:11 VA.R. 1926	3/4/09
3 VAC 5-50-50	Amended	25:11 VA.R. 1926	3/4/09
3 VAC 5-50-80	Amended	25:11 VA.R. 1926	3/4/09
3 VAC 5-50-100	Amended	25:11 VA.R. 1927	3/4/09
3 VAC 5-50-130	Amended	25:11 VA.R. 1928	3/4/09
3 VAC 5-50-140 emer	Amended	25:11 VA.R. 1925	1/9/08-6/30/09
3 VAC 5-50-140	Amended	25:11 VA.R. 1929	3/4/09
3 VAC 5-50-230 emer	Added	25:11 VA.R. 1929	1/13/09-1/12/10
Title 4. Conservation and Natural Resources			
4 VAC 3-10-10	Repealed	25:2 VA.R. 129	10/29/08
4 VAC 3-10-20	Repealed	25:2 VA.R. 129	10/29/08
4 VAC 3-10-30	Repealed	25:2 VA.R. 129	10/29/08
4 VAC 3-11-10 through 4 VAC 3-11-110	Added	25:2 VA.R. 130-132	10/29/08
4 VAC 5-10-10	Repealed	25:2 VA.R. 132	10/29/08
4 VAC 5-10-20	Repealed	25:2 VA.R. 132	10/29/08
4 VAC 5-10-30	Repealed	25:2 VA.R. 132	10/29/08
4 VAC 5-11-10 through 4 VAC 5-11-110	Added	25:2 VA.R. 133-136	10/29/08
4 VAC 5-36-50	Amended	25:6 VA.R. 1178	1/1/09
4 VAC 5-36-60	Amended	25:6 VA.R. 1183	1/1/09
4 VAC 5-36-70	Amended	25:6 VA.R. 1184	1/1/09
4 VAC 5-36-90	Amended	25:6 VA.R. 1185	1/1/09
4 VAC 5-36-100	Amended	25:6 VA.R. 1187	1/1/09
4 VAC 5-36-110	Amended	25:6 VA.R. 1191	1/1/09
4 VAC 5-36-115	Added	25:6 VA.R. 1192	1/1/09
4 VAC 5-36-120	Amended	25:6 VA.R. 1192	1/1/09
4 VAC 5-36-140	Amended	25:6 VA.R. 1193	1/1/09
4 VAC 5-36-150	Amended	25:6 VA.R. 1195	1/1/09
4 VAC 5-36-180	Amended	25:6 VA.R. 1198	1/1/09
4 VAC 5-36-200	Amended	25:6 VA.R. 1199	1/1/09
4 VAC 5-36-210	Amended	25:6 VA.R. 1204	1/1/09
4 VAC 10-10-10 through 4 VAC 10-10-30	Repealed	25:6 VA.R. 1208	12/24/08
4 VAC 10-11-10 through 4 VAC 10-11-110	Added	25:6 VA.R. 1209-1212	12/24/08
4 VAC 15-450-10 through 4 VAC 15-450-40	Added	25:10 VA.R. 1849-1850	1/1/09
4 VAC 20-20-50	Amended	25:6 VA.R. 1212	11/1/08
4 VAC 20-252-90	Amended	25:6 VA.R. 1213	11/1/08
4 VAC 20-252-100	Amended	25:6 VA.R. 1213	11/1/08

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
4 VAC 20-260-35 emer	Amended	25:3 VA.R. 353	10/1/08-10/31/08
4 VAC 20-260-35	Amended	25:6 VA.R. 1213	11/1/08
4 VAC 20-260-40 emer	Amended	25:3 VA.R. 353	10/1/08-10/31/08
4 VAC 20-260-40	Amended	25:6 VA.R. 1213	11/1/08
4 VAC 20-270-40	Amended	25:12 VA.R. 2048	2/1/09
4 VAC 20-620-20	Amended	25:3 VA.R. 354	10/1/08
4 VAC 20-620-30	Amended	25:3 VA.R. 354	10/1/08
4 VAC 20-620-40	Amended	25:3 VA.R. 355	10/1/08
4 VAC 20-720-20	Amended	25:3 VA.R. 357	10/1/08
4 VAC 20-720-40	Amended	25:3 VA.R. 359	10/1/08
4 VAC 20-720-50	Amended	25:3 VA.R. 360	10/1/08
4 VAC 20-720-60	Amended	25:3 VA.R. 360	10/1/08
4 VAC 20-720-70	Amended	25:3 VA.R. 360	10/1/08
4 VAC 20-720-75	Amended	25:3 VA.R. 361	10/1/08
4 VAC 20-720-80	Amended	25:3 VA.R. 361	10/1/08
4 VAC 20-720-95	Amended	25:3 VA.R. 361	10/1/08
4 VAC 20-720-100	Amended	25:3 VA.R. 361	10/1/08
4 VAC 20-720-106 emer	Amended	25:1 VA.R. 24	9/1/08-9/30/08
4 VAC 20-720-106	Amended	25:3 VA.R. 361	10/1/08
4 VAC 20-751-10 emer	Amended	25:3 VA.R. 362	9/29/08-10/28/08
4 VAC 20-751-15 emer	Amended	25:3 VA.R. 362	9/29/08-10/28/08
4 VAC 20-751-20 emer	Amended	25:3 VA.R. 362	9/29/08-10/28/08
4 VAC 20-751-20	Amended	25:6 VA.R. 1214	10/29/08
4 VAC 20-910-45	Amended	24:25 VA.R. 3537	8/1/08
4 VAC 20-910-45	Amended	25:6 VA.R. 1214	11/1/08
4 VAC 20-950-47	Amended	25:8 VA.R. 1491	1/1/09
4 VAC 20-950-48	Amended	25:8 VA.R. 1491	1/1/09
4 VAC 20-1040-20	Amended	25:8 VA.R. 1492	11/30/08
4 VAC 20-1040-25	Added	25:8 VA.R. 1493	11/30/08
4 VAC 20-1150-10	Added	24:25 VA.R. 3538	8/1/08
4 VAC 20-1150-20	Added	24:25 VA.R. 3538	8/1/08
4 VAC 20-1170-10	Added	25:6 VA.R. 1215	12/1/08
4 VAC 20-1170-20	Added	25:6 VA.R. 1215	12/1/08
4 VAC 20-1180-10 through 4 VAC 20-1180-60	Added	25:9 VA.R. 1680-1681	12/22/08
4 VAC 20-1190-10	Added	25:12 VA.R. 2049	2/1/09
4 VAC 20-1190-20	Added	25:12 VA.R. 2049	2/1/09
4 VAC 25-10-10 through 4 VAC 25-10-90	Repealed	25:5 VA.R. 795	12/25/08
4 VAC 25-11-10 through 4 VAC 25-11-120	Added	25:5 VA.R. 797-800	12/25/08
4 VAC 25-130-816.22	Amended	25:12 VA.R. 2049	3/18/09
4 VAC 25-130-816.43	Amended	25:12 VA.R. 2051	3/18/09
4 VAC 25-130-816.116	Amended	25:12 VA.R. 2052	3/18/09
4 VAC 25-130-817.22	Amended	25:12 VA.R. 2054	3/18/09
4 VAC 25-130-817.43	Amended	25:12 VA.R. 2055	3/18/09
4 VAC 25-130-817.116	Amended	25:12 VA.R. 2057	3/18/09
4 VAC 25-130-842.15	Amended	25:12 VA.R. 2058	3/18/09
4 VAC 50-10-10	Repealed	25:2 VA.R. 137	10/29/08
4 VAC 50-10-20	Repealed	25:2 VA.R. 137	10/29/08
4 VAC 50-10-30	Repealed	25:2 VA.R. 137	10/29/08
4 VAC 50-11-10 through 4 VAC 50-11-110	Added	25:2 VA.R. 138-141	10/29/08
4 VAC 50-20-20 through 4 VAC 50-20-90	Amended	24:25 VA.R. 3539-3554	9/26/08
4 VAC 50-20-51	Added	24:25 VA.R. 3544	9/26/08

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
4 VAC 50-20-52	Added	24:25 VA.R. 3545	9/26/08
4 VAC 50-20-54	Added	24:25 VA.R. 3545	9/26/08
4 VAC 50-20-58	Added	24:25 VA.R. 3546	9/26/08
4 VAC 50-20-59	Added	24:25 VA.R. 3546	9/26/08
4 VAC 50-20-100 through 4 VAC 50-20-140	Repealed	24:25 VA.R. 3554-3558	9/26/08
4 VAC 50-20-105	Added	24:25 VA.R. 3554	9/26/08
4 VAC 50-20-125	Added	24:25 VA.R. 3557	9/26/08
4 VAC 50-20-150 through 4 VAC 50-20-240	Amended	24:25 VA.R. 3558-3563	9/26/08
4 VAC 50-20-155	Added	24:25 VA.R. 3558	9/26/08
4 VAC 50-20-165	Added	24:25 VA.R. 3559	9/26/08
4 VAC 50-20-175	Added	24:25 VA.R. 3560	9/26/08
4 VAC 50-20-177	Added	24:25 VA.R. 3561	9/26/08
4 VAC 50-20-250	Repealed	24:25 VA.R. 3564	9/26/08
4 VAC 50-20-260 through 4 VAC 50-20-320	Amended	24:25 VA.R. 3564-3565	9/26/08
4 VAC 50-20-330 through 4 VAC 50-20-400	Added	24:25 VA.R. 3565-3567	9/26/08
Title 6. Criminal Justice and Corrections			
6 VAC 15-10-10 through 6 VAC 15-10-100	Repealed	25:3 VA.R. 363	11/15/08
6 VAC 15-11-10 through 6 VAC 15-11-110	Added	25:3 VA.R. 363-366	11/15/08
6 VAC 15-31-320	Amended	24:25 VA.R. 3568	9/18/08
6 VAC 15-70-10	Amended	25:3 VA.R. 367	11/15/08
6 VAC 15-70-40 through 6 VAC 15-70-130	Amended	25:3 VA.R. 367-372	11/15/08
6 VAC 15-70-160	Amended	25:3 VA.R. 372	11/15/08
6 VAC 20-10-10 through 6 VAC 20-10-50	Repealed	25:10 VA.R. 1850	2/20/09
6 VAC 20-11-10 through 6 VAC 20-11-110	Added	25:10 VA.R. 1851-1853	2/20/09
6 VAC 20-160-10	Amended	25:2 VA.R. 141	10/29/08
6 VAC 20-160-20	Amended	25:2 VA.R. 142	10/29/08
6 VAC 20-160-30	Amended	25:2 VA.R. 142	10/29/08
6 VAC 20-160-40	Amended	25:2 VA.R. 143	10/29/08
6 VAC 20-160-60	Amended	25:2 VA.R. 144	10/29/08
6 VAC 20-160-70	Amended	25:2 VA.R. 144	10/29/08
6 VAC 20-160-80	Amended	25:2 VA.R. 144	10/29/08
6 VAC 20-160-100	Amended	25:2 VA.R. 145	10/29/08
6 VAC 20-160-120	Amended	25:2 VA.R. 145	10/29/08
6 VAC 35-10-10 through 6 VAC 35-10-150	Repealed	24:25 VA.R. 3573	9/17/08
6 VAC 35-11-10 through 6 VAC 35-11-110	Added	24:25 VA.R. 3574-3576	9/17/08
6 VAC 35-20-37 emer	Amended	25:3 VA.R. 373	8/1/07-1/31/09
6 VAC 35-20-37	Amended	25:4 VA.R. 626	12/12/08
6 VAC 35-51-10 through 6 VAC 35-51-1100	Added	24:25 VA.R. 3577-3610	9/17/08
6 VAC 35-140-46	Added	25:3 VA.R. 376	12/12/08
6 VAC 40-10-10 through 6 VAC 40-10-90	Repealed	25:2 VA.R. 146	10/30/08
6 VAC 40-11-10 through 6 VAC 40-110	Added	25:2 VA.R. 147-149	10/30/08
6 VAC 40-20-30	Amended	24:26 VA.R. 3718	10/16/08
6 VAC 40-20-120	Amended	24:26 VA.R. 3718	10/16/08
6 VAC 40-20-130	Amended	24:26 VA.R. 3718	10/16/08
6 VAC 40-20-160	Amended	24:26 VA.R. 3718	10/16/08
Title 7. Economic Development			
7 VAC 10-20-10 through 7 VAC 10-20-350	Repealed	24:26 VA.R. 3719	9/1/08
7 VAC 10-21-10 through 7 VAC 10-21-610	Added	24:26 VA.R. 3719-3729	9/1/08
Title 8. Education			
8 VAC 20-10-10	Repealed	25:11 VA.R. 1930	3/19/09
8 VAC 20-11-10 through 8 VAC 20-11-110	Added	25:11 VA.R. 1932-1935	3/19/09

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
8 VAC 35-60-20	Amended	25:5 VA.R. 800	11/10/08
8 VAC 40-10-10 through 8 VAC 40-10-90	Repealed	25:3 VA.R. 376	1/1/09
8 VAC 40-11-10 through 8 VAC 40-11-110	Added	25:3 VA.R. 377-379	1/1/09
Title 9. Environment			
9 VAC 5-5-10 through 9 VAC 5-5-110	Added	25:5 VA.R. 801-804	1/1/09
9 VAC 5-10-20	Amended	25:12 VA.R. 2060	4/2/09
9 VAC 5-20-21	Amended	25:12 VA.R. 2068	3/18/09
9 VAC 5-30-55	Amended	25:12 VA.R. 2072	3/18/09
9 VAC 5-30-56	Added	25:12 VA.R. 2072	3/18/09
9 VAC 5-30-65	Amended	25:12 VA.R. 2072	3/18/09
9 VAC 5-40-5600 through 9 VAC 5-40-5645	Repealed	25:12 VA.R. 2088-2097	3/18/09
9 VAC 5-50-400	Amended	25:12 VA.R. 2073	3/18/09
9 VAC 5-50-410	Amended	25:12 VA.R. 2074	3/18/09
9 VAC 5-60-60	Amended	25:12 VA.R. 2079	3/18/09
9 VAC 5-60-90	Amended	25:12 VA.R. 2080	3/18/09
9 VAC 5-60-100	Amended	25:12 VA.R. 2080	3/18/09
9 VAC 5-80-5	Added	25:6 VA.R. 1231	12/31/08
9 VAC 5-80-15	Added	25:6 VA.R. 1234	12/31/08
9 VAC 5-80-25	Added	25:6 VA.R. 1234	12/31/08
9 VAC 5-80-35	Added	25:6 VA.R. 1235	12/31/08
9 VAC 5-80-150	Amended	25:6 VA.R. 1237	12/31/08
9 VAC 5-80-230	Amended	25:6 VA.R. 1237	12/31/08
9 VAC 5-80-270	Amended	25:6 VA.R. 1238	12/31/08
9 VAC 5-80-510	Amended	25:6 VA.R. 1239	12/31/08
9 VAC 5-80-590	Amended	25:6 VA.R. 1241	12/31/08
9 VAC 5-80-670	Amended	25:6 VA.R. 1241	12/31/08
9 VAC 5-80-670	Erratum	25:8 VA.R. 1644	--
9 VAC 5-80-860	Amended	25:6 VA.R. 1243	12/31/08
9 VAC 5-80-990	Amended	25:6 VA.R. 1243	12/31/08
9 VAC 5-80-1020	Amended	25:6 VA.R. 1244	12/31/08
9 VAC 5-80-1100	Amended	25:6 VA.R. 1258	12/31/08
9 VAC 5-80-1110	Amended	25:6 VA.R. 1259	12/31/08
9 VAC 5-80-1160	Amended	25:6 VA.R. 1244	12/31/08
9 VAC 5-80-1170	Amended	25:6 VA.R. 1245	12/31/08
9 VAC 5-80-1290	Amended	25:6 VA.R. 1246	12/31/08
9 VAC 5-80-1320	Amended	25:6 VA.R. 1264	12/31/08
9 VAC 5-80-1450	Amended	25:6 VA.R. 1247	12/31/08
9 VAC 5-80-1450	Erratum	25:8 VA.R. 1644	--
9 VAC 5-80-1460	Amended	25:6 VA.R. 1248	12/31/08
9 VAC 5-80-1615	Amended	25:6 VA.R. 1218	12/31/08
9 VAC 5-80-1695	Amended	25:6 VA.R. 1229	12/31/08
9 VAC 5-80-1765	Amended	25:6 VA.R. 1249	12/31/08
9 VAC 5-80-1773	Added	25:6 VA.R. 1251	12/31/08
9 VAC 5-80-1775	Amended	25:6 VA.R. 1251	12/31/08
9 VAC 5-80-1955	Amended	25:6 VA.R. 1253	12/31/08
9 VAC 5-80-2060	Amended	25:6 VA.R. 1254	12/31/08
9 VAC 5-80-2070	Amended	25:6 VA.R. 1255	12/31/08
9 VAC 5-80-2230	Amended	25:6 VA.R. 1256	12/31/08
9 VAC 5-91-20	Amended	25:6 VA.R. 1268	12/31/08
9 VAC 5-130-10 through 9 VAC 5-130-100	Added	25:12 VA.R. 2097-2106	3/18/09
9 VAC 5-140-900	Amended	25:6 VA.R. 1275	12/31/08

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
9 VAC 5-140-920	Amended	25:6 VA.R. 1275	12/31/08
9 VAC 5-140-930	Amended	25:6 VA.R. 1275	12/31/08
9 VAC 5-140-1010	Amended	25:12 VA.R. 2107	3/18/09
9 VAC 5-140-1020	Amended	25:12 VA.R. 2107	3/18/09
9 VAC 5-140-1060	Amended	25:12 VA.R. 2115	3/18/09
9 VAC 5-140-2010	Amended	25:12 VA.R. 2116	3/18/09
9 VAC 5-140-2020	Amended	25:12 VA.R. 2117	3/18/09
9 VAC 5-140-3010	Amended	25:12 VA.R. 2126	3/18/09
9 VAC 5-140-3020	Amended	25:12 VA.R. 2126	3/18/09
9 VAC 5-151-10	Amended	25:6 VA.R. 1276	12/31/08
9 VAC 5-151-20	Amended	25:6 VA.R. 1278	12/31/08
9 VAC 5-151-40	Amended	25:6 VA.R. 1279	12/31/08
9 VAC 5-151-61	Repealed	25:6 VA.R. 1279	12/31/08
9 VAC 5-151-70	Amended	25:6 VA.R. 1280	12/31/08
9 VAC 5-170-20	Amended	25:5 VA.R. 804	1/1/09
9 VAC 5-170-30	Amended	25:6 VA.R. 1256	12/31/08
9 VAC 5-170-40	Amended	25:5 VA.R. 806	1/1/09
9 VAC 5-170-80	Amended	25:5 VA.R. 807	1/1/09
9 VAC 5-170-90	Repealed	25:5 VA.R. 807	1/1/09
9 VAC 5-170-100	Repealed	25:5 VA.R. 807	1/1/09
9 VAC 5-170-110	Repealed	25:5 VA.R. 809	1/1/09
9 VAC 5-170-180	Amended	25:6 VA.R. 1256	12/31/08
9 VAC 5-170-190	Amended	25:6 VA.R. 1257	12/31/08
9 VAC 5-170-200	Amended	25:6 VA.R. 1257	12/31/08
9 VAC 10-10-10	Repealed	25:4 VA.R. 627	11/26/08
9 VAC 10-10-20	Repealed	25:4 VA.R. 627	11/26/08
9 VAC 10-10-30	Repealed	25:4 VA.R. 627	11/26/08
9 VAC 10-11-10 through 9 VAC 10-11-110	Added	25:4 VA.R. 627-630	11/26/08
9 VAC 15-10-10 through 9 VAC 15-10-40	Repealed	25:5 VA.R. 809	1/1/09
9 VAC 15-11-10 through 9 VAC 15-11-110	Added	25:5 VA.R. 810-813	1/1/09
9 VAC 20-10-10 through 9 VAC 20-10-40	Repealed	25:9 VA.R. 1681	2/4/09
9 VAC 20-11-10 through 9 VAC 20-11-110	Added	25:9 VA.R. 1682-1685	2/4/09
9 VAC 20-80-10	Amended	25:2 VA.R. 150	11/1/08
9 VAC 20-80-60	Amended	25:2 VA.R. 160	11/1/08
9 VAC 20-80-250	Amended	25:2 VA.R. 166	11/1/08
9 VAC 20-80-260	Amended	25:2 VA.R. 176	11/1/08
9 VAC 20-80-270	Amended	25:2 VA.R. 183	11/1/08
9 VAC 20-80-280	Amended	25:2 VA.R. 191	11/1/08
9 VAC 20-80-485	Amended	25:2 VA.R. 193	11/1/08
9 VAC 20-80-500	Amended	25:2 VA.R. 200	11/1/08
9 VAC 20-80-510	Amended	25:2 VA.R. 203	11/1/08
9 VAC 25-10-10 through 9 VAC 25-10-40	Repealed	25:5 VA.R. 813	1/1/09
9 VAC 25-11-10 through 9 VAC 25-11-110	Added	25:5 VA.R. 813-816	1/1/09
9 VAC 25-210-10	Amended	25:5 VA.R. 894	12/10/08
9 VAC 25-210-50	Amended	25:5 VA.R. 898	12/10/08
9 VAC 25-210-60	Amended	25:5 VA.R. 898	12/10/08
9 VAC 25-210-130	Erratum	25:9 VA.R. 1826	--
9 VAC 25-210-130	Amended	25:5 VA.R. 902	12/10/08

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
9 VAC 25-210-220	Amended	25:5 VA.R. 903	12/10/08
9 VAC 25-260-10	Amended	25:12 VA.R. 2134	*
9 VAC 25-260-20	Amended	25:12 VA.R. 2135	*
9 VAC 25-260-30	Amending	24:26 VA.R. 3747	8/12/08
9 VAC 25-260-30	Amended	25:5 VA.R. 904	10/22/08
9 VAC 25-260-30	Amended	25:12 VA.R. 2136	*
9 VAC 25-260-50	Amended	25:12 VA.R. 2139	*
9 VAC 25-260-55	Repealed	25:12 VA.R. 2139	*
9 VAC 25-260-90	Amended	25:12 VA.R. 2140	*
9 VAC 25-260-140	Amended	25:12 VA.R. 2140	*
9 VAC 25-260-160	Amended	25:12 VA.R. 2162	*
9 VAC 25-260-170	Amended	25:12 VA.R. 2162	*
9 VAC 25-260-185	Amended	25:12 VA.R. 2163	*
9 VAC 25-260-187	Amended	25:12 VA.R. 2167	*
9 VAC 25-260-290	Repealed	25:12 VA.R. 2170	*
9 VAC 25-260-310	Amended	25:12 VA.R. 2170	*
9 VAC 25-260-320	Repealed	25:12 VA.R. 2173	*
9 VAC 25-260-350	Amended	25:12 VA.R. 2173	*
9 VAC 25-260-360	Amended	25:12 VA.R. 2174	*
9 VAC 25-260-380	Amended	25:12 VA.R. 2175	*
9 VAC 25-260-390	Amended	25:12 VA.R. 2175	*
9 VAC 25-260-400	Amended	25:12 VA.R. 2179	*
9 VAC 25-260-410	Amended	25:12 VA.R. 2189	*
9 VAC 25-260-415	Amended	25:12 VA.R. 2190	*
9 VAC 25-260-420	Amended	25:12 VA.R. 2191	*
9 VAC 25-260-430	Amended	25:12 VA.R. 2197	*
9 VAC 25-260-440	Amended	25:12 VA.R. 2210	*
9 VAC 25-260-450	Amended	25:12 VA.R. 2213	*
9 VAC 25-260-460	Amended	25:12 VA.R. 2220	*
9 VAC 25-260-470	Amended	25:12 VA.R. 2221	*
9 VAC 25-260-480	Amended	25:12 VA.R. 2224	*
9 VAC 25-260-490	Amended	25:12 VA.R. 2224	*
9 VAC 25-260-500	Amended	25:12 VA.R. 2225	*
9 VAC 25-260-510	Amended	25:12 VA.R. 2228	*
9 VAC 25-260-520	Amended	25:12 VA.R. 2233	*
9 VAC 25-260-530	Amended	25:12 VA.R. 2235	*
9 VAC 25-260-540	Amended	25:12 VA.R. 2236	*
9 VAC 25-640 Appendices I through IX	Amended	25:2 VA.R. 217-231	11/1/08
9 VAC 25-640-10	Amended	25:2 VA.R. 206	11/1/08
9 VAC 25-640-20	Amended	25:2 VA.R. 209	11/1/08
9 VAC 25-640-30	Amended	25:2 VA.R. 209	11/1/08
9 VAC 25-640-50	Amended	25:2 VA.R. 210	11/1/08
9 VAC 25-640-70 through 9 VAC 25-640-120	Amended	25:2 VA.R. 210-213	11/1/08
9 VAC 25-640-130	Repealed	25:2 VA.R. 213	11/1/08
9 VAC 25-640-150 through 9 VAC 25-640-230	Amended	25:2 VA.R. 213-217	11/1/08
9 VAC 25-640-250	Amended	25:2 VA.R. 217	11/1/08
9 VAC 25-720-120	Amended	25:12 VA.R. 2250	4/2/09
9 VAC 25-740-10 through 9 VAC 25-740-210	Added	24:26 VA.R. 3748-3773	10/1/08
9 VAC 25-790 (Forms)	Added	25:6 VA.R. 1285	--

* Effective upon filing notice of U.S. EPA approval

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
9 VAC 25-860-10 through 9 VAC 25-860-70	Added	25:6 VA.R. 1285-1295	12/24/08
Title 10. Finance and Financial Institutions			
10 VAC 5-160-10	Amended	24:26 VA.R. 3775	8/10/08
10 VAC 5-160-70	Added	24:26 VA.R. 3776	8/10/08
10 VAC 5-160-80	Added	24:26 VA.R. 3776	8/10/08
10 VAC 5-200-10	Amended	25:4 VA.R. 637	1/1/09
10 VAC 5-200-20	Amended	25:4 VA.R. 637	1/1/09
10 VAC 5-200-33	Added	25:4 VA.R. 638	1/1/09
10 VAC 5-200-35	Added	25:4 VA.R. 639	1/1/09
10 VAC 5-200-40	Amended	25:4 VA.R. 641	1/1/09
10 VAC 5-200-60	Amended	25:4 VA.R. 642	1/1/09
10 VAC 5-200-70	Amended	25:4 VA.R. 642	1/1/09
10 VAC 5-200-80	Amended	25:4 VA.R. 643	1/1/09
10 VAC 5-200-110	Added	25:4 VA.R. 646	1/1/09
10 VAC 5-200-115	Added	25:4 VA.R. 651	1/1/09
10 VAC 5-200-120	Added	25:4 VA.R. 650	1/1/09
Title 11. Gaming			
11 VAC 10-10-10 through 11 VAC 10-10-70	Repealed	25:5 VA.R. 904	12/10/08
11 VAC 10-11-10 through 11 VAC 10-11-110	Added	25:5 VA.R. 905-907	12/10/08
11 VAC 15-12-10	Repealed	25:4 VA.R. 651	11/26/08
11 VAC 15-12-20	Repealed	25:4 VA.R. 651	11/26/08
11 VAC 15-13-10 through 11 VAC 15-13-110	Added	25:4 VA.R. 652-654	11/26/08
Title 12. Health			
12 VAC 5-10-10 through 12 VAC 5-10-80	Repealed	25:4 VA.R. 654	1/1/09
12 VAC 5-11-10 through 12 VAC 5-11-110	Added	25:4 VA.R. 655-657	1/1/09
12 VAC 5-67-10 emer	Added	25:4 VA.R. 658	11/1/08-10/31/09
12 VAC 5-67-20 emer	Added	25:4 VA.R. 658	11/1/08-10/31/09
12 VAC 5-67-30 emer	Added	25:4 VA.R. 658	11/1/08-10/31/09
12 VAC 5-90-80	Amended	25:11 VA.R. 1935	3/4/09
12 VAC 5-220-110	Amended	25:1 VA.R. 26	10/15/08
12 VAC 5-220-160	Amended	25:1 VA.R. 25	10/15/08
12 VAC 5-220-200	Amended	25:1 VA.R. 26	10/15/08
12 VAC 5-230-10	Amended	25:9 VA.R. 1707	2/15/09
12 VAC 5-230-10	Erratum	25:11 VA.R. 2018	--
12 VAC 5-230-20	Repealed	25:9 VA.R. 1711	2/15/09
12 VAC 5-230-30	Amended	25:9 VA.R. 1712	2/15/09
12 VAC 5-230-40 through 12 VAC 5-230-1000	Added	25:9 VA.R. 1713-1742	2/15/09
12 VAC 5-230-60	Erratum	25:11 VA.R. 2018	--
12 VAC 5-230-70	Erratum	25:11 VA.R. 2018	--
12 VAC 5-230-80	Erratum	25:11 VA.R. 2018	--
12 VAC 5-230-110	Erratum	25:11 VA.R. 2018	--
12 VAC 5-230-340	Erratum	25:11 VA.R. 2018	--
12 VAC 5-230-540	Amended	25:13 VA.R. 2316	4/1/09
12 VAC 5-230-550	Amended	25:13 VA.R. 2317	4/1/09
12 VAC 5-230-560	Amended	25:13 VA.R. 2317	4/1/09
12 VAC 5-230-870	Erratum	25:11 VA.R. 2018	--
12 VAC 5-240-10 through 12 VAC 5-240-60	Repealed	25:9 VA.R. 1706	2/15/09
12 VAC 5-250-10 through 12 VAC 5-250-120	Repealed	25:9 VA.R. 1706	2/15/09
12 VAC 5-260-10 through 12 VAC 5-260-130	Repealed	25:9 VA.R. 1706	2/15/09
12 VAC 5-270-10 through 12 VAC 5-270-60	Repealed	25:9 VA.R. 1706	2/15/09
12 VAC 5-280-10 through 12 VAC 5-280-70	Repealed	25:9 VA.R. 1706	2/15/09

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 5-290-10 through 12 VAC 5-290-70	Repealed	25:9 VA.R. 1706	2/15/09
12 VAC 5-300-10 through 12 VAC 5-300-70	Repealed	25:9 VA.R. 1706	2/15/09
12 VAC 5-310-10 through 12 VAC 5-310-70	Repealed	25:9 VA.R. 1706	2/15/09
12 VAC 5-320-10 through 12 VAC 5-320-480	Repealed	25:9 VA.R. 1706	2/15/09
12 VAC 5-330-10 through 12 VAC 5-330-70	Repealed	25:9 VA.R. 1706	2/15/09
12 VAC 5-340-10 through 12 VAC 5-340-120	Repealed	25:9 VA.R. 1706	2/15/09
12 VAC 5-350-10 through 12 VAC 5-350-60	Repealed	25:9 VA.R. 1707	2/15/09
12 VAC 5-360-10 through 12 VAC 5-360-70	Repealed	25:9 VA.R. 1707	2/15/09
12 VAC 5-481-10	Amended	25:2 VA.R. 231	11/1/08
12 VAC 5-481-390	Amended	25:2 VA.R. 256	11/1/08
12 VAC 5-481-400	Amended	25:2 VA.R. 256	11/1/08
12 VAC 5-481-450	Amended	25:2 VA.R. 257	11/1/08
12 VAC 5-481-451	Added	24:25 VA.R. 3612	10/3/08
12 VAC 5-481-480	Amended	25:2 VA.R. 260	11/1/08
12 VAC 5-481-2870	Amended	25:2 VA.R. 267	11/1/08
12 VAC 5-481-3160	Amended	25:2 VA.R. 267	11/1/08
12 VAC 5-481-3710	Amended	25:2 VA.R. 267	11/1/08
12 VAC 5-490-10	Amended	25:11 VA.R. 1942	3/4/09
12 VAC 5-490-20	Amended	25:11 VA.R. 1942	3/4/09
12 VAC 5-490-30	Added	25:11 VA.R. 1939	3/4/09
12 VAC 5-490-40	Added	25:11 VA.R. 1939	3/4/09
12 VAC 5-590-10	Amended	25:5 VA.R. 908	12/10/08
12 VAC 5-590-370	Amended	25:5 VA.R. 916	12/10/08
12 VAC 5-590-410	Amended	25:5 VA.R. 955	12/10/08
12 VAC 5-590-420	Amended	25:5 VA.R. 959	12/10/08
12 VAC 5-590-440	Amended	25:5 VA.R. 994	12/10/08
12 VAC 5-590-500	Amended	25:5 VA.R. 998	12/10/08
12 VAC 5-590-530	Amended	25:5 VA.R. 999	12/10/08
12 VAC 5-590-540	Amended	25:5 VA.R. 1011	12/10/08
12 VAC 5-590-545	Amended	25:5 VA.R. 1016	12/10/08
12 VAC 5-590-550	Amended	25:5 VA.R. 1021	12/10/08
12 VAC 30-5-10 through 12 VAC 30-5-110	Added	25:3 VA.R. 380-383	11/12/08
12 VAC 30-10-815	Added	25:4 VA.R. 662	11/26/08
12 VAC 30-40-280	Amended	25:11 VA.R. 1945	3/19/09
12 VAC 30-40-290 emer	Amended	25:1 VA.R. 35	8/27/08-8/26/09
12 VAC 30-40-345	Amended	25:11 VA.R. 1946	3/19/09
12 VAC 30-50-130	Amended	25:5 VA.R. 1041	12/10/08
12 VAC 30-50-140 emer	Amended	25:3 VA.R. 393	7/1/07-12/29/08
12 VAC 30-50-150 emer	Amended	25:3 VA.R. 393	7/1/07-12/29/08
12 VAC 30-50-180 emer	Amended	25:3 VA.R. 393	7/1/07-12/29/08
12 VAC 30-50-228 emer	Added	25:3 VA.R. 393	7/1/07-12/29/08
12 VAC 30-50-229.1	Repealed	25:5 VA.R. 1045	12/10/08
12 VAC 30-50-320	Amended	25:8 VA.R. 1515	2/5/09
12 VAC 30-50-330 through 12 VAC 30-50-360	Added	25:8 VA.R. 1515-1520	2/5/09
12 VAC 30-50-491 emer	Added	25:3 VA.R. 393	7/1/07-12/29/08
12 VAC 30-50-530	Amended	25:5 VA.R. 1049	12/10/08
12 VAC 30-60-180 emer	Added	25:3 VA.R. 393	7/1/07-12/29/08
12 VAC 30-60-185 emer	Added	25:3 VA.R. 393	7/1/07-12/29/08
12 VAC 30-60-500 emer	Added	25:3 VA.R. 384	8/8/07-2/7/09
12 VAC 30-70-70	Amended	25:3 VA.R. 387	11/27/08
12 VAC 30-70-261	Amended	25:3 VA.R. 388	11/27/08

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 30-70-271	Amended	25:3 VA.R. 388	11/27/08
12 VAC 30-70-311	Amended	24:26 VA.R. 3778	10/15/08
12 VAC 30-70-321	Amended	24:26 VA.R. 3778	10/15/08
12 VAC 30-70-500	Repealed	25:3 VA.R. 389	11/27/08
12 VAC 30-80-32 emer	Added	25:3 VA.R. 393	7/1/07-12/29/08
12 VAC 30-80-40 emer	Amended	24:25 VA.R. 3617	8/4/08-8/3/09
12 VAC 30-80-95	Amended	25:12 VA.R. 2253	4/2/09
12 VAC 30-80-190 emer	Amended	25:1 VA.R. 41	8/27/08-8/26/09
12 VAC 30-90-41	Amended	24:26 VA.R. 3778	10/15/08
12 VAC 30-90-264	Amended	25:3 VA.R. 390	11/27/08
12 VAC 30-100-10 through 12 VAC 30-100-60	Repealed	25:3 VA.R. 383-384	11/12/08
12 VAC 30-100-170	Amended	24:25 VA.R. 3622	10/2/08
12 VAC 30-120-61 through 12 VAC 30-120-68	Repealed	25:8 VA.R. 1520-1526	2/5/09
12 VAC 30-120-100	Amended	24:26 VA.R. 3781	10/15/08
12 VAC 30-120-310 emer	Amended	25:3 VA.R. 393	7/1/07-12/29/08
12 VAC 30-120-370 emer	Amended	25:3 VA.R. 393	9/1/07-3/3/09
12 VAC 30-120-370	Amended	25:11 VA.R. 1947	3/4/09
12 VAC 30-120-380 emer	Amended	25:3 VA.R. 393	9/1/07-3/3/09
12 VAC 30-120-380 emer	Amended	25:3 VA.R. 393	7/1/07-12/29/08
12 VAC 30-120-380	Amended	25:11 VA.R. 1950	3/4/09
12 VAC 30-135-10	Amended	24:26 VA.R. 3783	10/16/08
12 VAC 30-135-20	Amended	24:26 VA.R. 3783	10/16/08
12 VAC 30-135-30	Amended	24:26 VA.R. 3783	10/16/08
12 VAC 30-135-40	Amended	24:26 VA.R. 3783	10/16/08
12 VAC 30-135-70	Amended	24:26 VA.R. 3784	10/16/08
12 VAC 30-141-660 emer	Amended	25:10 VA.R. 1854	12/22/08-12/21/09
12 VAC 35-11-10 through 12 VAC 35-11-110	Repealed	25:2 VA.R. 271	10/29/08
12 VAC 35-12-10 through 12 VAC 35-12-110	Added	25:2 VA.R. 271-274	10/29/08
Title 13. Housing			
13 VAC 5-10-10 through 13 VAC 5-10-120	Repealed	25:4 VA.R. 666	11/26/08
13 VAC 5-11-10 through 13 VAC 5-11-110	Added	25:4 VA.R. 667-669	11/26/08
13 VAC 5-51-81	Amended	24:25 VA.R. 3622	10/1/08
13 VAC 5-100-10	Amended	25:13 VA.R. 2363	2/12/09
13 VAC 5-100-20	Amended	25:13 VA.R. 2364	2/12/09
13 VAC 5-200-10	Amended	24:26 VA.R. 3784	10/1/08
13 VAC 5-200-40 through 13 VAC 5-200-80	Amended	24:26 VA.R. 3784-3785	10/1/08
13 VAC 5-200-100	Amended	24:26 VA.R. 3785	10/1/08
13 VAC 6-10-10 through 13 VAC 6-10-120	Repealed	25:3 VA.R. 394	11/13/08
13 VAC 6-11-10 through 13 VAC 6-11-110	Added	25:3 VA.R. 394-397	11/13/08
13 VAC 10-20-40	Amended	25:9 VA.R. 1743	12/15/08
13 VAC 10-180-40	Amended	25:7 VA.R. 1418	1/1/09
13 VAC 10-180-50	Amended	25:7 VA.R. 1419	1/1/09
13 VAC 10-180-60	Amended	25:7 VA.R. 1421	1/1/09
Title 14. Insurance			
14 VAC 5-323-10 through 14 VAC 5-323-70	Added	25:8 VA.R. 1527-1528	1/1/09
14 VAC 5-395-40	Amended	24:26 VA.R. 3811	8/29/08
Title 16. Labor and Employment			
16 VAC 15-10-10 through 16 VAC 15-10-100	Repealed	25:4 VA.R. 672	11/26/08
16 VAC 15-11-10 through 16 VAC 15-11-110	Added	25:4 VA.R. 672-675	11/26/08
16 VAC 15-30-40	Amended	24:25 VA.R. 3632	9/18/08
16 VAC 20-10-10 through 16 VAC 20-10-100	Repealed	25:4 VA.R. 675	11/27/08

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
16 VAC 20-11-10 through 16 VAC 20-11-110	Added	25:4 VA.R. 676-678	11/27/08
16 VAC 25-10-10 through 16 VAC 25-10-120	Repealed	24:26 VA.R. 3811	10/1/08
16 VAC 25-11-10 through 16 VAC 25-11-110	Added	24:26 VA.R. 3811-3814	10/1/08
16 VAC 25-20-10	Amended	25:8 VA.R. 1529	2/1/09
16 VAC 30-11-10 through 16 VAC 30-11-30	Repealed	25:6 VA.R. 1307	12/24/08
16 VAC 30-12-10 through 16 VAC 30-12-110	Added	25:6 VA.R. 1307-1310	12/24/08
16 VAC 30-90-10 through 16 VAC 30-90-80	Repealed	25:11 VA.R. 1951	3/4/09
16 VAC 30-91-10	Added	25:11 VA.R. 1951	3/4/09
16 VAC 30-91-20	Added	25:11 VA.R. 1952	3/4/09
Title 17. Libraries and Cultural Resources			
17 VAC 5-10-10 through 17 VAC 5-10-40	Repealed	25:6 VA.R. 1310	12/24/08
17 VAC 5-11-10 through 17 VAC 5-11-110	Added	25:6 VA.R. 1311-1313	12/24/08
17 VAC 10-10-10 through 17 VAC 10-10-40	Repealed	25:6 VA.R. 1313	12/24/08
17 VAC 10-11-10 through 17 VAC 10-11-110	Added	25:6 VA.R. 1314-1316	12/24/08
17 VAC 15-10-10	Repealed	25:5 VA.R. 1064	12/10/08
17 VAC 15-11-10 through 17 VAC 15-11-110	Added	25:5 VA.R. 1065-1067	12/10/08
17 VAC 15-120-10	Added	25:6 VA.R. 1317	12/24/08
17 VAC 15-120-20	Added	25:6 VA.R. 1317	12/24/08
17 VAC 15-120-30	Added	25:6 VA.R. 1317	12/24/08
Title 18. Professional and Occupational Licensing			
18 VAC 5-10-10 through 18 VAC 5-10-90	Repealed	25:4 VA.R. 678	11/26/08
18 VAC 5-11-10 through 18 VAC 5-11-110	Added	25:4 VA.R. 679-682	11/26/08
18 VAC 10-10-10 through 18 VAC 10-10-90	Repealed	25:4 VA.R. 682	11/27/08
18 VAC 10-11-10 through 18 VAC 10-11-110	Added	25:4 VA.R. 682-685	11/27/08
18 VAC 10-20-10	Amended	25:3 VA.R. 397	12/1/08
18 VAC 10-20-120	Amended	25:3 VA.R. 399	12/1/08
18 VAC 10-20-120	Amended	25:5 VA.R. 1068	1/1/09
18 VAC 10-20-140	Amended	25:5 VA.R. 1068	1/1/09
18 VAC 10-20-280	Amended	25:3 VA.R. 399	12/1/08
18 VAC 10-20-295	Amended	25:3 VA.R. 400	12/1/08
18 VAC 10-20-310	Amended	25:3 VA.R. 400	12/1/08
18 VAC 10-20-310	Erratum	25:7 VA.R. 1451	--
18 VAC 10-20-340	Amended	25:3 VA.R. 401	12/1/08
18 VAC 10-20-350	Amended	25:3 VA.R. 401	12/1/08
18 VAC 10-20-360	Amended	25:3 VA.R. 401	12/1/08
18 VAC 10-20-380	Amended	25:3 VA.R. 402	12/1/08
18 VAC 10-20-382	Added	25:3 VA.R. 403	12/1/08
18 VAC 10-20-392	Added	25:3 VA.R. 404	12/1/08
18 VAC 10-20-395	Added	25:3 VA.R. 404	12/1/08
18 VAC 10-20-670	Amended	25:12 VA.R. 2258	4/1/09
18 VAC 10-20-680	Amended	25:12 VA.R. 2258	4/1/09
18 VAC 10-20-683	Added	25:12 VA.R. 2259	4/1/09
18 VAC 10-20-687	Added	25:12 VA.R. 2260	4/1/09
18 VAC 10-20-760	Amended	25:3 VA.R. 404	12/1/08
18 VAC 10-20-790	Amended	25:12 VA.R. 2260	4/1/09
18 VAC 15-10-10 through 18 VAC 15-10-90	Repealed	25:1 VA.R. 55	10/15/08
18 VAC 15-11-10 through 18 VAC 15-11-110	Added	25:1 VA.R. 55-58	10/15/08
18 VAC 25-10-10 through 18 VAC 25-10-90	Repealed	25:6 VA.R. 1318	12/24/08
18 VAC 25-11-10 through 18 VAC 25-11-110	Added	25:6 VA.R. 1319-1321	12/24/08
18 VAC 25-21-20	Amended	25:7 VA.R. 1431	2/1/09
18 VAC 25-21-40	Amended	25:7 VA.R. 1432	2/1/09

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 25-21-50	Amended	25:7 VA.R. 1432	2/1/09
18 VAC 25-21-60	Amended	25:7 VA.R. 1432	2/1/09
18 VAC 25-21-110	Amended	25:7 VA.R. 1433	2/1/09
18 VAC 25-21-120	Amended	25:7 VA.R. 1433	2/1/09
18 VAC 25-21-150	Amended	25:7 VA.R. 1433	2/1/09
18 VAC 25-21-170	Amended	25:7 VA.R. 1434	2/1/09
18 VAC 25-21-180	Amended	25:7 VA.R. 1434	2/1/09
18 VAC 25-21-185	Added	25:7 VA.R. 1435	2/1/09
18 VAC 30-10-10 through 18 VAC 30-10-120	Repealed	25:5 VA.R. 1070	12/10/08
18 VAC 30-11-10 through 18 VAC 30-11-110	Added	25:5 VA.R. 1070-1073	12/10/08
18 VAC 30-20 (Forms)	Amended	24:26 VA.R. 3814	--
18 VAC 41-10-10 through 18 VAC 41-10-90	Repealed	25:6 VA.R. 1321	12/24/08
18 VAC 41-11-10	Erratum	25:9 VA.R. 1826	--
18 VAC 41-11-20	Erratum	25:9 VA.R. 1826	--
18 VAC 41-11-10 through 18 VAC 41-11-110	Added	25:6 VA.R. 1322-1325	12/24/08
18 VAC 45-10-10 through 18 VAC 45- 10-90	Repealed	24:26 VA.R. 3815	10/2/08
18 VAC 45-11-10 through 18 VAC 45-11-110	Added	24:26 VA.R. 3815-3818	10/2/08
18 VAC 47-10-10 through 18 VAC 47-10-90	Repealed	25:6 VA.R. 1325	12/24/08
18 VAC 47-11-10 through 18 VAC 47-11-110	Added	25:6 VA.R. 1325-1328	12/24/08
18 VAC 48-10-10 through 18 VAC 48-10-110	Added	25:3 VA.R. 411-414	11/13/08
18 VAC 48-20-10 through 18 VAC 48-20-730 emer	Added	25:5 VA.R. 1074-1093	11/13/08-11/12/09
18 VAC 48-40-10 through 18 VAC 48-40-110	Added	25:4 VA.R. 685-688	11/27/08
18 VAC 48-50-10 through 18 VAC 48-50-200 emer	Added	25:5 VA.R. 1095-1100	11/13/08-11/12/09
18 VAC 48-60-10 through 18 VAC 48-60-60	Added	25:4 VA.R. 688-689	11/27/08
18 VAC 50-10-10 through 18 VAC 50-10-90	Repealed	25:6 VA.R. 1328	12/24/08
18 VAC 50-11-10 through 18 VAC 50-11-110	Added	25:6 VA.R. 1328-1331	12/24/08
18 VAC 50-22-40	Amended	25:3 VA.R. 415	12/1/08
18 VAC 50-22-50	Amended	25:3 VA.R. 415	12/1/08
18 VAC 50-22-60	Amended	25:3 VA.R. 416	12/1/08
18 VAC 50-22-300 through 18 VAC 50-22-350	Added	25:3 VA.R. 417-418	12/1/08
18 VAC 60-10-10 through 18 VAC 60-10-120	Repealed	25:3 VA.R. 418	11/12/08
18 VAC 60-11-10 through 18 VAC 60-11-110	Added	25:3 VA.R. 419-422	11/12/08
18 VAC 60-20 (Forms)	Amended	25:1 VA.R. 58	--
18 VAC 62-10-10 through 18 VAC 62-10-110	Added	25:6 VA.R. 1332-1334	12/24/08
18 VAC 65-10-10 through 18 VAC 65-10-120	Repealed	25:2 VA.R. 291	10/29/08
18 VAC 65-11-10 through 18 VAC 65-11-110	Added	25:2 VA.R. 291-294	10/29/08
18 VAC 65-20 (Forms)	Amended	24:26 VA.R. 3818	--
18 VAC 65-40 (Forms)	Amended	24:26 VA.R. 3818	--
18 VAC 70-10-10 through 18 VAC 70-10-90	Repealed	25:5 VA.R. 1100	12/10/08
18 VAC 70-11-10 through 18 VAC 70-11-110	Added	25:5 VA.R. 1100-1103	12/10/08
18 VAC 75-10-10 through 18 VAC 75-10-120	Repealed	25:2 VA.R. 294	10/29/08
18 VAC 75-11-10 through 18 VAC 75-11-110	Added	25:2 VA.R. 295-297	10/29/08
18 VAC 75-20 (Forms)	Amended	24:25 VA.R. 3632	--
18 VAC 76-20 (Forms)	Amended	24:26 VA.R. 3819	--
18 VAC 76-30-10 through 18 VAC 76-30-120	Repealed	24:25 VA.R. 3632	9/17/08
18 VAC 76-31-10 through 18 VAC 76-31-110	Added	24:25 VA.R. 3633-3635	9/17/08
18 VAC 76-40 (Forms)	Amended	24:26 VA.R. 3820	--
18 VAC 80-10-10 through 18 VAC 80-10-90	Repealed	25:6 VA.R. 1334	12/24/08
18 VAC 80-11-10 through 18 VAC 80-11-110	Added	25:6 VA.R. 1335-1338	12/24/08
18 VAC 85-10-10 through 18 VAC 85-10-110	Repealed	24:26 VA.R. 3820	10/1/08
18 VAC 85-11-10 through 18 VAC 85-11-110	Added	24:26 VA.R. 3820	10/1/08

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 85-20 (Forms)	Amended	24:26 VA.R. 3823	--
18 VAC 85-40 (Forms)	Amended	24:26 VA.R. 3823	--
18 VAC 85-50 (Forms)	Amended	24:26 VA.R. 3823	--
18 VAC 85-80 (Forms)	Amended	24:26 VA.R. 3823	--
18 VAC 85-80-10 emer	Amended	25:5 VA.R. 1104	11/1/08-10/31/09
18 VAC 85-80-26 emer	Amended	25:5 VA.R. 1104	11/1/08-10/31/09
18 VAC 85-80-40 emer	Amended	25:5 VA.R. 1104	11/1/08-10/31/09
18 VAC 85-80-45 emer	Amended	25:5 VA.R. 1105	11/1/08-10/31/09
18 VAC 85-80-50 emer	Amended	25:5 VA.R. 1105	11/1/08-10/31/09
18 VAC 85-80-61 emer	Repealed	25:5 VA.R. 1105	11/1/08-10/31/09
18 VAC 85-80-65 emer	Amended	25:5 VA.R. 1105	11/1/08-10/31/09
18 VAC 85-80-70 emer	Amended	25:5 VA.R. 1105	11/1/08-10/31/09
18 VAC 85-80-72 emer	Amended	25:5 VA.R. 1105	11/1/08-10/31/09
18 VAC 85-80-73 emer	Amended	25:5 VA.R. 1106	11/1/08-10/31/09
18 VAC 85-80-80 emer	Amended	25:5 VA.R. 1106	11/1/08-10/31/09
18 VAC 85-80-90 emer	Amended	25:5 VA.R. 1106	11/1/08-10/31/09
18 VAC 85-80-100 emer	Amended	25:5 VA.R. 1107	11/1/08-10/31/09
18 VAC 85-80-110 emer	Amended	25:5 VA.R. 1107	11/1/08-10/31/09
18 VAC 85-80-111 emer	Added	25:5 VA.R. 1108	11/1/08-10/31/09
18 VAC 85-101 (Forms)	Amended	24:26 VA.R. 3823	--
18 VAC 85-110 (Forms)	Amended	24:26 VA.R. 3823	--
18 VAC 85-120 (Forms)	Amended	24:26 VA.R. 3823	--
18 VAC 85-130 (Forms)	Amended	24:26 VA.R. 3823	--
18 VAC 90-10-10 through 18 VAC 90-10-120	Repealed	24:25 VA.R. 3635	9/17/08
18 VAC 90-11-10 through 18 VAC 90-11-110	Added	24:25 VA.R. 3636-3639	9/17/08
18 VAC 90-20 (Forms)	Amended	25:1 VA.R. 59	--
18 VAC 90-25 (Forms)	Amended	25:1 VA.R. 59	--
18 VAC 90-30 (Forms)	Amended	25:1 VA.R. 59	--
18 VAC 90-30-10	Amended	25:5 VA.R. 1111	12/25/08
18 VAC 90-30-20	Amended	25:5 VA.R. 1112	12/25/08
18 VAC 90-30-30	Amended	25:5 VA.R. 1112	12/25/08
18 VAC 90-30-80	Amended	25:5 VA.R. 1112	12/25/08
18 VAC 90-30-85	Amended	25:5 VA.R. 1112	12/25/08
18 VAC 90-30-100	Amended	25:5 VA.R. 1113	12/25/08
18 VAC 90-30-105	Amended	25:5 VA.R. 1113	12/25/08
18 VAC 90-30-110	Amended	25:5 VA.R. 1113	12/25/08
18 VAC 90-30-120	Amended	25:5 VA.R. 1114	12/25/08
18 VAC 90-30-121	Amended	25:5 VA.R. 1114	12/25/08
18 VAC 90-30-220	Amended	25:5 VA.R. 1115	12/25/08
18 VAC 90-30-230	Amended	25:5 VA.R. 1115	12/25/08
18 VAC 90-40 (Forms)	Amended	25:1 VA.R. 59	--
18 VAC 90-40-10	Amended	25:5 VA.R. 1115	12/25/08
18 VAC 90-40-20	Amended	25:5 VA.R. 1116	12/25/08
18 VAC 90-40-40	Amended	25:5 VA.R. 1116	12/25/08
18 VAC 90-40-50	Amended	25:5 VA.R. 1116	12/25/08
18 VAC 90-40-55	Amended	25:5 VA.R. 1116	12/25/08
18 VAC 90-40-60	Amended	25:5 VA.R. 1117	12/25/08
18 VAC 90-40-90	Amended	25:5 VA.R. 1117	12/25/08
18 VAC 90-40-100	Amended	25:5 VA.R. 1117	12/25/08
18 VAC 90-40-121	Added	25:5 VA.R. 1118	12/25/08
18 VAC 90-40-130	Amended	25:5 VA.R. 1118	12/25/08

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 90-40-140	Amended	25:5 VA.R. 1118	12/25/08
18 VAC 90-50 (Forms)	Amended	25:1 VA.R. 59	--
18 VAC 90-50-10	Amended	25:4 VA.R. 691	12/11/08
18 VAC 90-50-40	Amended	25:4 VA.R. 691	12/11/08
18 VAC 90-50-75	Amended	25:4 VA.R. 691	12/11/08
18 VAC 90-50-80	Amended	25:4 VA.R. 692	12/11/08
18 VAC 90-50-90	Amended	25:4 VA.R. 692	12/11/08
18 VAC 90-60 (Forms)	Amended	25:1 VA.R. 59	--
18 VAC 95-10-10 through 18 VAC 95-10-120	Repealed	25:6 VA.R. 1338	12/24/08
18 VAC 95-11-10 through 18 VAC 95-11-110	Added	25:6 VA.R. 1338-1341	12/24/08
18 VAC 95-20 (Forms)	Amended	24:26 VA.R. 3827	--
18 VAC 95-20-80	Amended	24:16 VA.R. 2264	5/14/08
18 VAC 95-20-225	Amended	25:6 VA.R. 1341	12/24/08
18 VAC 95-30 (Forms)	Amended	24:26 VA.R. 3827	--
18 VAC 100-10-10 through 18 VAC 100-10-90	Repealed	25:6 VA.R. 1342	12/24/08
18 VAC 100-11-10 through 18 VAC 100-11-110	Added	25:6 VA.R. 1342-1345	12/24/08
18 VAC 105-10-10 through 18 VAC 105-10-120	Repealed	24:26 VA.R. 3828	10/1/08
18 VAC 105-11-10 through 18 VAC 105-11-110	Added	24:26 VA.R. 3828-3831	10/1/08
18 VAC 105-20 (Forms)	Amended	24:25 VA.R. 3639	--
18 VAC 110-10-10 through 18 VAC 110-10-120	Repealed	25:2 VA.R. 298	10/29/08
18 VAC 110-11-10 through 18 VAC 110-11-110	Added	25:2 VA.R. 298-301	10/29/08
18 VAC 110-20 (Forms)	Amended	24:25 VA.R. 3640	--
18 VAC 110-20-20 emer	Amended	25:3 VA.R. 464	9/23/08-9/22/09
18 VAC 110-20-220	Amended	25:4 VA.R. 694	12/11/08
18 VAC 110-20-230	Repealed	25:4 VA.R. 695	12/11/08
18 VAC 110-30 (Forms)	Amended	24:25 VA.R. 3640	--
18 VAC 110-50 (Forms)	Amended	24:25 VA.R. 3640	--
18 VAC 110-50-20 emer	Amended	25:3 VA.R. 466	9/23/08-9/22/09
18 VAC 112-10-10 through 18 VAC 112-10-120	Repealed	25:1 VA.R. 61	10/15/08
18 VAC 112-11-10 through 18 VAC 112-11-110	Added	25:1 VA.R. 62-64	10/15/08
18 VAC 112-20 (Forms)	Amended	24:26 VA.R. 3831	--
18 VAC 112-20-81 emer	Added	25:3 VA.R. 467	11/1/07-4/29/09
18 VAC 112-20-90 emer	Amended	25:3 VA.R. 467	11/1/07-4/29/09
18 VAC 112-20-130 emer	Amended	25:3 VA.R. 467	11/1/07-4/29/09
18 VAC 112-20-131 emer	Amended	25:3 VA.R. 467	11/1/07-4/29/09
18 VAC 112-20-150 emer	Amended	25:3 VA.R. 467	11/1/07-4/29/09
18 VAC 115-10-10 through 18 VAC 115-10-120	Repealed	24:26 VA.R. 3832	10/1/08
18 VAC 115-11-10 through 18 VAC 115-11-110	Added	24:26 VA.R. 3832-3835	10/1/08
18 VAC 115-20 (Forms)	Amended	25:1 VA.R. 65	--
18 VAC 115-30 (Forms)	Amended	25:1 VA.R. 65	--
18 VAC 115-40 (Forms)	Amended	25:1 VA.R. 65	--
18 VAC 115-50 (Forms)	Amended	25:1 VA.R. 65	--
18 VAC 115-60 (Forms)	Amended	25:1 VA.R. 65	--
18 VAC 120-10-100 through 18 VAC 120-10-180	Repealed	24:26 VA.R. 3835	10/2/08
18 VAC 120-11-10 through 18 VAC 120-11-110	Added	24:26 VA.R. 3836-3838	10/2/08
18 VAC 125-10-10 through 18 VAC 125-10-120	Repealed	25:4 VA.R. 699	11/26/08
18 VAC 125-11-10 through 18 VAC 125-11-110	Added	25:4 VA.R. 699-702	11/26/08
18 VAC 125-20 (Forms)	Amended	25:1 VA.R. 66	--
18 VAC 125-30 (Forms)	Amended	25:1 VA.R. 66	--
18 VAC 130-10-10 through 18 VAC 130-10-90	Repealed	25:6 VA.R. 1345	12/24/08
18 VAC 130-11-10 through 18 VAC 130-11-110	Added	25:6 VA.R. 1345-1348	12/24/08

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 135-10-10 through 18 VAC 135-10-90	Repealed	25:6 VA.R. 1348	12/24/08
18 VAC 135-11-10 through 18 VAC 135-11-110	Added	25:6 VA.R. 1348-1351	12/24/08
18 VAC 140-10-10 through 18 VAC 140-10-120	Repealed	24:25 VA.R. 3641	9/17/08
18 VAC 140-11-10 through 18 VAC 140-11-110	Added	24:25 VA.R. 3641-3644	9/17/08
18 VAC 140-20 (Forms)	Amended	25:1 VA.R. 67	--
18 VAC 140-20-10	Amended	25:4 VA.R. 703	11/26/08
18 VAC 140-20-40	Amended	25:4 VA.R. 703	11/26/08
18 VAC 140-20-50	Amended	25:4 VA.R. 703	11/26/08
18 VAC 140-20-51	Added	25:4 VA.R. 705	11/26/08
18 VAC 140-20-60	Amended	25:4 VA.R. 705	11/26/08
18 VAC 140-20-105	Amended	25:4 VA.R. 706	11/26/08
18 VAC 140-20-140	Repealed	25:4 VA.R. 707	11/26/08
18 VAC 140-20-150	Amended	25:4 VA.R. 707	11/26/08
18 VAC 140-20-160	Amended	25:4 VA.R. 709	11/26/08
18 VAC 145-10-10 through 18 VAC 145-10-90	Repealed	25:6 VA.R. 1351	12/24/08
18 VAC 145-11-10 through 18 VAC 145-11-110	Added	25:6 VA.R. 1352-1355	12/24/08
18 VAC 150-10-10 through 18 VAC 150-10-120	Repealed	25:1 VA.R. 68	10/15/08
18 VAC 150-11-10 through 18 VAC 150-11-110	Added	25:1 VA.R. 68-71	10/15/08
18 VAC 150-20 (Forms)	Amended	24:26 VA.R. 3838	--
18 VAC 155-10-5 through 18 VAC 155-10-80	Repealed	25:6 VA.R. 1355	12/24/08
18 VAC 155-11-10 through 18 VAC 155-11-110	Added	25:6 VA.R. 1355-1358	12/24/08
18 VAC 160-10-10 through 18 VAC 160-10-90	Repealed	25:4 VA.R. 709	11/26/08
18 VAC 160-11-10 through 18 VAC 160-11-110	Added	25:4 VA.R. 709-712	11/26/08
Title 19. Public Safety			
19 VAC 15-10-10 through 19 VAC 15-10-50	Repealed	25:5 VA.R. 1118	12/10/08
19 VAC 15-11-10 through 19 VAC 15-11-110	Added	25:5 VA.R. 1119-1121	12/10/08
19 VAC 30-10-10 through 19 VAC 30-10-40	Repealed	24:26 VA.R. 3839	10/1/08
19 VAC 30-11-10 through 19 VAC 30-11-110	Added	24:26 VA.R. 3839-3842	10/1/08
19 VAC 30-20-40	Amended	25:11 VA.R. 1968	3/4/09
19 VAC 30-20-60	Amended	25:11 VA.R. 1968	3/4/09
19 VAC 30-20-80	Amended	25:11 VA.R. 1968	3/4/09
19 VAC 30-20-270 through 19 VAC 30-20-300	Added	25:11 VA.R. 1968-1969	3/4/09
19 VAC 30-200-10	Added	25:12 VA.R. 2273	4/2/09
Title 20. Public Utilities and Telecommunications			
20 VAC 5-200-30	Repealed	25:9 VA.R. 1768	1/1/09
20 VAC 5-201-10 through 20 VAC 5-201-110	Added	25:9 VA.R. 1768-1816	1/1/09
20 VAC 5-302-10 through 20 VAC 5-302-35	Amended	25:10 VA.R. 1859-1863	1/15/09
20 VAC 5-312-10	Amended	25:8 VA.R. 1534	1/1/09
20 VAC 5-312-20	Amended	25:8 VA.R. 1535	1/1/09
20 VAC 5-312-60	Amended	25:8 VA.R. 1537	1/1/09
20 VAC 5-312-80	Amended	25:8 VA.R. 1538	1/1/09
20 VAC 5-312-90	Amended	25:8 VA.R. 1540	1/1/09
20 VAC 5-312-120	Repealed	25:8 VA.R. 1542	1/1/09
20 VAC 5-313-10	Amended	25:8 VA.R. 1543	1/1/09
20 VAC 5-313-20	Amended	25:8 VA.R. 1543	1/1/09
20 VAC 5-313-30	Repealed	25:8 VA.R. 1544	1/1/09
20 VAC 5-315-10	Amended	24:26 VA.R. 3845	8/25/08
20 VAC 5-315-20	Amended	24:26 VA.R. 3845	8/25/08
20 VAC 5-315-40	Amended	24:26 VA.R. 3846	8/25/08
20 VAC 5-315-50	Amended	24:26 VA.R. 3847	8/25/08
20 VAC 5-403-70	Amended	25:9 VA.R. 1816	1/1/09

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
20 VAC 5-414-10 through 20 VAC 5-414-70	Added	25:7 VA.R. 1437-1438	12/1/08
Title 22. Social Services			
22 VAC 5-10-10 through 22 VAC 5-10-110	Repealed	25:5 VA.R. 1122	1/1/09
22 VAC 5-11-10 through 22 VAC 5-11-110	Added	25:5 VA.R. 1122-1125	1/1/09
22 VAC 5-30-10 through 22 VAC 5-30-60	Added	24:25 VA.R. 3665-3669	1/1/09
22 VAC 15-10-10 through 22 VAC 15-10-70	Repealed	25:4 VA.R. 712	1/1/09
22 VAC 15-11-10 through 22 VAC 15-11-110	Added	25:4 VA.R. 713-715	1/1/09
22 VAC 20-10-10 through 22 VAC 20-10-100	Repealed	25:7 VA.R. 1438	1/7/09
22 VAC 20-11-10 through 22 VAC 20-11-110	Added	25:7 VA.R. 1439-1441	1/7/09
22 VAC 27-10-10 through 22 VAC 27-10-110	Added	25:7 VA.R. 1442-1445	1/7/09
22 VAC 30-10-10	Repealed	25:1 VA.R. 71	10/15/08
22 VAC 30-10-20	Repealed	25:1 VA.R. 71	10/15/08
22 VAC 30-10-40	Repealed	25:1 VA.R. 71	10/15/08
22 VAC 30-10-50	Repealed	25:1 VA.R. 71	10/15/08
22 VAC 30-10-60	Repealed	25:1 VA.R. 71	10/15/08
22 VAC 30-11-10 through 22 VAC 30-11-110	Added	25:1 VA.R. 72-74	10/15/08
22 VAC 40-11-10 through 22 VAC 40-11-70	Repealed	25:1 VA.R. 74	1/1/09
22 VAC 40-12-10 through 22 VAC 40-12-110	Added	25:1 VA.R. 74-78	1/1/09
22 VAC 40-72-10	Amended	25:8 VA.R. 1592	2/5/09
22 VAC 40-72-30	Repealed	25:8 VA.R. 1598	2/5/09
22 VAC 40-72-50	Amended	25:8 VA.R. 1598	2/5/09
22 VAC 40-72-90	Amended	25:8 VA.R. 1599	2/5/09
22 VAC 40-72-100	Amended	25:8 VA.R. 1600	2/5/09
22 VAC 40-72-150	Amended	25:8 VA.R. 1600	2/5/09
22 VAC 40-72-190	Repealed	25:8 VA.R. 1600	2/5/09
22 VAC 40-72-191	Added	25:8 VA.R. 1601	2/5/09
22 VAC 40-72-200	Repealed	25:8 VA.R. 1601	2/5/09
22 VAC 40-72-201	Added	25:8 VA.R. 1602	2/5/09
22 VAC 40-72-210	Amended	25:8 VA.R. 1603	2/5/09
22 VAC 40-72-220	Amended	25:8 VA.R. 1603	2/5/09
22 VAC 40-72-230	Amended	25:8 VA.R. 1605	2/5/09
22 VAC 40-72-260	Amended	25:8 VA.R. 1606	2/5/09
22 VAC 40-72-290	Amended	25:8 VA.R. 1606	2/5/09
22 VAC 40-72-340	Amended	25:8 VA.R. 1607	2/5/09
22 VAC 40-72-390	Amended	25:8 VA.R. 1609	2/5/09
22 VAC 40-72-420	Amended	25:8 VA.R. 1610	2/5/09
22 VAC 40-72-430	Amended	25:8 VA.R. 1610	2/5/09
22 VAC 40-72-440	Amended	25:8 VA.R. 1611	2/5/09
22 VAC 40-72-630	Amended	25:8 VA.R. 1612	2/5/09
22 VAC 40-72-660	Amended	25:8 VA.R. 1613	2/5/09
22 VAC 40-72-670	Amended	25:8 VA.R. 1613	2/5/09
22 VAC 40-72-910	Amended	25:8 VA.R. 1615	2/5/09
22 VAC 40-72-920	Amended	25:8 VA.R. 1615	2/5/09
22 VAC 40-72-930	Amended	25:8 VA.R. 1615	2/5/09
22 VAC 40-72-950	Amended	25:8 VA.R. 1616	2/5/09
22 VAC 40-72-960	Amended	25:8 VA.R. 1616	2/5/09
22 VAC 40-72-970	Amended	25:8 VA.R. 1617	2/5/09
22 VAC 40-72-1010	Amended	25:8 VA.R. 1617	2/5/09
22 VAC 40-72-1120	Amended	25:8 VA.R. 1618	2/5/09
22 VAC 40-151-10 through 22 VAC 40-151-1020	Added	25:3 VA.R. 482-512	1/1/09
22 VAC 40-705-10	Amended	25:11 VA.R. 1993	3/4/09

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
22 VAC 40-705-30	Amended	25:11 VA.R. 1996	3/4/09
22 VAC 40-705-40	Amended	25:11 VA.R. 1997	3/4/09
22 VAC 40-705-50	Amended	25:11 VA.R. 1999	3/4/09
22 VAC 40-705-70	Amended	25:11 VA.R. 2000	3/4/09
22 VAC 40-705-80	Amended	25:11 VA.R. 2000	3/4/09
22 VAC 40-705-120	Amended	25:11 VA.R. 2001	3/4/09
22 VAC 40-705-140	Amended	25:11 VA.R. 2002	3/4/09
22 VAC 40-705-150	Amended	25:11 VA.R. 2003	3/4/09
22 VAC 40-705-180	Amended	25:11 VA.R. 2003	3/4/09
22 VAC 45-11-10 through 22 VAC 45-11-90	Repealed	25:5 VA.R. 1125	12/1/08
22 VAC 45-12-10 through 22 VAC 45-12-110	Added	25:5 VA.R. 1125-1128	12/1/08
Title 23. Taxation			
23 VAC 10-10-10 through 23 VAC 10-10-80	Repealed	25:4 VA.R. 730	1/10/09***
23 VAC 10-11-10 through 23 VAC 10-11-110	Added	25:4 VA.R. 732-735	1/10/09***
23 VAC 10-20-155	Added	24:26 VA.R. 3848	10/1/08
23 VAC 10-20 (Forms)	Amended	25:5 VA.R. 1128	--
23 VAC 10-20-20	Amended	25:11 VA.R. 2004	3/4/09
23 VAC 10-20-80	Amended	25:11 VA.R. 2004	3/4/09
23 VAC 10-20-90	Amended	25:11 VA.R. 2004	3/4/09
23 VAC 10-20-110	Amended	25:11 VA.R. 2004	3/4/09
23 VAC 10-20-130	Amended	25:11 VA.R. 2005	3/4/09
23 VAC 10-20-160	Amended	25:8 VA.R. 1620	3/8/09
23 VAC 10-20-165	Added	25:8 VA.R. 1622	3/8/09
23 VAC 10-20-170	Repealed	25:8 VA.R. 1627	3/8/09
23 VAC 10-20-180	Amended	25:8 VA.R. 1628	3/8/09
23 VAC 10-20-190	Amended	25:8 VA.R. 1628	3/8/09
23 VAC 10-20-200	Amended	25:11 VA.R. 2005	3/4/09
23 VAC 10-55 (Forms)	Amended	25:5 VA.R. 1129	--
23 VAC 10-60 (Forms)	Amended	25:5 VA.R. 1129	--
23 VAC 10-65 (Forms)	Amended	25:5 VA.R. 1129	--
23 VAC 10-75 (Forms)	Amended	25:5 VA.R. 1129	--
23 VAC 10-210 (Forms)	Amended	25:6 VA.R. 1358	--
23 VAC 10-210-20	Repealed	24:26 VA.R. 3849	10/1/08
23 VAC 10-210-170	Repealed	25:4 VA.R. 736	11/26/08
23 VAC 10-210-220	Amended	25:11 VA.R. 2006	3/4/09
23 VAC 10-210-250	Amended	25:11 VA.R. 2007	3/4/09
23 VAC 10-210-595	Added	25:4 VA.R. 736	11/26/08
23 VAC 10-210-870	Repealed	25:4 VA.R. 736	11/26/08
23 VAC 10-210-3080	Amended	25:11 VA.R. 2007	3/4/09
23 VAC 10-210-4010	Repealed	25:4 VA.R. 736	11/26/08
23 VAC 10-210-6060	Amended	25:8 VA.R. 1632	3/8/09
23 VAC 10-220 (Forms)	Amended	25:5 VA.R. 1129	--
23 VAC 10-230 (Forms)	Amended	25:5 VA.R. 1129	--
23 VAC 10-230-20	Amended	25:8 VA.R. 1633	3/8/09
23 VAC 10-230-30	Amended	25:8 VA.R. 1633	3/8/09
23 VAC 10-230-40	Amended	25:8 VA.R. 1635	3/8/09
23 VAC 10-230-70	Added	25:8 VA.R. 1637	3/8/09
23 VAC 10-230-75	Added	25:8 VA.R. 1637	3/8/09
23 VAC 10-230-80	Amended	25:8 VA.R. 1637	3/8/09

*** See erratum (25:6 VA.R. 1375) for effective date

Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
23 VAC 10-230-90	Amended	25:8 VA.R. 1638	3/8/09
23 VAC 10-230-110	Amended	25:8 VA.R. 1639	3/8/09
23 VAC 10-230-120	Amended	25:8 VA.R. 1639	3/8/09
23 VAC 10-240 (Forms)	Amended	25:6 VA.R. 1359	--
23 VAC 10-300 (Forms)	Amended	25:5 VA.R. 1129	--
23 VAC 10-310 (Forms)	Amended	25:5 VA.R. 1129	--
23 VAC 10-330 (Forms)	Amended	25:5 VA.R. 1129	--
23 VAC 10-350 (Forms)	Amended	25:5 VA.R. 1129	--
23 VAC 10-370 (Forms)	Amended	25:5 VA.R. 1129	--
23 VAC 10-390 (Forms)	Amended	25:5 VA.R. 1130	--
Title 24. Transportation and Motor Vehicles			
24 VAC 20-10-10 through 24 VAC 20-10-140	Repealed	25:6 VA.R. 1360	12/24/08
24 VAC 20-11-10 through 24 VAC 20-11-110	Added	25:6 VA.R. 1361-1364	12/24/08
24 VAC 22-10-10 through 24 VAC 22-10-140	Repealed	25:4 VA.R. 752	11/26/08
24 VAC 22-11-10 through 24 VAC 22-11-110	Added	25:4 VA.R. 753-755	11/26/08
24 VAC 25-5-10 through 24 VAC 25-5-110	Added	25:7 VA.R. 1445-1448	1/7/09
24 VAC 25-10-10	Repealed	25:3 VA.R. 519	10/13/08
24 VAC 25-20-10	Repealed	25:3 VA.R. 519	10/13/08
24 VAC 27-10-10 through 24 VAC 27-10-120	Repealed	25:6 VA.R. 1364	12/24/08
24 VAC 27-11-10 through 24 VAC 27-11-110	Added	25:6 VA.R. 1364-1367	12/24/08
24 VAC 27-30-10 through 24 VAC 27-30-190	Added	25:1 VA.R. 78-89	10/15/08
24 VAC 30-10-10 through 24 VAC 30-10-70	Repealed	25:6 VA.R. 1367	12/24/08
24 VAC 30-11-10 through 24 VAC 30-11-110	Added	25:6 VA.R. 1367-1370	12/24/08
24 VAC 30-15-10	Repealed	25:10 VA.R. 1863	2/18/09
24 VAC 30-16-10	Repealed	25:3 VA.R. 520	11/12/08
24 VAC 30-380-10	Amended	25:5 VA.R. 1130	10/22/08
24 VAC 35-10-10 through 24 VAC 35-10-70	Repealed	25:5 VA.R. 1131	12/10/08
24 VAC 35-11-10 through 24 VAC 35-11-110	Added	25:5 VA.R. 1132-1134	12/10/08

PETITIONS FOR RULEMAKING

TITLE 4. CONSERVATION AND NATURAL RESOURCES

DEPARTMENT OF FORESTRY

Agency Decision

Title of Regulation: **4VAC10-30. Regulations Pertaining to State Forests and Carrying Firearms.**

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

Name of Petitioner: Philip Van Cleave, President, Virginia Citizens Defense League.

Nature of Petitioner's Request: Change regulations to allow the lawful carry of handguns, either concealed with a concealed handgun permit, or openly in a state forest.

Agency Decision: Request granted in part; request denied in part.

Statement of Reasons for Decision: The request is granted in part and denied in part. The State Forester has reviewed the petitioner's request to allow the lawful carry of handguns, either concealed with a concealed handgun permit, or openly in a state forest, and agrees to amend the regulations to allow the lawful carry of concealed handguns with a concealed handgun permit, but not change regulations to allow the carrying of open handguns on State Forests. Once the State Forest regulations are successfully amended, the requirements for carrying handguns on State Forests will be similar to those governing handguns on State Parks.

Agency Contact: Ron Jenkins, Assistant State Forester, Policy, Planning and Budget, Department of Forestry, 900 Natural Resources Drive, Suite 800, Charlottesville, VA 22903, telephone (434) 977-6555, FAX (434) 977-7749, or email ron.jenkins@dof.virginia.gov.

VA.R. Doc. No. R09-06; Filed February 19, 2009, 10:54 a.m.

TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Agency Decision

Title of Regulation: **9VAC25-720. Water Quality Management Planning Regulation.**

Statutory Authority: § 62.1-44.15 of the Code of Virginia.

Name of Petitioner: New Kent County.

Nature of Petitioner's Request: Amend the Water Quality Management Planning Regulation (9VAC25-720-120 C) to revise the total nitrogen and total phosphorus waste load

allocations for New Kent County's Parham Landing wastewater facility (VPDES Permit No. 0088331). The county originally planned to expand the plant from 0.568 million gallons per day (MGD) to 3.0 MGD, and now intends to construct a smaller addition that will increase the design flow to 2.0 MGD. The funds saved by constructing the smaller plant will be used by the county to build a reuse system that will provide bulk irrigation water to aid in preventing groundwater shortages in the area. This change will result in lower discharged nutrient waste load allocations; the total nitrogen allocation would decrease by 18,273 lbs/yr (from 54,820 to 36,547 lbs/yr) and the total phosphorus allocation would decrease by 2,132 lbs/yr (from 6,396 to 4,264 lbs/yr). The county asks that since this request is expected to be noncontroversial, that the rulemaking be "fast-tracked."

Agency Decision: Request granted.

Statement of Reasons for Decision: At their October 2008 meeting, the State Water Control Board adopted the following recommendations by staff of the Department of Environmental Quality:

1. That the board authorize the department to promulgate a proposal for public comment using the fast-track process established in § 2.2-4012.1 of the Administrative Process Act for regulations expected to be noncontroversial. The board's authorization should also be understood to constitute its adoption of the regulation at the end of the public comment period provided that (i) no objection to use of the fast-track process is received from 10 or more persons, or any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, and (ii) the department does not find it necessary, based on public comments or for any other reason, to make any changes to the proposal.

2. That the board authorize the department to set an effective date 15 days after close of the 30-day public comment period provided (i) the proposal completes the fast-track rulemaking process as provided in § 2.2-4012.1 of the Administrative Process Act and (ii) the department does not find it necessary to make any changes to the proposal.

3. Should the proposal fail to complete the fast-track rulemaking process as provided in § 2.2-4012.1 of the Administrative Process Act or changes to the proposal be needed, it is recommended that the board authorize the director to make the decision under 9VAC25-10-30 C concerning the use of the participatory approach or alternatives.

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, or email jmkennedy@deq.virginia.gov.

VA.R. Doc. No. R08-27; Filed February 11, 2009, 3:57 p.m.

◆ ————— ◆

**TITLE 18. PROFESSIONAL AND
OCCUPATIONAL LICENSING**

BOARD OF DENTISTRY

Initial Agency Notice

Title of Regulation: 18VAC60-20. Regulations Governing the Practice of Dentistry and Dental Hygiene.

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

Name of Petitioner: Len Futerman.

Nature of Petitioner's Request: To amend regulations for anesthesia in dental offices for consistency with guidelines of the American Dental Association, as amended in October of 2007.

Agency's Plan for Disposition of Request: The board is requesting public comment on the petition and will consider the petitioner's request and any comment on the petition at its meeting on June 12, 2009.

Comments may be submitted until April 15, 2009.

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4688, FAX (804) 527-4434, or email elaine.yeatts@dhp.virginia.gov.

VA.R. Doc. No. R09-12; Filed February 13, 2009, 12:19 p.m.

BOARD OF MEDICINE

Initial Agency Notice

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

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

Name of Petitioner: Dr. Percy Ramos.

Nature of Petitioner's Request: To amend 18VAC85-20-122 to allow practice as a medical doctor in another state with an unrestricted license for a certain number of years to be counted in lieu of one of the two years of postgraduate training for graduates of nonapproved medical schools.

Agency Decision: Request denied.

Statement of Reasons for Decision: While the Code of Virginia does allow the board to substitute other postgraduate

training for one of the two years required in an approved residency or internship program, the board does not believe its regulations should allow practice in another state to serve as a replacement for such training.

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

VA.R. Doc. No. R09-09; February 19, 2009, 3:00 p.m.

NOTICES OF INTENDED REGULATORY ACTION

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Withdrawal of Notice of Intended Regulatory Action

Notice is hereby given that the Department of Medical Assistance Services has WITHDRAWN the Notice of Intended Regulatory for **12VAC30-40, Eligibility Conditions and Requirements**, relating to life estates (12VAC30-40-290) that was published in 25:1 VA.R. 23 September 15, 2008. On February 24, 2009, the department withdrew the notice because of requirements of the American Recovery and Reinvestment Act of 2009.

Agency Contact: Cindy Olson, Project Manager, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 225-4282, FAX (804) 786-1680, or email cindy.olson@dmas.virginia.gov.

VA.R. Doc. No. R09-1326; Filed February 24, 2009, 9:32 a.m.

REGULATIONS

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

Symbol Key

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

TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

Emergency Regulation

Title of Regulation: **4VAC20-270. Pertaining to Crabbing (amending 4VAC20-270-10, 4VAC20-270-30, 4VAC20-270-40, 4VAC20-270-55, 4VAC20-270-60).**

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

Effective Dates: February 26, 2009, through March 28, 2009.

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

Preamble:

This emergency 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, previous 4VAC20-270, which was promulgated January 27, 2009, and made effective on February 1, 2009.

The amendments establish the season for the harvest of blue crabs for 2009.

EMERGENCY CHAPTER 270 PERTAINING TO CRABBING

4VAC20-270-10. Purpose.

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

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. 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.~~ C. 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.

Regulations

4VAC20-270-40. Season limits.

A. 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~~ November 30.

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 Virginia 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.

d. In the Potomac River the boundary line shall be the Route 301 bridge that extends from Newberg, Maryland, to Dahlgren, Virginia.

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

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 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 subsections B and C of this section.

B. From July 16, ~~2008~~, through November 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.~~

~~D. C.~~ 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.

~~E. D.~~ 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.

4VAC20-270-60. Penalty.

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

VA.R. Doc. No. R09-1789; Filed February 26, 2009, 2:46 p.m.

Final Regulation

<p>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.</p>
--

Title of Regulation: **4VAC20-490. Pertaining to Sharks (amending 4VAC20-490-20, 4VAC20-490-30, 4VAC20-490-40, 4VAC20-490-41).**

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

Effective Date: March 1, 2009.

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

Summary:

The amendments establish restrictions on the use of shortlines to harvest sharks, commercial catch limits on the harvest of large coastal sharks, and a recreational catch limit of one shark. The harvest of sharks from Virginia waters and the landing of sharks in Virginia is

also prohibited when the National Oceanic and Atmospheric Administration fisheries close the shark fishery in federal waters. All sharks harvested from state waters must be sold to a federally permitted shark dealer.

4VAC20-490-20. Definitions.

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

"Carcass length" means that length measured in a straight line from the anterior edge of the first dorsal fin to the posterior end of the shark carcass.

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

"Commercial shark fishermen" means any commercially permitted fisherman who has landed and sold one pound of shark or more (excludes spiny dogfish) in that calendar year (January 1 through December 31).

"Commercially permitted nonsandbar large coastal shark species" means any of the following species:

Blacktip, Carcharhinus limbatus

Bull, Carcharhinus leucas

Great hammerhead, Sphyrna mokarran

Lemon, Negaprion brevirostris

Nurse, Ginglymostoma cirratum

Scalloped hammerhead, Sphyrna lewini

Silky, Carcharhinus falciformis

Smooth hammerhead, Sphyrna zygaena

Spinner, Carcharhinus brevipinna

Tiger, Galeocerdo cuvier

"Commercially permitted pelagic species" means any of the following species:

Blue, Prionace glauca

Oceanic whitetip, Carcharhinus longimanus

Porbeagle, Lamna nasus

Shortfin mako, Isurus oxyrinchus

Thresher, Alopias vulpinus

"Commercially permitted small coastal shark species" means any of the following species:

Atlantic sharpnose, Rhizoprionodon terraenovae

Blacknose, Carcharhinus acronotus

Bonnethead, Sphyrna tiburo

Finetooth, Carcharhinus isodon

"Commercially prohibited species" means any of the following species:

Atlantic angel, Squatina dumeril

Basking, Cetorhinus maximus

Bigeye sand tiger, Odontaspis noronhai

Bigeye sixgill, Hexanchus nakamurai

Bigeye thresher, Alopias superciliosus

Bignose, Carcharhinus altimus

Caribbean reef, Carcharhinus perezii

Caribbean sharpnose, Rhizoprionodon porosus

Dusky, Carcharhinus obscurus

Galapagos, Carcharhinus galapagensis

Longfin mako, Isurus paucus

Narrowtooth, Carcharhinus brachyurus

Night, Carcharhinus signatus

Sand tiger, Carcharias taurus

Sevengill, Heptranchias perlo

Sixgill, Hexanchus griseus

Smalltail, Carcharhinus porosus

Whale, Rhincodon typus

White, Carcharodon carcharias

"Control rule" means a time-certain date, past, present or future, used to establish participation in a limited entry fishery and may or may not include specific past harvest amounts.

"Dressed weight" means the result from processing a fish by removal of head, viscera, and fins, but does not include removal of the backbone, halving, quartering, or otherwise further reducing the carcass.

"Finning" means removing the fins and returning the remainder of the shark to the sea.

"Fork length" means the straight-line measurement of a fish from the tip of the snout to the fork of the tail. The measurement is not made along the curve of the body.

~~"Large coastal shark group" means any of the following species:~~

~~Sandbar, Carcharhinus plumbeus~~

~~Silky, Carcharhinus falciformis~~

~~Tiger, Galeocerdo cuvieri~~

Regulations

~~Blacktip, *Carcharhinus limbatus*~~

~~Bull, *Carcharhinus leucas*~~

~~Great hammerhead, *Sphyrna mokarran*~~

~~Lemon, *Negaprion brevirostris*~~

~~Nurse, *Ginglymostoma cirratum*~~

~~Scalloped hammerhead, *Sphyrna lewini*~~

~~Smooth hammerhead, *Sphyrna zygaena*~~

~~Spinner, *Carcharhinus brevipinna*~~

"Large mesh gill net" means any gill net having a stretched mesh equal to or greater than five inches.

"Longline" means any fishing gear that is set horizontally, either anchored, floating or attached to a vessel, and that consists of a mainline or groundline, greater than 1,000 feet in length, with multiple leaders (gangions) and hooks, whether retrieved by hand or mechanical means.

"Pelagic shark group" means any of the following species:

~~Blue, *Prionace glauca*~~

~~Oceanic whitetip, *Carcharhinus longimanus*~~

~~Porbeagle, *Lamna nasus*~~

~~Shortfin mako, *Isurus oxyrinchus*~~

~~Thresher, *Alopias vulpinus*~~

"Permitted commercial gear" means rod and reel, handlines, shark shortlines, small mesh gill nets, large mesh gill nets, pound nets, and weirs.

"Recreational shore angler" means a person not fishing from a vessel nor transported to or from a fishing location by a vessel.

"Recreational vessel angler" means a person fishing from a vessel or transported to or from a fishing location by a vessel.

"Recreationally permitted species" means any of the following species:

Atlantic sharpnose, *Rhizoprionodon terraenovae*

Blacknose, *Carcharhinus acronotus*

Blacktip, *Carcharhinus limbatus*

Blue, *Prionace glauca*

Bonnethead, *Sphyrna tiburo*

Bull, *Carcharhinus leucas*

Finetooth, *Carcharhinus isodon*

Great hammerhead, *Sphyrna mokarran*

Lemon, *Negaprion brevirostris*

Nurse, *Ginglymostoma cirratum*

Oceanic whitetip, *Carcharhinus longimanus*

Porbeagle, *Lamna nasus*

Scalloped hammerhead, *Sphyrna lewini*

Shortfin mako, *Isurus oxyrinchus*

Smooth dogfish, *Mustelus canis*

Smooth hammerhead, *Sphyrna zygaena*

Spinner, *Carcharhinus brevipinna*

Thresher, *Alopias vulpinus*

Tiger, *Galeocerdo cuvier*

~~"Prohibited shark group"~~ "Recreationally prohibited species" means any of the following species:

Atlantic angel, *Squatina dumerili dumeril*

Basking, *Cetorhinus maximus*

Bigeye sand tiger, *Odontaspis noronhai*

Bigeye sixgill, *Hexanchus ~~vitulus~~ nakamurai*

Bigeye thresher, *Alopias superciliosus*

Bignose, *Carcharhinus altimus*

Caribbean reef, *Carcharhinus ~~perezi~~ perezii*

Caribbean sharpnose, *Rhizoprionodon porosus*

Dusky, *Carcharhinus obscurus*

Galapagos, *Carcharhinus galapagensis*

Longfin mako, *Isurus paucus*

Narrowtooth, *Carcharhinus brachyurus*

Night, *Carcharhinus signatus*

Sand tiger, *~~Odontaspis~~ Carcharias taurus*

Sandbar, *Carcharhinus plumbeus*

Sevengill, *Heptranchias perlo*

Silky, *Carcharhinus falciformis*

Sixgill, *Hexanchus griseus*

Smalltail, *Carcharhinus porosus*

Whale, *Rhincodon typus*

White, *Carcharodon carcharias*

~~"Small coastal shark group"~~ means any of the following species:

Atlantic sharpnose, *Rhizoprionodon terraenovae*

Blacknose, *Carcharhinus acronotus*

Bonnethead, *Sphyrna tiburo*

Finetooth, *Carcharhinus isodon*

"Research only species" means any of the following species:

Sandbar, *Carcharhinus plumbeus*

"Shark shortline" means a fish trotline that is set horizontally, either anchored, floating or attached to a vessel, and that consists of a mainline or groundline, 1,000 feet in length or less, with multiple leaders (gangions) and no more than 50 corrodible circle hooks, whether retrieved by hand or mechanical means.

"Small mesh gill net" means any gill net having a stretched mesh less than five inches.

"Smooth dogfish" means any shark of the species *Mustelus canis*.

"Spiny dogfish" means any shark of the species *Squalus acanthias*.

4VAC20-490-30. Gear restrictions.

A. It shall be unlawful for any person to place, set, or fish any longline in Virginia's tidal waters.

B. It shall be unlawful for any person to place, set, or fish any shark shortline in Virginia's tidal waters with more than 50 hooks. All hooks must be corrodible circle hooks. In addition, any person aboard a vessel fishing shortlines must practice the protocols and possess the federally required release equipment, for pelagic and bottom longlines, for the safe handling, release and disentanglement of sea turtles and other nontarget species; all captain and vessel owners must be certified in using handling and release equipment.

C. It shall be unlawful for a person to have more than two shark shortlines on board a vessel.

D. It shall be unlawful for any person fishing recreationally to take any shark using any gear other than handline or rod and reel.

E. It shall be unlawful for any person fishing for commercial purposes to possess any shark caught in state waters by means other than permitted commercial gear.

F. Any commercial shark fisherman fishing for sharks shall check all of his large mesh gill nets at least once every two hours.

4VAC20-490-40. Recreational catch limitations.

A. Recreational fishing vessels are allowed a maximum possession limit of one shark described in the recreationally permitted species list, excluding smooth dogfish, per trip, regardless of the number of people on board the vessel. In addition, each recreational vessel angler may possess one bonnethead and one Atlantic sharpnose per trip. The taking, catching, or possessing possession aboard a vessel of more

than one shark from either the large coastal, small coastal, or pelagic group per day, described in the recreationally permitted species list, excluding smooth dogfish, or the possession of more than one Atlantic sharpnose shark and one bonnethead shark per person per day, shall constitute a violation of this regulation. When fishing from any boat or vessel where the entire catch is held in a common hold or container, the possession limits for Atlantic sharpnose shark or bonnethead shark shall be for the boat or vessel and shall be equal to the number of persons on board legally eligible to fish, plus one additional shark described in the recreationally permitted species list. The captain or operator of the boat or vessel shall be responsible for any boat or vessel possession limits.

B. A recreational shore angler is allowed a maximum possession limit of one shark described in the recreationally permitted species list, excluding smooth dogfish, per calendar day. In addition a recreational shore angler may harvest one additional bonnethead and one additional Atlantic sharpnose per calendar day. The possession of more than one shark described in the recreationally permitted species list, excluding smooth dogfish, or the possession of more than one bonnethead and one Atlantic sharpnose, by any person, shall constitute a violation of this regulation.

C. It shall be unlawful for any person to ~~retain or~~ possess any ~~prohibited~~ shark described in the recreationally prohibited species list.

~~C. D. It shall be unlawful for any person to possess any large coastal, small coastal or pelagic shark, described in the recreationally permitted species list, landed under the recreational catch limitations described in this section that is less than 54 inches fork length except Atlantic sharpnose and, bonnethead sharks, landed under the recreational catch limitations described in this section, that is less than 54 inches fork length or 30 inches in carcass length finetooth, blacknose, and smooth dogfish.~~

E. It shall be unlawful for any person to take, harvest, land, or possess any blacktip, bull, great hammerhead, lemon, nurse, scalloped hammerhead, smooth hammerhead, spinner or tiger shark from May 15 through July 15 of any calendar year.

F. All sharks, except smooth dogfish, must have heads, tails and fins attached naturally to the carcass. Anglers may gut and bleed the carcass as long as the head and tail are not removed. Filleting sharks, except smooth dogfish, at sea is prohibited.

4VAC20-490-41. Commercial catch limitations.

A. It shall be unlawful for any person to take, harvest, land, or possess, for commercial purposes, any shark less than 58 inches in fork length or any shark carcass less than 31 inches in carcass length, from any waters west of the COLREGS Line.

Regulations

~~B. A.~~ It shall be unlawful for any person to possess on board a vessel or to land in Virginia more than ~~4,000 pounds, dressed weight, of 33 commercially permitted nonsandbar large coastal sharks per day in one 24-hour period.~~ The person who owns or operates the vessel is responsible for compliance with the provisions of this subsection.

~~C. B.~~ It shall be unlawful for any person to fillet a shark, except smooth dogfish, at sea. A licensed commercial fisherman may eviscerate and remove the head ~~and fins of sharks, but shall retain the fins with the dressed carcasses.~~ While on board and when offloaded, wet shark fins shall not exceed 5.0% of the dressed weight of the carcasses. Possession of wet shark fins on board a vessel or at offloading that exceeds 5.0% of the dressed weight of the carcasses shall constitute a violation of this regulation any shark, but the tail and all fins of any shark, except smooth dogfish, shall remain naturally attached to the carcass through landing. The fins of any shark, except smooth dogfish, may be partially cut but some portion of the fin shall remain attached, until the shark is landed.

C. It shall be unlawful to possess on board a vessel or to land in Virginia any species of shark after NOAA Fisheries has closed the fishery for that species in federal waters.

D. There are no commercial trip limits or possession limits for ~~pelagic or small coastal sharks~~ smooth dogfish or sharks on the lists of commercially permitted pelagic species or commercially permitted small coastal species.

E. Except as described in this section, it shall be unlawful for any person to take, harvest, land, or possess, in Virginia, any blacktip, bull, great hammerhead, lemon, nurse, scalloped hammerhead, silky, smooth hammerhead, spinner or tiger shark from May 15 through July 15. These sharks may be transported by vessel, in Virginia waters, during the closed season provided the sharks were caught in a legal manner consistent with federal regulations outside Virginia waters and:

1. The vessel does not engage in fishing, in Virginia waters, while possessing the above species; and
2. All fishing gear aboard the vessel is stowed and not available for immediate use.

~~E. F.~~ It shall be unlawful for any person to retain, possess or purchase any ~~prohibited~~ shark described in the commercially prohibited species list.

G. All sharks harvested from state waters or federal waters, for commercial purposes, shall be sold to a federally permitted shark dealer.

H. The commissioner may grant exemptions from the seasonal closure, quota, possession limit, size limit, gear restrictions and prohibited species restrictions. Exemptions shall only be granted for display or research purposes. The exempted fishermen or owner of the fishing vessel shall

report the species, weight, location caught and gear used for each shark collected for research or display within 30 days.

VA.R. Doc. No. R09-1775; Filed February 26, 2009, 2:45 p.m.

Emergency Regulation

Title of Regulation: **4VAC20-530. Pertaining to American Shad (amending 4VAC20-530-10, 4VAC20-530-20, 4VAC20-530-31, 4VAC20-530-40).**

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

Effective Dates: February 26, 2009, through March 28, 2009.

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

Preamble:

This emergency chapter 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 4VAC20-530, which was adopted on January 22, 2008, and made effective on February 1, 2008.

The amendments extend the 2008 provision for an American shad commercial bycatch fishery to the 2009 season.

EMERGENCY CHAPTER 530 PERTAINING TO AMERICAN SHAD

4VAC20-530-10. Purpose.

The purposes of this emergency chapter are to rebuild the Virginia stocks of American Shad and to comply with the requirements for ocean intercept commercial fisheries as specified by the Interstate Fishery Management Plan for Shad and River Herring.

4VAC20-530-20. Definition.

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

"Bycatch area" means those tidal waters of (i) the James River, from the James River Bridge upstream to a line connecting Dancing Point and New Sunken Meadow Creek; (ii) the York River, from the George P. Coleman Bridge upstream to the Rt. 33 Eltham and Lord Delaware bridges at West Point; and (iii) the Rappahannock River, from the Norris Bridge upstream to the Rt. 360 Downing Bridge at Tappahannock.

"Chesapeake Bay" means all Virginia tidal waters west of the Colregs Demarcation Line that connect the Cape Henry

Lighthouse in Virginia Beach to the Cape Charles Lighthouse on Smith Island.

"Coastal area" means all Virginia tidal waters east of the Colregs Demarcation Line that connect the Cape Henry Lighthouse in Virginia Beach to the Cape Charles Lighthouse on Smith Island.

4VAC20-530-31. Bycatch fishery.

A. Any registered commercial fisherman meeting the conditions described in this subsection shall be eligible to participate in the American shad bycatch fishery in 2008 2009:

1. The registered commercial fisherman shall apply for a VMRC American Shad Bycatch Permit and possess that permit while fishing, landing, or selling his catch of American shad.
2. The registered commercial fisherman shall complete the VMRC American Shad Bycatch Survey form to describe his pending fishing activity.

B. It shall be unlawful for any person to possess aboard a vessel more than 10 American shad. When more than one registered and permitted fisherman is fishing on the same vessel, it shall be unlawful to possess more than 10 American shad aboard that vessel.

C. It shall be unlawful for any person to possess aboard a vessel or land any American shad unless that person possesses at least an equal number of fish of only the following food-grade species: spot, croaker, bluefish, catfish, striped bass or white perch.

D. Possession of American shad by any person permitted in accordance with this section shall be lawful only when those American shad were harvested from the bycatch area. Possession of any American shad harvested in Virginia waters that are outside of the bycatch area shall constitute a violation of this regulation, except as described in 4VAC20-530-32.

E. American shad harvested only as bycatch by anchored gill nets and staked gill nets may be possessed or retained for sale in accordance with the provisions of this regulation. It shall be unlawful for any person to harvest, land or possess any American shad taken by any commercial gear, except anchored gill net or staked gill net, or any recreational gear.

F. Every fisherman permitted for the American shad bycatch fishery shall contact the commission's interactive voice response system once weekly to report the following for the preceding weekly period: name, registration number, number of fishing trips taken, water body fished, number of nets set, number of American shad caught and number retained.

4VAC20-530-40. Penalty.

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

VA.R. Doc. No. R09-1790; Filed February 26, 2009, 2:47 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: **4VAC20-620. Pertaining to Summer Flounder (amending 4VAC20-620-70).**

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

Effective Date: March 1, 2009.

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

Summary:

The amendments eliminate the season closure for the 2009 recreational harvest of summer flounder.

4VAC20-620-70. Recreational fishing season.

A. The recreational fishing season for the Chesapeake Bay and its tributaries, ~~excluding the Potomac River tributaries,~~ and the coastal area, shall be ~~closed July 21 through July 30~~ open year-round.

B. The recreational fishing season for the Potomac River tributaries shall be the same as established by the Potomac River Fisheries Commission for the mainstem Potomac River.

C. It shall be unlawful for any person fishing recreationally to take, catch, or possess any Summer Flounder during any closed recreational fishing season.

D. Nothing in this chapter shall prohibit the landing of Summer Flounder in Virginia that were legally harvested in the Potomac River.

VA.R. Doc. No. R09-1791; Filed February 26, 2009, 2:48 p.m.

Regulations

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: **4VAC20-700. Pertaining to Crab Pots (amending 4VAC20-700-20).**

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

Effective Date: March 1, 2009.

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

Summary:

The amendment eliminates the requirement that each crab pot contain cull rings of 2-5/16 inches and 2-3/16 inches.

4VAC20-700-20. Cull ring requirements.

A. ~~Effective July 1, 2008, it~~ It shall be unlawful for any person to place, set or fish any crab pot, in Virginia's 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 subsection C~~ subsection 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~~ 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~~ two unobstructed cull rings ~~of size and location within the pot, as described in this subsection.~~ The two cull rings shall be at least 2-3/8 inches inside diameter. ~~These cull rings and~~ and 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. R09-1792; Filed February 26, 2009, 2:49 p.m.



TITLE 5. CORPORATIONS

STATE CORPORATION COMMISSION

Final 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: **5VAC5-20. State Corporation Commission Rules of Practice and Procedure (amending 5VAC5-20-10, 5VAC5-20-20, 5VAC5-20-80, 5VAC5-20-90, 5VAC5-20-100, 5VAC5-20-120 through 5VAC5-20-150, 5VAC5-20-170, 5VAC5-20-180, 5VAC5-20-240 through 5VAC5-20-280).**

Statutory Authority: §§ 12.1-13 and 12.1-25 of the Code of Virginia.

Effective Date: March 11, 2009.

Agency Contact: William H. Chambliss, General Counsel, State Corporation Commission, 1300 East Main Street, PO Box 1197, Richmond, VA 23218, telephone (804) 371-9671, FAX (804) 371-9240, or email william.chambliss@scc.virginia.gov.

Summary:

The amendments modify and clarify the operation of the rules of practice before the State Corporation Commission relating to pleadings, discovery, and the treatment of confidential information in regulatory, adjudicatory, and other proceedings before the commission. Minor edits to form and structure of the rules are also made. In response to comments presented by interested parties and further review by the commission's staff, several changes to the initially proposed revisions, as well as additional revisions were made to the rules with regard the standard for reviewing designations of information as confidential in a formal proceeding, access to confidential information between parties, treatment of confidential information provided to the commission outside of formal proceedings, and access to staff workpapers. Further additional minor edits to form and structure are also included.

AT RICHMOND, FEBRUARY 24, 2009

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. CLK-2008-00002

Ex Parte: In the matter concerning revised
State Corporation Commission Rules of
Practice and Procedure

FINAL ORDER

The Rules of Practice and Procedure, now codified at 5 VAC 5-10-10 *et seq.* ("Rules"), were last revised in Case No. CLK-2007-00005,¹ in which the State Corporation Commission ("Commission") incorporated procedures for electronic filing. Prior to Case No. CLK-2007-00005, the Rules were last revised in 2001 in Case No. CLK-2000-00311.²

On August 7, 2008, the Commission entered an Order for Notice of Proceeding to Consider Revisions to Commission's Rules of Practice and Procedure ("Order"). In the Order, the Commission permitted interested persons to review the Commission Staff's ("Staff") proposed revisions to the Commission's Rules of Practice and Procedure ("Proposed Rules") and to file comments and suggestions thereon. A copy of the Proposed Rules was attached to the Order.

Comments were filed on October 3, 2008, by the following: Appalachian Power Company ("Appalachian Power"); the Office of the Attorney General, Division of Consumer Counsel ("Consumer Counsel"); Potomac Edison Company d/b/a Allegheny Power ("Allegheny Power"); Columbia Gas of Virginia, Inc. ("Columbia Gas"); Virginia Electric and Power Company d/b/a Dominion Virginia Power ("Virginia Power"); Washington Gas Light Company ("Washington Gas"); and the Virginia Industrial Energy Users Groups ("VIEUG").³ Columbia Gas and Virginia Power requested a hearing, and Appalachian Power requested that the Commission require the Staff to file a report and to permit responses by parties to other comments and the Staff Report.

On November 21, 2008, the Commission entered an Order Scheduling Hearing and Directing Parties and Staff to File Additional Comments, directing the Staff to file a Report on the comments to the Proposed Rules, permitting the parties to file a response to the Staff Report, and permitting the Staff to file a reply to these responses. A public hearing was also scheduled for February 4, 2009.

The Staff Report was filed on December 16, 2008, addressing the numerous comments and proposed changes filed by the parties. Attached to the Staff Report were further changes recommended by the Staff as a result of the parties' comments ("Revised Proposed Rules"). Appalachian Power, Columbia Gas, Consumer Counsel, Allegheny Power, VIEUG, Virginia Power, and Washington Gas each filed a response to the Staff Report and the Revised Proposed Rules on January 9, 2009. The Staff filed a reply to these responses on January 23, 2009.

The Commission convened a hearing on February 4, 2009. All parties who submitted comments, as well as the Staff, appeared by counsel at the hearing. The Staff advised that they had met with those who had filed comments in advance of the hearing and had been able to reach accord on a number of the revisions remaining at issue after the filing of the Staff

Report and the Revised Proposed Rules attached thereto.⁴ Resolution was reached either by agreement to new language, withdrawal of additional proposals, or withdrawal of objections to text included in the Revised Proposed Rules. However, two Rules were the subject of proposals that remained contested at the hearing.⁵ Accordingly, full arguments on each contested proposal, as described below, were heard by the Commission.⁶

Rule 80⁷

Appalachian Power proposed in its initial comments that subsection B of Rule 80 be revised to require a respondent to update its notice of intent to participate.⁸ Currently, Rule 80 B requires in part that a notice of participation state a specific action sought to the extent then known and the factual and legal basis for the action. Appalachian Power's proposal would modify Rule 80 B to require a respondent to state actions sought and facts underlying them as soon as such actions and facts are known and without regard to whether such respondent had completed discovery or whether the date for filing written testimony had passed.⁹ While the Staff opposed the Appalachian Power proposal in the Staff Report, the Staff and Virginia Power offered an alternative approach at the hearing that was intended to require respondents to update the information provided in the notice of participation if the respondent did not prefile testimony.¹⁰ Both the VIEUG and Consumer Counsel opposed the changes, arguing that the present language in the Rule was adequate.¹¹

Separately, Columbia Gas proposed a revision to Rule 80 B to change the way in which groups or associations file their notices of participation. In filed comments, Columbia Gas recommended that Rule 80 require that a group or association include the name of each member of the association in the notice of participation.¹² At the hearing, Columbia Gas revised its proposal to address only associations consisting of utility customers that are grouped together to participate collectively rather than individually in a Commission proceeding.¹³ VIEUG and the Staff opposed the proposal noting that there are alternative methods by which such information could be discovered if it is relevant to the proceeding.¹⁴

Rule 260

Columbia Gas sought to amend Rule 260 to permit interrogatories and requests for production of documents to be sent to individual members of an association appearing as a respondent in a Commission proceeding.¹⁵ As with Rule 80, Columbia Gas modified its proposal at the hearing to make it applicable specifically to groups or associations of utility customers.¹⁶ Columbia Gas contends that it is unfair for associations such as VIGUA to have the ability to propound discovery upon Columbia Gas on behalf of individual customers in a Commission proceeding while Columbia Gas is not authorized to serve interrogatories on those same customers.¹⁷

Regulations

VIEUG opposed the Columbia Gas proposal.¹⁸ Counsel for VIEUG argued that when his law firm represents an association in a Commission proceeding, the law firm is not counsel for the individual members of the group and, as such, has no authority to answer discovery on behalf of these individual companies.¹⁹ VIEUG also argued that modifying Rule 260 in the manner proposed by Columbia Gas could discourage participation in Commission proceedings.²⁰

Allegheny Power and Washington Gas each proposed a change in the rules of discovery related to the Staff. Initially, both Allegheny Power and Washington Gas sought to amend Rule 260 to provide for full discovery on the Staff.²¹ In its response to the Staff Report, Allegheny Power amended its proposal to provide for discovery on the Staff when it acts as a litigant in a Commission proceeding.²² Allegheny Power argued that the right of full discovery between participants in a proceeding, including the Staff, promotes "judicial efficiency" and "just results."²³ Washington Gas stated in its comments that it needs discovery on the Staff to foster the opportunity to resolve issues on which an applicant, the Staff, and parties have differing opinions.²⁴

The Staff opposed the proposals, noting that Rule 270 already requires the Staff to make available workpapers that support the Staff's recommendations in testimony and in reports to parties in a regulatory proceeding and that Rule 260 permits parties to discover factual information that supports those workpapers.²⁵ The Staff argued that this method of furnishing information continues to strike an appropriate balance between the interests of the parties to a regulatory proceeding and the Staff's unique role in Commission proceedings.²⁶ The Staff also opposed expanding discovery beyond the present level as an unnecessary expense on the Commission's limited resources.²⁷

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that the current Rules of Practice and Procedure shall be revised as set forth in the attachment to this Final Order. The Commission has considered all of the comments, revisions, argument of the participants, and applicable law in making its determination in this matter. The Commission commends the parties and the Staff for narrowing the issues in dispute prior to the start of the hearing. The uncontested revisions shall be adopted.²⁸

We find that the contested proposals, discussed above, need not be adopted in this proceeding. We find that Rule 80 B's requirement for notice of participation is presently adequate. Any abuse of the Rule is currently subject to challenge on a case-by-case basis, and discovery options present parties with alternatives for addressing relevant concerns in the course of a proceeding. We further find that the proposal to permit discovery on non-parties to a proceeding — *i.e.*, individual members of an association — is not reasonable and should not be adopted. Finally, we find that the proposals for full or expanded discovery upon the Staff should be rejected. As the

Staff serves a unique role in Commission proceedings, the two avenues for access to Staff workpapers and discovering facts relied upon by the Staff in those workpapers, pursuant to Rule 260 and Rule 270, remain sufficient for parties participating in the Commission's regulatory proceedings.

The revisions to these Rules adopted herein shall be effective March 11, 2009.

Accordingly, IT IS ORDERED THAT:

(1) The current Rules of Practice and Procedure as set forth in 5 VAC 5-20-10 *et seq.* are hereby revised and adopted as set forth on the attachment to this Final Order.

(2) The revisions to these Rules adopted herein shall be effective March 11, 2009.

(3) A copy of this Final Order and the Rules adopted herein shall be forwarded to the Virginia Register of Regulations for publication.

(4) This case shall be dismissed from the Commission's docket of active proceedings, and the papers filed herein shall be placed in the Commission's file for ended causes.

Commissioner Dimitri did not participate in this proceeding.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: Donald G. Owens, Esquire, and Thomas C. Walker, Jr., Esquire, Troutman Sanders LLP, 1001 Haxall Point, P.O. Box 1122, Richmond, Virginia 23218-1122; Karen L. Bell, Esquire, and Lisa S. Booth, Esquire, Dominion Resources Services, Inc., P.O. Box 26532, Richmond, Virginia 23261-6532; Vishwa B. Link, Esquire, and Andrea R. Chase, Esquire, McGuireWoods LLP, One James Center, 901 East Cary Street, Richmond, Virginia 23219-4030; Anthony Gambardella, Esquire, Woods Rogers, PLC, 823 East Main Street, Suite 1200, Richmond, Virginia 23219; Charles E. Bayless, Esquire, and James R. Bacha, Esquire, Appalachian Power Company, Three James Center, Suite 702, 1051 East Cary Street, Richmond, Virginia 23219; C. Meade Browder, Jr., Senior Assistant Attorney General, and Kiva Bland Pierce, Assistant Attorney General, Division of Consumer Counsel, Office of the Attorney General, 900 East Main Street, Richmond, Virginia 23219; Richard D. Gary, Esquire, and Noelle J. Coates, Esquire, Hunton & Williams LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219; Jeffrey P. Trout, Esquire, Allegheny Power, 800 Cabin Hill Drive, Greensburg, Pennsylvania 15601; James S. Copenhaver, Esquire, and T. Borden Ellis, Esquire, Columbia Gas of Virginia, Inc., 1809 Coyote Drive, Chester, Virginia 23836; Meera Ahamed, Esquire, Washington Gas Light Company, 101 Constitution Avenue, N.W., Washington, D.C. 20080; Louis R. Monacell, Esquire, Edward L. Petrini, Esquire, and Cliona Mary Robb, Esquire, Christian & Barton, L.L.P., 909 East Main Street, Suite 1200, Richmond, Virginia 23219-3095; and the Commission's Office of General Counsel.

¹ Commonwealth of Virginia ex rel. State Corporation Commission, Ex Parte: In the Matter concerning revised State Corporation Commission Rules of Practice and Procedure, Case No. CLK-2007-00005 (Final Order, January 15, 2008).

² Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte: In the Matter concerning revised State Corporation Commission Rules of Practice and Procedure, Case No. CLK-2000-00311, 2001 S.C.C. Ann. Rpt. 55 (Final Order, April 30, 2001).

³ The VIEUG is comprised of the Virginia Committee for Fair Utility Rates, the Old Dominion Committee for Fair Utility Rates, and the Virginia Industrial Gas Users Association ("VIGUA").

⁴ *See* Tr. at 7-39; 166-168.

⁵ *See* Tr. at 9, 28, 30, 39-40, 104, 107, 166.

⁶ Tr. at 40-166.

⁷ Each rule discussed herein will be referred to in this short form. The full citation for the Rule is 5 VAC 5-20-80.

⁸ Appalachian Power October 3, 2008 Comments at 4-5.

⁹ *Id.*

¹⁰ Staff Report at 3-4; Tr. at 40-43, 46-48, 71-74, 77-80.

¹¹ *See* Consumer Counsel January 9, 2009 Response at 3-4; Tr. at 51-54, 71, 74-77.

¹² Columbia Gas October 3, 2008 Comments at 18-19, 29; Columbia Gas January 9, 2009 Response at 15-18.

¹³ Tr. at 82.

¹⁴ VIEUG January 9, 2009 Response at 7, n.10; Staff Report at 4-5; Tr. at 98-99, 102.

¹⁵ Columbia Gas October 3, 2008 Comments at 19-22; Columbia Gas January 9, 2009 Response at 33-37.

¹⁶ Tr. at 139-140.

¹⁷ Tr. at 116-124; 135-141; Columbia Gas January 9, 2009 Response at 34-36.

¹⁸ VIEUG January 9, 2009 Response at 2-7.

¹⁹ Tr. at 142.

²⁰ VIEUG January 9, 2009 Response at 6; Tr. at 141, 144-145.

²¹ Allegheny Power October 3, 2008 Comments at 3-4; Washington Gas October 3, 2008 Comments at 9-12.

²² Allegheny Power January 9, 2009 Response at 1-4.

²³ *Id.* at 2.

²⁴ Washington Gas October 3, 2008 Comments at 10-11; Tr. at 150-151.

²⁵ Staff Report at 13-16.

²⁶ *Id.* at 15-16; Staff January 23, 2009 Reply at 15-18.

²⁷ Staff Report at 16.

²⁸ *See* Tr. at 7-39, 166-168. The Commission has made technical changes where necessary to improve uniformity and clarity of the Rules as revised. These technical changes are in addition to, but consistent with, the uncontested revisions.

Part I General Provisions

5VAC5-20-10. Applicability.

The State Corporation Commission Rules of Practice and Procedure are promulgated pursuant to the authority of § 12.1-25 of the Code of Virginia and are applicable to the regulatory and adjudicatory proceedings of the State Corporation Commission except where superseded by more specific rules for particular types of cases or proceedings. When necessary to serve the ends of justice in a particular case, the commission may grant, upon motion or its own

initiative, a waiver or modification of any of the provisions of ~~the~~ these rules, except 5VAC5-20-220, under terms and conditions and to the extent it deems appropriate. These rules do not apply to the internal administration or organization of the commission in matters such as the procurement of goods and services, personnel actions, and similar issues, nor to matters that are being handled administratively by a division or bureau of the commission.

5VAC5-20-20. Good faith pleading and practice.

Every pleading, written motion, or other document presented for filing by a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, and the attorney's mailing address and telephone number, and where available, telefax number and email address, shall be stated. An individual not represented by an attorney shall sign the individual's pleading, motion, or other document, and shall state the individual's mailing address and telephone number. A partnership not represented by an attorney shall have a partner sign the partnership's pleading, motion, or other document, and shall state the partnership's mailing address and telephone number. A nonlawyer may only represent the interests of another before the commission in the presentation of facts, figures, or factual conclusions, as distinguished from legal arguments or conclusions. In the case of an individual or entity not represented by counsel, each signature shall be that of the individual or a qualified officer or agent of the entity. [~~The~~] pleadings [document Documents signed pursuant to this rule] need not be under oath unless so required by statute.

The commission allows electronic filing. Before filing electronically, the filer shall complete an electronic document filing authorization form, establish a filer authentication password with the Clerk of the State Corporation Commission and otherwise comply with the electronic filing procedures adopted by the commission. Upon establishment of a filer authentication password, a filer may make electronic filings in any case. All documents submitted electronically must be capable of being printed as paper documents without loss of content or appearance.

The signature of an attorney or party constitutes a certification that (i) the attorney or party has read the pleading, motion, or other document; (ii) to the best of the attorney's or party's knowledge, information, and belief formed after reasonable inquiry, ~~it~~ the pleading, motion or other document is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and (iii) ~~it~~ the pleading, motion or other document is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. A pleading, written motion, or other document will not be accepted for filing by the Clerk of the Commission if it is not signed.

Regulations

An oral motion made by an attorney or party in a commission proceeding constitutes a representation that the motion (i) is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and (ii) is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

Part II

Commencement of Formal Proceedings

[5VAC5-20-80. Regulatory proceedings.

A. Application. Except where otherwise provided by statute, rule or commission order, a person or entity seeking to engage in an industry or business subject to the commission's regulatory ~~control~~ authority, or to make changes in any previously authorized service, rate, facility, or other aspect of such industry or business that, by statute or rule, must be approved by the commission, shall file an application requesting authority to do so. The application shall contain (i) a specific statement of the action sought; (ii) a statement of the facts that the applicant is prepared to prove that would warrant the action sought; (iii) a statement of the legal basis for such action; and (iv) any other information required by law or regulation. Any person or entity filing an application shall be a party to that proceeding.

B. Participation as a respondent. A notice of participation as a respondent is the proper initial response to an application. A notice of participation shall be filed within the time prescribed by the commission and shall contain (i) a precise statement of the interest of the respondent; (ii) a statement of the specific action sought to the extent then known; and (iii) the factual and legal basis for the action. Any person or entity filing a notice of participation as a respondent shall be a party to that proceeding.

C. Public witnesses. Any person or entity not participating in a matter pursuant to subsection A or B of this section may make known their position in any regulatory proceeding by filing written comments in advance of the hearing if provided for by commission order or by attending the hearing, noting an appearance in the manner prescribed by the commission, and giving oral testimony. Public witnesses may not otherwise participate in the proceeding, be included in the service list, or be considered a party to the proceeding.

D. Commission staff. The commission staff may appear and participate in any proceeding in order to see that pertinent issues on behalf of the general public interest are clearly presented to the commission. The staff may, inter alia, conduct investigations and discovery, evaluate the issues raised, testify and offer exhibits, file briefs and make argument, and be subject to cross-examination when testifying. Neither the commission staff collectively nor any individual member of the commission staff shall be

considered a party to the case for any purpose by virtue of participation in a proceeding.]

5VAC5-20-90. Adjudicatory proceedings.

A. Initiation of proceedings. Investigative, disciplinary, penal, and other adjudicatory proceedings may be initiated by motion of the commission staff or upon the commission's own motion. Further proceedings shall be controlled by the issuance of a rule to show cause, which shall give notice to the defendant, state the allegations against the defendant, provide for a response from the defendant and, where appropriate, set the matter for hearing. A rule to show cause shall be served in the manner provided by § 12.1-19.1 or § 12.1-29 of the Code of Virginia. The commission staff shall prove the case by clear and convincing evidence.

B. Answer. ~~An answer is the proper initial responsive pleading to a rule to show cause.~~ An answer or other responsive pleading shall be filed within 21 days of service of the rule to show cause, unless the commission shall order otherwise. The answer shall state, in narrative form, each defendant's responses to the allegations in the rule to show cause and any affirmative defenses asserted by the defendant. Failure to file a timely answer or other responsive pleading may result in the entry of judgment by default against the party failing to respond.

5VAC5-20-100. Other proceedings.

A. Promulgation of general orders, rules, or regulations. Before promulgating a general order, rule, or regulation, the commission shall, by order upon an application or upon its own motion, require reasonable notice of the contents of the proposed general order, rule, or regulation, including publication in the Virginia Register of Regulations, and afford interested persons an opportunity to comment, present evidence, and be heard. A copy of each general order, rule, and regulation adopted in final form by the commission shall be filed with the Registrar of Regulations for publication in the Virginia Register of Regulations.

B. Petitions in other matters. Persons having a cause before the commission, whether by statute, rule, regulation, or otherwise, against a defendant, including the commission, a commission bureau, or a commission division, shall proceed by filing a written petition containing (i) the identity of the parties; (ii) a statement of the action sought and the legal basis for the commission's jurisdiction to take the action sought; (iii) a statement of the facts, proof of which would warrant the action sought; (iv) a statement of the legal basis for the action; and (v) a certificate showing service upon the defendant.

Within 21 days of service of a petition under this rule, the defendant shall file an answer or other responsive pleading containing, in narrative form, (i) a response to each allegation of the petition and (ii) a statement of each affirmative defense asserted by the defendant. Failure to file a timely answer may

result in entry of judgment by default against the defendant failing to respond. Upon order of the commission, the commission staff may participate in any proceeding under this rule in which it is not a defendant to the same extent as permitted by 5VAC5-20-80 D.

C. Declaratory judgments. Persons having no other adequate remedy may petition the commission for a declaratory judgment. The petition shall meet the requirements of subsection B of this section and, in addition, contain a statement of the basis for concluding that an actual controversy exists. In the proceeding, the commission shall by order provide for the necessary notice, responsive pleadings, and participation by interested parties and the commission staff.

5VAC5-20-120. Procedure before hearing examiners.

A. Assignment. The commission may, by order, assign a matter pending before it to a hearing examiner. Unless otherwise ordered, the hearing examiner shall conduct all further proceedings in the matter on behalf of the commission in accordance with ~~the~~ these rules. In the discharge of his duties, the hearing examiner shall exercise all the adjudicatory powers possessed by the commission including, inter alia, the power to administer oaths; require the attendance of witnesses and parties; require the production of documents; schedule and conduct pre-hearing conferences; admit or exclude evidence; grant or deny continuances; and rule on motions, matters of law, and procedural questions. The hearing examiner shall, upon conclusion of all assigned duties, issue a written final report and recommendation to the commission at the conclusion of the proceedings.

B. Objections and certification of issues. An objection to a ruling by the hearing examiner [during a hearing] shall be stated with the reasons therefor at the time of the ruling [~~and the~~ Any] objection [to a hearing examiner's ruling] may be argued to the commission as part of a response to the hearing examiner's report. A ruling by the hearing examiner that denies further participation by a party in interest or the commission staff in a proceeding that has not been concluded may be immediately appealed to the commission by filing a written motion with the commission for review. Upon the motion of any party or the staff, or upon the hearing examiner's own initiative, the hearing examiner may certify any other material issue to the commission for its consideration and resolution. Pending resolution by the commission of a ruling appealed or certified, the hearing examiner shall retain procedural control of the proceeding.

C. Responses to hearing examiner reports. Unless otherwise ordered by the hearing examiner, responses supporting or objecting to the hearing examiner's final report must be filed within 21 days of the issuance of the report. A reply to a response to the hearing examiner's report may only be filed with leave of the commission. The commission may accept, modify, or reject the hearing examiner's recommendations in

any manner consistent with law and the evidence, notwithstanding an absence of objections to the hearing examiner's report.

5VAC5-20-130. Amendment of pleadings.

No amendment shall be made to any ~~formal~~ pleading after it is filed except by leave of the commission, which leave shall be liberally granted in the furtherance of justice. The commission shall make such provision for notice and for opportunity to respond to the amended pleadings as it may deem necessary and proper.

5VAC5-20-140. Filing and service.

A ~~formal~~ pleading or other ~~related~~ document shall be considered filed with the commission upon receipt of the original and required copies by the Clerk of the Commission no later than the time established for the closing of business of the clerk's office on the day the item is due. The original and copies shall be stamped by the Clerk to show the time and date of receipt.

Electronic filings may be submitted at any time and will be deemed filed on the date and at the time the electronic document is received by the commission's database; provided, that if a document is received when the clerk's office is not open for public business, the document shall be deemed filed on the next regular business day. A filer will receive an electronic notification identifying the date and time the document ~~is~~ was received by the commission's database. An electronic document may be rejected if it is not submitted in compliance with these rules.

When a filing would otherwise be due on a day when the clerk's office is not open for public business [during all or part of a business day], the filing will be timely if made on the next regular business day ~~when that~~ the office is open to the public. [~~When~~ Except as otherwise ordered by the commission, when] a period of 15 days or fewer is permitted to make a filing or take other action pursuant to commission rule or order, intervening weekends or holidays shall not be counted in determining the due date.

Service of a ~~formal~~ pleading, brief, or other document filed with the commission required to be served on the parties to a proceeding or upon the commission staff, shall be effected by delivery of a true copy to the party or staff, or by deposit of a true copy into the United States mail [or overnight express mail delivery service] properly addressed and [~~stamped~~ postage prepaid, or via hand-delivery], on or before the date of filing. Service on a party may be made by service on the party's counsel. Alternatively, electronic service shall be permitted on parties or staff in cases where all parties and staff have agreed to such service, or where the commission has provided for such service by order. At the foot of a formal pleading, brief, or other document required to be served, the party making service shall append a certificate of counsel of record that copies were mailed or delivered as required.

Regulations

Notices, findings of fact, opinions, decisions, orders, or other documents to be served by the commission may be served by United States mail. However, all writs, processes, and orders of the commission, when acting in conformity with § 12.1-27 of the Code of Virginia, shall be attested by the Clerk of the Commission and served in compliance with § 12.1-19.1 or 12.1-29 of the Code of Virginia.

5VAC5-20-150. Copies and format.

Applications, petitions, motions, responsive pleadings, briefs, and other documents filed by parties must be filed in an original and 15 copies unless otherwise directed by the commission. Except as otherwise stated in these rules, submissions filed electronically are exempt from the copy requirement. One copy of each responsive pleading or brief must be served on each party and the commission staff counsel assigned to the matter, or, if no counsel has been assigned, on the general counsel.

Each document must be filed on standard size white opaque paper, 8-1/2 by 11 inches in dimension, ~~and~~ must be capable of being reproduced in copies of archival quality, and only one side of the paper may be used. Submissions filed electronically shall be made in portable document format (PDF).

~~Pleadings~~ Each document shall be bound or attached on the left side and contain adequate margins. Each page following the first page shall be numbered. If necessary, a document may be filed in consecutively numbered volumes, each of which may not exceed three inches in thickness. Submissions filed electronically may not exceed 100 pages of printed text of 8-1/2 by 11 inches.

~~Pleadings~~ Each document containing more than one exhibit should have dividers separating each exhibit and should contain an index. Exhibits such as maps, plats, and photographs not easily reduced to standard size may be filed in a different size, as necessary. Submissions filed electronically that otherwise would incorporate large exhibits impractical for conversion to electronic format shall be identified in the filing and include a statement that the exhibit was filed in hardcopy and is available for viewing at the commission or that a copy may be obtained from the filing party. Such exhibit shall be filed in an original and 15 copies.

All filed documents shall be fully collated and assembled into complete and proper sets ready for distribution and use, without the need for further assembly, sorting, or rearrangement.

The Clerk of the Commission may reject the filing of any document not conforming to the requirements of this rule.

5VAC5-20-170. Confidential information.

A person who proposes in good faith in a formal proceeding that information to be filed with or submitted delivered to the commission [~~or to be supplied to a party under Part IV~~

~~(5VAC5-20-240 et seq.) of these rules,~~] be withheld from public disclosure on the ground that it contains trade secrets, privileged, or confidential commercial or financial information shall file this information under seal with the Clerk of the Commission, or otherwise ~~submit~~ deliver the information under seal to the commission staff, [~~requesting party,~~] or both, as may be required. Items filed or delivered under seal shall be securely sealed in an opaque container that is clearly labeled "UNDER SEAL," and, if filed, shall meet the other requirements for filing contained in these rules. An original and 15 copies of all such information shall be filed with the clerk. One additional copy of all such information also shall also be submitted delivered under seal to the commission staff counsel assigned to the matter, or, where no counsel has been assigned, to the general counsel who, until ordered otherwise by the commission, shall disclose the information only to the members of the commission staff directly assigned to the matter as necessary in the discharge of their duties. Staff counsel and all members of the commission staff, until otherwise ordered by the commission, shall maintain the information in strict confidence and shall not disclose its contents to members of the public, or to other staff members not assigned to the matter. The commission staff or any party may object to the proposed withholding of the information.

[When an application (including supporting documents and prefiled testimony) contains information that the applicant claims to be confidential, the filing shall be made under seal and accompanied by a motion for protective order or other confidential treatment. The provision to a party of information claimed to be trade secrets, privileged, or confidential commercial or financial information shall be governed by a protective order or other individual arrangements for confidential treatment.]

On every document filed or delivered under seal, the producing party shall mark each individual page of the document that contains confidential information, and on each such page shall clearly indicate the specific information requested to be treated as confidential by use of highlighting, underscoring, bracketing or other appropriate marking. All remaining materials on each page of the document shall be treated as nonconfidential and available for public use and review. If an entire document is confidential, or if all information provided [~~electronically~~ in electronic format] under Part IV [(5VAC5-20-240 et seq.)] of these rules is confidential, a marking prominently displayed on the first page of such document or at the beginning of any information provided [~~electronically~~ in electronic format], indicating that the entire document is confidential shall suffice. [~~No document containing any confidential material may be filed electronically with the Clerk of the Commission.~~]

Upon challenge, ~~the filing party shall demonstrate to the satisfaction of the commission that the information should be withheld from public disclosure [the] information shall be~~

~~reated as confidential pursuant to these rules only where the party requesting confidential treatment can [prove it is more likely than not that public disclosure of the information will result in unreasonable harm the information shall be treated as confidential pursuant to the rules only where the party requesting confidential treatment can demonstrate to the satisfaction of the commission that the risk of harm of publicly disclosing the information outweighs the presumption in favor of public disclosure]. If the commission determines that the information should be withheld from public disclosure, it may nevertheless require the information to be disclosed to parties to a proceeding under appropriate protective order.~~

Whenever a document is filed with the clerk under seal, an original and [~~15 copies~~ one copy] of an expurgated or redacted version of the document deemed by the filing party or determined by the commission to be confidential shall be filed with the clerk for use and review by the public. A document containing confidential information shall not be submitted electronically. An expurgated or redacted version of the document may be filed electronically. Documents containing confidential information must be filed in hardcopy and in accordance with all requirements of these rules. [Upon a determination by the commission or a hearing examiner that all or portions of any materials filed under seal are not entitled to confidential treatment, the filing party shall file one original and one copy of the expurgated or redacted version of the document reflecting the ruling.]

When the information at issue is not required to be filed or made a part of the record, a party who wishes to withhold confidential information from filing or production may move the commission for a protective order without filing the materials. In considering such a motion, the commission may require production of the confidential materials for inspection in camera, if necessary.

A party may request additional protection for extraordinarily sensitive information by motion filed pursuant to 5VAC5-20-110, and filing the information with the Clerk of the Commission under seal and delivering a copy of the information to commission staff counsel under seal as directed above. Whenever such treatment has been requested under Part IV of these rules, the commission may make such orders as necessary to permit parties to challenge the requested additional protection.

The commission, hearing examiners, any party and the commission staff may make use of confidential material in orders, filing pleadings [~~or~~] testimony [, or other documents,] as directed by order of the commission. When a party or commission staff uses confidential material in a filed pleading [~~or~~] testimony, [or other document,] the party or commission staff must file both confidential and nonconfidential versions of the pleading [~~or~~] testimony [, or other document] . Confidential versions of filed pleadings

[~~or~~] testimony [, or other documents] shall clearly indicate the confidential material contained within by highlighting, underscoring, bracketing or other appropriate marking. When filing confidential pleadings [~~or~~] testimony, [or other documents,] parties must submit the confidential [pleadings or testimony version] to the Clerk of the Commission securely sealed in an opaque container that is clearly labeled "UNDER SEAL." Nonconfidential versions of filed pleadings [~~or~~] testimony [, or other documents] shall [expurgate, redact, or otherwise] omit all references to confidential material.

The commission may issue such order as it deems necessary to prevent the use of confidentiality claims for the purpose of delay or obstruction of the proceeding.

[A person who proposes in good faith that information to be delivered to the commission staff outside of a formal proceeding be withheld from public disclosure on the ground that it contains trade secrets, privileged, or confidential commercial or financial information may deliver the information under seal to the commission staff, subject to the same protections afforded confidential information in formal proceedings.]

5VAC5-20-180. Official transcript of hearing.

The official transcript of a hearing before the commission or a hearing examiner shall be that prepared by the court reporters retained by the commission and certified by the court reporter as a true and correct transcript of the proceeding. Transcripts of proceedings shall not be prepared except in cases assigned to a hearing examiner, when directed by the commission, or when requested by a party desiring to purchase a copy. Parties desiring to purchase copies of the transcript shall make arrangement for purchase with the court reporter. When a transcript is prepared, a copy thereof shall be made available for public inspection in the ~~Clerk of the Commission's~~ clerk's office. [If the transcript includes confidential information, an expurgated or redacted version of the transcript shall be made available for public inspection in the clerk's office. Only the parties who have executed an agreement to adhere to a protective order or other arrangement for access to confidential treatment in such proceeding and the commission staff shall be entitled to access to an unexpurgated or unredacted version of the transcript.] By agreement of the parties, or as the commission may by order provide, corrections may be made to the transcript.

Part IV

Discovery and Hearing Preparation Procedures

5VAC5-20-240. Prepared testimony and exhibits.

Following the filing of an application dependent upon complicated or technical proof, the commission may direct the applicant to prepare and file the testimony and exhibits by which the applicant expects to establish its case. In all

Regulations

proceedings in which an applicant is required to file testimony, respondents shall be permitted and may be directed by the commission or hearing examiner to file, on or before a date certain, testimony and exhibits by which they expect to establish their case. Any respondent that chooses not to file testimony and exhibits by that date may not thereafter present testimony or exhibits except by leave of the commission, but may otherwise fully participate in the proceeding and engage in cross-examination of the testimony and exhibits of commission staff and other parties. The commission staff also shall file testimony and exhibits when directed to do so by the commission. Failure to comply with the directions of the commission, without good cause shown, may result in rejection of the testimony and exhibits by the commission. With leave of the commission and unless a timely objection is made, the commission staff or a party may correct or supplement any prepared testimony and exhibits before or during the hearing. In all proceedings, all evidence must be verified by the witness before introduction into the record, and the admissibility of the evidence shall be subject to the same standards as if the testimony were offered orally at hearing, unless, with the consent of the commission, the staff and all parties stipulate the introduction of testimony without need for verification. An original and 15 copies of prepared testimony and exhibits shall be filed unless otherwise specified in the commission's scheduling order and public notice, or unless the testimony and exhibits are filed electronically and otherwise comply with these rules. Documents of unusual bulk or weight and physical exhibits other than documents need not be filed in advance, but shall be described and made available for pretrial examination.

5VAC5-20-250. Process, witnesses, and production of documents and things.

A. Subpoenas. Commission staff and a any party to a proceeding shall be entitled to process, to convene parties, to compel the attendance of witnesses, and to compel the production of books, papers, documents, or things provided in this rule.

B. Commission issuance and enforcement of other regulatory agency subpoenas. Upon motion by commission staff counsel, the commission may issue and enforce subpoenas at the request of a regulatory agency of another jurisdiction if the activity for which the information is sought by the other agency, if occurring in the Commonwealth, would be a violation of the laws of the Commonwealth that are administered by the commission.

A motion requesting the issuance of a commission subpoena shall include:

1. A copy of the original subpoena issued by the regulatory agency to the named defendant;

2. An affidavit of the requesting agency administrator stating the basis for the issuance of the subpoena under that state's laws; and

3. A memorandum from the commission's corresponding division director providing the basis for the issuance of the commission subpoena.

C. ~~Documents~~ Document subpoenas. In a pending ~~case~~ proceeding, at the request of commission staff or any party, the Clerk of the Commission shall issue a subpoena. When a matter is under investigation by commission staff, before a formal proceeding has been established, whenever it appears to the commission by affidavit filed with the Clerk of the Commission by the commission staff or an individual, that a book, writing, document, or thing sufficiently described in the affidavit, is in the possession, or under the control, of an identified person and is material and proper to be produced, the commission may order the Clerk of the Commission to issue a subpoena and to have the subpoena duly served, together with an attested copy of the commission's order compelling production at a reasonable place and time as described in the commission's order.

D. ~~Witnesses~~ Witness subpoenas. In a pending ~~case~~ proceeding, at the request of commission staff or any party, the Clerk of the Commission shall issue a subpoena.

5VAC5-20-260. Interrogatories to parties or requests for production of documents and things.

The commission staff and a any party in a formal proceeding before the commission, other than a proceeding under 5VAC5-20-100 A [~~and C~~], may serve written interrogatories or requests for production of documents upon a party, to be answered by the party served, or if the party served is an entity, by an officer or agent of the entity, who shall furnish to the staff or requesting party information as is known. Interrogatories or requests for production of documents [, including workpapers pursuant to 5VAC5-20-270,] that cannot be timely answered before the scheduled hearing date may be served only with leave of the commission for good cause shown and upon such conditions as the commission may prescribe. [Such otherwise untimely interrogatories or requests for production of documents, including workpapers pursuant to 5VAC5-20-270, may not be served until such leave is granted.] No interrogatories or requests for production of documents may be served upon a member of the commission staff, except to discover factual information that supports the workpapers submitted by the staff [~~to the Clerk of the Commission~~] pursuant to 5VAC5-20-270. All interrogatories and requests for production of documents shall be filed with the Clerk of the Commission. Responses to interrogatories and requests for production of documents shall not be filed with the Clerk of the Commission.

The response to each interrogatory or document request shall identify by name the person making the response. Any

objection to an interrogatory or document request shall identify the interrogatory or document request to which the objection is raised, and shall state with specificity the basis and supporting legal theory for the objection. ~~Objections, if any, to specified questions shall be stated with specificity, citing appropriate legal authority, and shall be served with the list of responses or in such manner as the commission may designate by order.~~ Responses and objections to interrogatories or requests for production of documents shall be served within ~~14~~ 10 days of receipt, unless otherwise ordered by the commission. Upon motion promptly made and accompanied by a copy of the interrogatory or document request and the response or objection that is subject to the motion, the commission will rule upon the validity of the objection; the objection otherwise will be considered sustained.

Interrogatories or requests for production of documents may relate to any matter not privileged, which is relevant to the subject matter involved, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things, and the identity and location of persons having knowledge of evidentiary value. It is not grounds for objection that the information sought will be inadmissible at the hearing if the information appears reasonably calculated to lead to the discovery of admissible evidence.

Where the response to an interrogatory or document request may only be derived or ascertained from the business records of the party questioned, from an examination, audit, or inspection of business records, or from a compilation, abstract, or summary of business records, and the burden of deriving or ascertaining the response is substantially the same for one entity as for the other, a response is sufficient if it (i) identifies by name and location all records from which the response may be derived or ascertained; and (ii) tenders to the inquiring party reasonable opportunity to examine, audit, or inspect the records subject to objection as to their proprietary or confidential nature. The inquiring party bears the expense of making copies, compilations, abstracts, or summaries.

[5VAC5-20-270. Hearing preparation.

In a formal proceeding, a party or the commission staff may serve on a party a request to examine the workpapers supporting the testimony or exhibits of a witness whose prepared testimony has been filed in accordance with 5VAC5-20-240. The movant may request abstracts or summaries of the workpapers, and may request copies of the workpapers upon payment of the reasonable cost of duplication or reproduction. Copies requested by the commission staff shall be furnished without payment of copying costs. In actions pursuant to 5VAC5-20-80 A, the commission staff shall, upon the filing of its testimony, exhibits, or report, ~~will compile and file with the Clerk of the Commission three copies provide (in either paper or~~

electronic format) a copy of any workpapers that support the recommendations made in its testimony or report to any party upon request and may additionally file a copy of such workpapers with the Clerk of the Commission. The Clerk of the Commission shall make ~~the~~ any filed workpapers available for public inspection and copying during regular business hours.]

5VAC5-20-280. Discovery ~~is~~ applicable only to 5VAC5-20-90 proceedings.

~~The following~~ This rule applies only to ~~proceedings a proceeding~~ in which a defendant is subject to a monetary penalty or ~~injunctive penalties~~ injunction, or revocation, cancellation, or curtailment of a license, certificate of authority, registration, or similar authority previously issued by the commission to the defendant:

1. Discovery of material in possession of the commission staff. Upon written motion of the defendant, the commission shall permit the defendant to inspect and, at the defendant's expense, copy or photograph any relevant written or recorded statements, the existence of which is known, after reasonable inquiry, by the commission staff counsel assigned to the matter to be within the custody, possession, or control of commission staff, made by the defendant, or representatives, or agents of the defendant if the defendant is other than an individual, to a commission staff member or law enforcement officer.

A motion by the defendant under this rule shall be filed and served at least 10 days before the hearing date. The motion shall include all relief sought. A subsequent motion may be made only upon a showing of cause as to why the motion would be in the interest of justice. An order granting relief under this ~~section~~ rule shall specify the time, place, and manner of making discovery and inspection permitted, and may prescribe such terms and conditions as the commission may determine.

Nothing in this rule shall require the disclosure of any information, the disclosure of which is prohibited by statute. The disclosure of the results of a commission staff investigation or work product of commission staff counsel shall not be required.

2. Depositions. After commencement of ~~an action a proceeding~~ to which this rule applies, the commission staff or a party may take the testimony of a party or ~~another a person or entity not a party~~, other than a member of the commission staff, by deposition on oral examination or by written questions. Depositions may be used for any purpose for which they may be used in the courts of record of the Commonwealth. Except where the commission or hearing examiner finds that an emergency exists, no deposition may be taken later than 10 days in advance of the formal hearing. The attendance of witnesses at depositions may be compelled by subpoena. Examination

Regulations

and cross-examination of the witness shall be as at hearing. Depositions may be taken in the City of Richmond or in the town, city, or county in which the deposed ~~party~~ person resides, is employed, or does business. The parties and the commission staff, by agreement, may designate another place for the taking of the deposition. Reasonable notice of the intent to take a deposition must be given in writing to the commission staff counsel and to each party to the action, stating the time and place where the deposition is to be taken. A deposition may be taken before any person (the "officer") authorized to administer oaths by the laws of the jurisdiction in which the deposition is to be taken. The officer shall certify his authorization in writing, administer the oath to the deponent, record or cause to be recorded the testimony given, and note any objections raised. In lieu of participating in the oral examination, a party or the commission staff may deliver sealed written questions to the officer, who shall propound the questions to the witness. The officer may terminate the deposition if convinced that the examination is being conducted in bad faith or in an unreasonable manner. Costs of the deposition shall be borne by the party noticing the deposition, unless otherwise ordered by the commission.

3. Requests for admissions. The commission staff or a party to a proceeding may serve upon a party written requests for admission. Each matter on which an admission is requested shall be stated separately. A matter shall be deemed admitted unless within 21 days of the service of the request, or some other period the commission may designate, the party to whom the request is directed serves upon the requesting party a written answer addressing or objecting to the request. The response shall set forth in specific terms a denial of the matter set forth or an explanation as to the reasons the responding party cannot truthfully admit or deny the matter set forth. Requests for admission shall be filed with the Clerk of the Commission and simultaneously served on commission staff counsel and on all parties to the ~~matter~~ proceeding.

VA.R. Doc. No. R08-1540; Filed February 24, 2009, 11:11 a.m.

◆ ————— ◆

TITLE 10. FINANCE AND FINANCIAL INSTITUTIONS

STATE CORPORATION COMMISSION

Final Regulation

<p>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.</p>

Title of Regulation: **10VAC5-200. Payday Lending (amending 10VAC5-200-60, 10VAC5-200-110; adding 10VAC5-200-130).**

Statutory Authority: §§ 6.1-458 and 12.1-13 of the Code of Virginia.

Effective Date: March 1, 2009.

Agency Contact: E. J. Face, Jr., Commissioner, Bureau of Financial Institutions, State Corporation Commission, P. O. Box 640, Richmond, VA 23218, telephone (804) 371-9659, FAX (804) 371-9416, or email joe.face@scc.virginia.gov.

Summary:

The amendments modify subsections L and M of 10VAC5-200-110 by directing licensed payday lenders to use the database provider's alternative means of database access, such as a telephone interactive voice response system, in lieu of contacting the database provider's call center when licensed payday lenders are unable to access the database via the Internet due to technical problems beyond their control. Revised subsections L and M of 10VAC5-200-110 supersede former subsections L and M of 10VAC5-200-110, which had a delayed effective date of April 1, 2009. (See 25:4 VA.R. 635-636 October 27, 2008.) The amendments also modify 10VAC5-200-60 by incorporating a requirement contained in subdivision 18 § 6.1-459 of the Code of Virginia. A new section, 10VAC5-200-130, provides that the commission may waive or grant exceptions to its payday lending regulations for good cause shown.

AT RICHMOND, FEBRUARY 12, 2009

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. BFI-2008-00436

Ex Parte: In re: limited revisions to Payday Loan Act regulations

ORDER ADOPTING FINAL REGULATIONS

By Order entered in this case on December 12, 2008, the State Corporation Commission ("Commission") directed that notice be given of its proposal, acting pursuant to § 6.1-458 of the Payday Loan Act, § 6.1-444 et seq. of the Code of Virginia, to amend 10 VAC 5-200-60 and 10 VAC 5-200-110. A new section, 10 VAC 5-200-130, was also proposed. Notice of the proposed regulations was published in the Virginia Register of Regulations on January 5, 2009, posted on the Commission's website, and sent by the Commissioner of Financial Institutions to all licensed payday lenders and other interested persons. Licensees and other interested persons were afforded the opportunity to file written comments or request a hearing on or before January 20, 2009.

The Commission received a letter from the Community Financial Services Association indicating that it did not intend to offer any comments on the proposed regulations. The Commission did not receive any requests for a hearing.

THE COMMISSION, having considered the record and the proposed regulations, concludes that the proposed regulations should be adopted as proposed. The Commission further concludes that revised subsections L and M of 10 VAC 5-200-110, as reflected in the attached regulations, should supersede former subsections L and M of 10 VAC 5-200-110, which had a delayed effective date of April 1, 2009.

THEREFORE IT IS ORDERED THAT:

- (1) The proposed regulations, which are attached hereto and made a part hereof, are adopted effective March 1, 2009.
- (2) Revised subsections L and M of 10 VAC 5-200-110 shall supersede former subsections L and M of 10 VAC 5-200-110, which had a delayed effective date of April 1, 2009.
- (3) This Order and the attached regulations shall be posted on the Commission's website at <http://www.scc.virginia.gov/case>.
- (4) The Commission's Division of Information Resources shall send a copy of this Order, including a copy of the attached regulations, to the Virginia Registrar of Regulations for publication in the Virginia Register of Regulations.
- (5) This case is dismissed from the Commission's docket of active cases.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to C. William Waechter, Jr., Williams Mullen, Two James Center, P.O. Box 1320, Richmond, Virginia 23218-1320; and to the Commissioner of Financial Institutions, who shall forthwith mail a copy of this Order and the attached regulations to all licensed payday lenders and such other interested persons as he may designate.

10VAC5-200-60. Posting of charges.

A. A licensee shall conspicuously post in its licensed location a schedule of payments, fees and interest charges, with examples using (i) a \$300 loan payable in 14 days; (ii) a \$300 loan payable in 30 days; (iii) a \$300 loan payable in 31 days; ~~(iii)~~ (iv) a \$300 loan payable in 62 days; ~~(iv)~~ (v) a \$300 loan payable through an extended payment plan that is elected on the date the loan is obtained; ~~(v)~~ (vi) a \$300 loan payable through an extended payment plan that is elected on the 15th day of a 31-day term; and ~~(vi)~~ (vii) a \$300 extended term loan.

B. A licensee shall display its fees and interest charges not only as a dollar amount, but also as an Annual Percentage Rate, which shall be stated using this term, calculated in accordance with Federal Reserve Board Regulation Z (12 CFR 226.1 et seq.).

10VAC5-200-110. Payday lending database.

A. This section sets forth the rules applicable to the payday lending database referred to in § 6.1-453.1 of the Code of Virginia.

B. Except as otherwise provided in this section, a licensee shall transmit all information to the database via the Internet. In order to maintain the confidentiality and security of the information, a licensee shall not transmit information to the database using publicly accessible computers, computers that are not under the licensee's control, unsecured wireless (Wi-Fi) connections, or other connections that are not secure. A licensee shall maintain generally accepted security safeguards to protect the confidentiality of the information transmitted to the database, including but not limited to installing and regularly updating malware protection (antivirus and antispyware) software and a firewall.

C. Prior to making a payday loan, a licensee shall transmit the following information to the database for purposes of determining whether an applicant is eligible for a payday loan. The licensee shall obtain the applicant information required by this subsection in accordance with the provisions of subsection D of this section.

- 1. Name of licensee and license number.
- 2. Office location of licensee.
- 3. First and last name or identification number of employee entering information into the database.
- 4. Applicant's first and last name.
- 5. Last four digits of applicant's driver's license number or identification card number.
- 6. Applicant's address.
- 7. Applicant's date of birth.

D. 1. A licensee shall obtain the information required by subdivisions C 4, 5, 6, and 7 of this section directly from the applicant's unexpired original driver's license or identification card issued by a state driver's licensing authority (e.g., Department of Motor Vehicles for the Commonwealth of Virginia), regardless of whether the information on the driver's license or identification card is still accurate. A licensee shall not accept photocopies, facsimiles, or other reproductions of a driver's license or identification card.

- 2. A licensee shall photocopy the applicant's driver's license or identification card, partially redact the driver's license number or identification card number so that only the last four digits of the number remain visible, and retain the redacted photocopy in its records.
- 3. A licensee shall not accept a driver's license or identification card from an applicant when there is reason to believe that (i) it belongs to an individual other than the applicant or (ii) it is fake, counterfeit, or has been altered,

Regulations

fraudulently obtained, forged, or is otherwise nongenuine or illegitimate.

E. If the database advises a licensee that an applicant is ineligible for a payday loan, then the licensee shall inform the applicant of his ineligibility, instruct the applicant to contact the database provider for information about the specific reason for his ineligibility, and provide the applicant with the toll-free telephone number of the database provider.

F. If the database advises a licensee that an applicant is eligible for a payday loan, then the licensee shall transmit the following additional information to the database prior to making a payday loan:

1. Application date.
2. Loan number.
3. Date of loan.
4. Principal amount of loan.
5. Interest rate.
6. Dollar amount of interest to be charged until date of loan maturity.
7. Dollar amount of loan fee to be charged.
8. Dollar amount of verification fee to be charged.
9. Dollar amount of total finance charges.
10. Annual [Percentage Rate] (APR) of loan.
11. Number of days in applicant's pay cycle.
12. Number of days in loan term.
13. Date loan is due.
14. Dollar amount of check given by applicant to secure the loan (i.e., at the time the loan is made).

G. If the database advises a licensee that an applicant is eligible for an extended payment plan or extended term loan and the applicant subsequently elects an extended payment plan or extended term loan, then the licensee shall transmit the following additional applicable information to the database no later than the time the licensee closes for business on the date the applicant enters into the extended payment plan or extended term loan:

1. Date the extended payment plan or extended term loan is entered into.
2. Principal amount owed under the extended payment plan or extended term loan.
3. Number of installment payments and the amount of each payment to be made under the extended payment plan or extended term loan.
4. Date each installment payment is due under the extended payment plan or extended term loan.

5. Number of days in term of extended payment plan or extended term loan.

H. For purposes of this section, a licensee closes for business when it officially shuts its doors to the general public on a business day, or within one hour thereafter.

I. A licensee shall generate a separate printout from the database showing the results of each loan eligibility query, including whether an applicant is eligible for an extended payment plan or extended term loan, and retain the printout in its loan records.

J. Except as otherwise provided in subdivisions 3, 7, and 8 of this subsection, a licensee shall transmit the following additional information, as applicable, to the database no later than the time the licensee closes for business on the date of the event:

1. If a borrower cancels a payday loan, the date of the cancellation.
2. If a payday loan (including an extended term loan or a loan that a borrower elected to repay by means of an extended payment plan) is repaid or otherwise satisfied in full, (i) the date of repayment or satisfaction, and (ii) the total net dollar amount ultimately paid by the borrower in connection with the loan (i.e., principal amount of loan plus all fees and charges received or collected pursuant to §§ 6.1-460 and 6.1-461 of the Code of Virginia, less any amount refunded to the borrower as a result of overpayment).
3. If a check used to repay a loan in full is returned unpaid, the date the check is returned unpaid and the dollar amount of the check. A licensee shall transmit such information to the database no later than five calendar days after the date the check is returned unpaid.
4. If a licensee collects a returned check fee from a borrower, the dollar amount of the returned check fee.
5. If a licensee initiates a legal proceeding against a borrower for nonpayment of a payday loan, the date the proceeding is initiated and the total dollar amount sought to be recovered.
6. If a licensee obtains a judgment against a borrower, the date and total dollar amount of the judgment.
7. If a judgment obtained by a licensee against a borrower is satisfied, the date of satisfaction. A licensee shall transmit such information to the database on the date the licensee learns that the judgment has been satisfied.
8. If a licensee collects any court costs or attorney's fees from a borrower, the dollar amount of the court costs or attorney's fees. A licensee shall transmit such information to the database on the date the licensee learns that the court costs or attorney's fees have been paid.

9. If a licensee charges off a payday loan as uncollectible, the date the loan is charged off and the total dollar amount charged off.

K. 1. If any information required to be transmitted by a licensee to the database is automatically populated or calculated by the database provider, the licensee shall verify the information and immediately correct any inaccuracies or other errors.

2. If a licensee becomes aware of any changes, inaccuracies, or other errors in the information previously verified or transmitted by the licensee to the database, the licensee shall immediately update or correct the database.

L. The following provisions address a licensee's inability to access the database via the Internet at the time of loan application:

1. If at the time a licensee receives a loan application the licensee is unable to access the database via the Internet due to technical problems beyond the licensee's control, then the licensee shall ~~contact the database provider's call center and request that the call center enter to the extent possible use the database provider's alternative means of database access, such as a telephone interactive voice response system, for purposes of transmitting the information required by this section and query the database on the licensee's behalf. The licensee shall document in its records the technical problems it experienced, the specific information it provided to the call center, the result of each query (including the applicant's eligibility for an extended payment plan or extended term loan), the date and time of the phone call, and the first and last name or identification number of the person in the call center who provided the results of the query to the licensee~~ obtaining applicant eligibility information from the database.

2. ~~If at the time a licensee receives a loan application the licensee is unable to access the database due to technical problems beyond the licensee's control and the database provider's call center is either closed or also unable to access the database, If a licensee makes a payday loan based on applicant eligibility information obtained from the database provider's alternative means of database access, then the licensee shall transmit to the database any remaining information required by this section no later than the time the licensee closes for business on the date that the database becomes accessible to the licensee via the Internet.~~

3. If at the time a licensee receives a loan application the licensee is unable to access the database via the Internet due to technical problems beyond the licensee's control and the database provider's alternative means of database access is unavailable or otherwise unable to provide the licensee with applicant eligibility information (including eligibility for an extended payment plan or extended term

loan), then the licensee may make a payday loan to an applicant if the applicant signs and dates a separate document containing all of the representations and responses to the questions set forth below and the prospective loan otherwise complies with the provisions of the Act and this chapter. The document shall be printed in a type size of not less than 14 point and contain a statement that the representations and questions relate to loans obtained from either the licensee or another payday lender. The licensee shall retain the original document in its loan file and provide the applicant with a duplicate original. ~~The licensee shall also document in its records the technical problems it experienced and the date and time that it sought to query the database.~~

a. The representations to be made by an applicant are as follows:

- (1) I do not currently have any outstanding payday loans.
- (2) I did not repay or otherwise satisfy in full a payday loan today.
- (3) In the past 90 days I did not repay or otherwise satisfy in full a payday loan by means of an extended payment plan.
- (4) In the past 45 days I did not repay or otherwise satisfy in full a fifth payday loan that was obtained within a period of 180 days.
- (5) In the past 90 days I did not repay or otherwise satisfy in full an extended term loan.
- (6) I did not obtain an extended term loan within the past 150 days.
- (7) I am not a regular or reserve member of the United States Army, Navy, Marine Corps, Air Force, Coast Guard, or National Guard serving on active duty under a call or order that does not specify a period of 30 days or fewer.
- (8) I am not married to a regular or reserve member of the United States Army, Navy, Marine Corps, Air Force, Coast Guard, or National Guard serving on active duty under a call or order that does not specify a period of 30 days or fewer.
- (9) I am not under the age of 18 and the son or daughter of a regular or reserve member of the United States Army, Navy, Marine Corps, Air Force, Coast Guard, or National Guard serving on active duty under a call or order that does not specify a period of 30 days or fewer.
- (10) One-half or less (including none) of my financial support for the past 180 days was provided by a regular or reserve member of the United States Army, Navy, Marine Corps, Air Force, Coast Guard, or National Guard serving on active duty under a call or order that does not specify a period of 30 days or fewer.

Regulations

b. The questions to be presented to an applicant are as follows:

(1) In the past 12 months, have you obtained an extended payment plan in order to repay a payday loan? If the applicant's response is "no" and the applicant is eligible for a payday loan, then the licensee shall immediately provide the applicant with the oral notice prescribed in subdivision C 4 of 10VAC5-200-33.

(2) Have you obtained four or more payday loans within the past 180 days? If the applicant's response is "yes" and the applicant is eligible for a payday loan, then the licensee shall immediately provide the applicant with the oral notice prescribed in subdivision E 4 of 10VAC5-200-35.

~~3. c. If a licensee makes a payday loan based upon an applicant's written representations and responses pursuant to subdivision L 3 of this section, then the licensee shall transmit the information required by this section to the database~~ the information required by this section no later than the time the licensee closes for business on the date ~~that~~ the database becomes accessible to the licensee, via either directly the Internet or through the database provider's call center alternative means of database access.

4. If at the time a licensee receives a loan application the licensee is unable to access the database via the Internet due to technical problems beyond the licensee's control, then the licensee shall document in its records the technical problems it experienced and the date and time that it sought to access the database.

M. The following provisions address a licensee's inability to access the database via the Internet subsequent to ~~loan application~~ making a loan:

1. If a licensee is required to transmit to the database information regarding a loan that has already been made, but the licensee is unable to access the database via the Internet due to technical problems beyond the licensee's control, then the licensee shall ~~contact the database provider's call center and request that the call center enter the information required by this section on the licensee's behalf. The licensee shall document in its records the technical problems it experienced, the specific information it provided to the call center, the date and time of the phone call, and the first and last name or identification number of the person in the call center who entered the information on the licensee's behalf to the extent possible use the database provider's alternative means of database access, such as a telephone interactive voice response system, for purposes of transmitting the information required by this section to the database. If the database provider's alternative means of database access is unavailable or otherwise unable to accept the information,~~

then the licensee shall transmit to the database the information required by this section no later than the time the licensee closes for business on the date that the database becomes accessible to the licensee, via either the Internet or the database provider's alternative means of database access.

2. If a licensee is required to transmit to the database information regarding a loan that has already been made, but the licensee is unable to access the database via the Internet due to technical problems beyond the licensee's control ~~and the database provider's call center is closed or also unable to access the database,~~ then the licensee shall ~~transmit to the database the information required by this section no later than the time the licensee closes for business on the date the database becomes accessible to the licensee, either directly or through the database provider's call center. The licensee shall also document in its records the technical problems it experienced and the date and time that it sought to transmit the information to the database.~~

N. By the close of business on each business day, a licensee shall transmit to the database the total daily number (even if 0) of individuals who were unable to obtain payday loans from the licensee because they are members of the military services of the United States or the spouses or other dependents of members of the military services of the United States. If the licensee is unable to access the database due to technical problems beyond the licensee's control, then the licensee shall transmit to the database the information required by this subsection no later than the time the licensee closes for business on the next business day that the licensee is able to access the database. The licensee shall also document in its records the technical problems it experienced and the date and time that it sought to transmit the information to the database.

O. A licensee shall have limited access to the information contained in the database. The database shall only provide a licensee with the following information: (i) whether an applicant is eligible for a new payday loan; (ii) if an applicant is ineligible for a new payday loan, the general reason for the ineligibility (e.g., the database may state that the applicant has an outstanding payday loan but it shall not furnish any details regarding the outstanding loan); and (iii) if an applicant is eligible for a new payday loan, whether the applicant is also eligible for an extended payment plan or extended term loan. The database shall also permit a licensee to access information that the licensee is required to transmit to the database provided that such access is for the sole purpose of verifying, updating, or correcting the information. Except as otherwise provided in this subsection, a licensee shall be prohibited from accessing or otherwise obtaining any information contained in or derived from the database.

P. If the Commissioner of Financial Institutions determines that a licensee has ceased business but still has one or more

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Notice of Rescission and Withdrawal of Emergency Regulation

Title of Regulation: 12VAC30-40. Eligibility Conditions and Requirements (amending 12VAC30-40-290).

Statutory Authority: §§ 32.1-324 and 32.1-325 of the Code of Virginia.

Under direction from Governor Timothy M. Kaine, the Director of the Department of Medical Assistance Services (DMAS) gives notice that, effective February 24, 2009, Governor Kaine rescinded, and DMAS withdrew, the emergency regulation **Treatment of Life Estates (12VAC30-40-290: More liberal methods of treating resources under § 1902(r)(2) of the Act: § 1902(f) states.**

The Director of the Department of Medical Assistance Services, through the Secretary of Health and Human Resources, implemented this emergency regulation on August 27, 2008 (see 25:1 VA.R. 34-37 September 15, 2008). It was scheduled to expire August 26, 2009. DMAS is withdrawing this emergency regulation due to a determination by the Centers for Medicare and Medicaid Services that this regulation constitutes a limitation on Medicaid eligibility. Such a limitation would disqualify the Commonwealth of Virginia from receiving enhanced federal financial participation under the American Recovery and Reinvestment Act of 2009. This withdrawal will return 12VAC30-40-290, More liberal methods of treating resources under § 1902(r)(2) of the Act: § 1902(f) states, to its original language in effect prior to August 27, 2008.

Agency Contact: Cindy Olson, Project Manager, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 225-4282, FAX (804) 786-1680, or email cindy.olson@dmas.virginia.gov.

VA.R. Doc. No. R09-1326; Filed February 24, 2009, 9:32 a.m.

Final Regulation

REGISTRAR'S NOTICE: The Department of Medical Assistance Services is claiming an exemption from the Administrative Process Act in accordance with (i) § 2.2-4006 A 3 of the Code of Virginia, which excludes regulations that consist only of changes in style or form or corrections of technical errors, and (ii) § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Department of Medical Assistance Services will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

outstanding payday loans that cannot be repaid due to the licensee's closure, the Commissioner of Financial Institutions may authorize the database provider to mark the outstanding loans as satisfied in the database in order to enable the affected borrowers to obtain payday loans in the future.

Q. 1. Except as provided in subsection F of 10VAC5-200-35, payday loans made on or after October 1, 2008, and prior to January 1, 2009, that remain outstanding on January 1, 2009, shall be considered for purposes of determining a borrower's eligibility for a payday loan. Accordingly, on or before January 1, 2009, a licensee shall transmit the following information to the database in connection with every payday loan made on or after October 1, 2008, that will or may be outstanding as of January 1, 2009:

- a. Name of licensee and license number.
- b. Office location of licensee.
- c. First and last name or identification number of employee entering information into the database.
- d. Borrower's first and last name.
- e. Last four digits of borrower's driver's license number or identification card number.
- f. Borrower's address.
- g. Borrower's date of birth.
- h. Date loan funds were disbursed.
- i. Date loan is due.

2. A licensee shall obtain and retain the borrower information required by this subsection in accordance with the provisions of subsection D of this section.

3. For every payday loan made on or after October 1, 2008, that remains outstanding as of January 1, 2009, a licensee shall transmit to the database all applicable information required by subsection J of this section within the time prescribed therein or January 1, 2009, whichever is later.

10VAC5-200-130. Commission authority.

The commission may, at its discretion, waive or grant exceptions to any provision of this chapter for good cause shown.

VA.R. Doc. No. R09-1749; Filed February 13, 2009, 2:15 p.m.



Regulations

Titles of Regulations: **12VAC30-10. State Plan Under Title XIX of the Social Security Act Medical Assistance Program; General Provisions (amending 12VAC30-10-150, 12VAC30-10-930).**

12VAC30-20. Administration of Medical Assistance Services (amending 12VAC30-20-90, 12VAC30-20-500, 12VAC30-20-520).

12VAC30-50. Amount, Duration, and Scope of Medical and Remedial Care Services (amending 12VAC30-50-10).

12VAC30-110. Eligibility and Appeals (amending 12VAC30-110-40, 12VAC30-110-370, 12VAC30-110-670, 12VAC30-110-680, 12VAC30-110-700, 12VAC30-110-720, 12VAC30-110-741, 12VAC30-110-980, 12VAC30-110-1040; repealing 12VAC30-110-380, 12VAC30-110-990, 12VAC30-110-1000).

12VAC30-120. Waivered Services (amending 12VAC30-120-140).

12VAC30-130. Amount, Duration and Scope of Selected Services (amending 12VAC30-130-260, 12VAC30-130-270, 12VAC30-130-290, 12VAC30-130-380, 12VAC30-130-540, 12VAC30-130-800, 12VAC30-130-820, 12VAC30-130-890, 12VAC30-130-910; repealing 12VAC30-130-370, 12VAC30-130-410).

12VAC30-141. Family Access to Medical Insurance Security Plan (amending 12VAC30-141-60, 12VAC30-141-120, 12VAC30-141-720, 12VAC30-141-760).

12VAC30-150. Uninsured Medical Catastrophe Fund (amending 12VAC30-150-40).

Statutory Authority: §§ 32.1-324 and 32.1-325 of the Code of Virginia.

Effective Date: April 15, 2009.

Agency Contact: Brian McCormick, Regulatory Supervisor, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-8856, FAX (804) 786-1680, or email brian.mccormick@dmas.virginia.gov.

Summary:

In response to suggestions of the Regulatory Reform Task Force of the Office of the Attorney General, the amendments make changes to correct style or technical errors and conform to changes in Virginia statutory law where no agency discretion is involved. In addition, the amendments update administrative code sections concerning the Program of All-Inclusive Care for the Elderly (PACE) and replace the use of the outdated term "per diem" in 12VAC30-10-930.

12VAC30-10-150. Amount, duration, and scope of services: Medically needy.

A. This State Plan covers the medically needy. The services described ~~below in this section~~ and in ~~12VAC30-50-40 et seq. Part II (12VAC30-50-40 et seq.)~~ of 12VAC30-50 are provided. Services for medically needy include:

(i) 1. If services in an institution for mental diseases (42 CFR 440.140 and 440.160) or an intermediate care facility for the mentally retarded (or both) are provided to any medically needy group, then each medically needy group is provided either the services listed in § 1905(a)(1) through (5) and (17) of the Act, or seven of the services listed in § 1902(a)(1) through (20). The services are provided as defined in 42 CFR 440, Subpart A and in §§ 1902, 1905, and 1915 of the Act.

~~The above stated Subdivision 1 of this subsection~~ is applicable with respect to nurse-midwife services under § 1902(a)(17).

(ii) 2. Prenatal care and delivery services for pregnant women.

(iii) 3. Pregnancy-related, including family planning services, and postpartum services for a 60-day period (beginning on the day the pregnancy ends) and any remaining days in the month in which the sixtieth day falls are provided to women who, while pregnant, were eligible for, applied for, and received medical assistance on the day the pregnancy ends.

(iv) 4. Services for any other medical condition that may complicate the pregnancy (other than pregnancy-related and postpartum services) are provided to pregnant women.

(v) 5. Ambulatory services, as defined in 12VAC30-50-40 for recipients under age 18 and recipients entitled to institutional services.

(vi) 6. Home health services to recipients entitled to nursing facility services as indicated in 12VAC30-10-220.

(vii) 7. Services for the medically needy do not include services in an institution for mental diseases for individuals over age 65.

(viii) 8. Services for the medically needy do not include services in an intermediate care facility for the mentally retarded.

(ix) 9. Services for the medically needy do not include inpatient psychiatric services for individuals under age 21, other than those covered under early and periodic screening, diagnosis, and treatment (at 12VAC30-50-130).

(x) 10. Services for the medically needy do not include respiratory care services provided to ventilator dependent individuals. See 12VAC30-10-300.

~~(xi)~~ 11. Home and community care for functionally disabled elderly individuals is not covered.

12. Program of All-Inclusive Care for the Elderly (PACE) services as described and limited in Supplement 6 to Attachment 3.1-A (12VAC30-50-320, 12VAC30-50-321, 12VAC30-50-325, and 12VAC30-50-328) are covered.

B. Part II (12VAC30-50-40 et seq.) of 12VAC30-50 identifies the services provided to each covered group of the medically needy; specifies all limitations on the amount, duration, and scope of those items; and specifies the ambulatory services provided under this plan and any limitations on them. It also lists the additional coverage (that is in excess of established service limits) for pregnancy-related services and services for conditions that may complicate the pregnancy. (Note: Other programs to be offered to medically needy beneficiaries would specify all limitations on the amount, duration and scope of those services. As PACE provides services to the frail elderly population without such limitation, this is not applicable for this program. In addition, other programs to be offered to medically needy beneficiaries would also list the additional coverage that is in excess of established service limits for pregnancy-related services for conditions that may complicate the pregnancy. As PACE is for the frail elderly population, this also is not applicable for this program.)

12VAC30-10-930. Hospital credit balance reporting.

Hospitals shall be required to report Medicaid credit balances on a quarterly basis no later than 30 days after the close of each quarter. For a credit balance arising on a Medicaid claim within three years of the date paid by the DMAS, the hospital shall either submit a check for the balance due or an adjustment claim with the Credit Balance Report. For credit balances arising on claims over three years old, the hospital shall submit a check for the balance due. Interest at the maximum rate allowed shall be assessed for those credit balances (overpayments) ~~which that~~ are identified on the quarterly report but not reimbursed with the submission of the form. Interest will begin to accrue 30 days after the end of the quarter and will continue to accrue until the overpayment has been refunded or adjusted. A penalty shall be imposed for failure to submit the form timely as follows:

1. Hospitals ~~which that~~ have not submitted their Medicaid credit balance data within the required 30 days after the end of a quarter shall be notified in writing. If the required report is not submitted within the next 30 days, there will be a 20% reduction in the ~~Medicaid per diem~~ DMAS payment.
2. If the required report is not submitted within the next 30 days (60 days after the due date), the ~~per diem~~ DMAS payments shall be reduced to -0- until the report is received.

3. If the credit balance has not been refunded within 90 days of the end of a quarter, it shall be recovered, with interest, through the use of a negative balance transaction on the weekly remittance.

4. A periodic audit shall be conducted of hospitals' quarterly submission of Medicaid credit balance data. Hospitals shall maintain an audit trail back to the underlying accounts receivable records supporting each quarterly report.

12VAC30-20-90. Confidentiality and disclosure of information concerning Medicaid applicants and recipients.

~~4.~~ A. Definitions. The following words and terms, when used in these regulations, shall have the following meanings, unless the context clearly indicates otherwise:

"Agency" or "the Medicaid agency" means the Department of Medical Assistance Services or its designee.

"Client" means an applicant for, or recipient of, Medicaid benefits.

"Client information" or ~~"Client~~ "client record" means any information, including information stored in computer data banks or computer files relating to a recipient or applicant, which was received in connection with the performance of any function of the agency and which either identifies a client or describes a client such that the client could be specifically identified.

"Provider" means any individual or organization that delivers a medical service to a recipient of, or applicant for, Medicaid benefits.

"The Plan" means the State Plan for Medical Assistance.

~~2.~~ B. Purpose. Section 1902(a)(7) of the Social Security Act and 42 CFR 431.300, et seq., require a State Plan for Medical Assistance to provide safeguards to restrict the use or disclosure of information concerning applicants and recipients to purposes directly connected with the administration of the Plan. The rules herein are established to protect the rights of clients to confidentiality of their Medicaid information. ~~Code of Virginia, § Section 32.1-325.3 of the Code of Virginia~~ requires the Board of Medical Assistance Services to promulgate regulations consistent with the foregoing.

~~3.~~ C. Release of ~~Client Information~~ client information. Except as otherwise provided in these rules, no person shall obtain, disclose or use, or authorize, permit or acquiesce the use of any client information that is directly or indirectly derived from the records, files, or communications of the agency, except for purposes directly connected with the administration of the Plan or as otherwise provided by federal and state law. The agency can conduct all of the above administrative activities itself or it can contract some or all of

Regulations

them to other state agencies or private companies. These other entities must maintain client information confidential in accordance with the terms of these regulations. Purposes directly related to the administration of the Plan include; but are not limited to:

- ~~A.~~ 1. Establishing eligibility;
- ~~B.~~ 2. Determining the amount of medical assistance;
- ~~C.~~ 3. Providing services for recipients; and
- ~~D.~~ 4. Conducting or assisting in an investigation, prosecution or a civil or criminal proceeding related to the administration of the Plan.

4. ~~D.~~ D. Safeguarding ~~Client Information~~ client information.

All information associated with an applicant or recipient ~~which that~~ could disclose the individual's identity is confidential and shall be safeguarded. Such information shall include, but is not limited to:

- ~~A.~~ 1. Name, address and all types of identification numbers assigned to the client;
- ~~B.~~ 2. Medical services provided to the client;
- ~~C.~~ 3. Social and economic conditions or circumstances of the client;
- ~~D.~~ 4. Agency evaluation of the client's personal information;
- ~~E.~~ 5. Medical data about the client, including diagnoses and past histories of disease or disabilities;
- ~~F.~~ 6. Information received for verifying income, eligibility, and amount of medical assistance payments; and
- ~~G.~~ 7. Information received in connection with identification of legally liable third party resources, and information received in connection with processing and rendering decisions of recipient appeals.

5. ~~E.~~ E. Ownership of ~~Records~~ records.

~~A.~~ 1. All client information contained in the agency records is the property of the agency, and employees of the agency shall protect and preserve such information from dissemination except as provided herein.

~~B.~~ 2. Original client records are not to be removed from the premises by individuals other than authorized staff of the agency, except by a court order. The agency may destroy records pursuant to records retention schedules consistent with state and federal regulations.

6. ~~F.~~ F. Disclosure of ~~Client Information~~ client information.

~~A.~~ 1. Conditions for ~~Releasing Information~~ releasing information. Access to information concerning applicants or recipients must be restricted to persons or agency representatives who are subject to the standards of

confidentiality ~~which that~~ are consistent with that of the agency.

~~4.~~ a. Consent. As part of the application process for Medicaid, the client shall be informed of the need to consent to the release of information necessary for verifying eligibility. Whenever a person, agency or organization that is not performing one or more of the functions delineated in subsection ~~3~~ ~~above~~ C of this section requests client information, the Medicaid agency must obtain written permission to disseminate the information from the client or the person legally responsible for the client whenever possible. A release for information obtained from the client by the requesting agency also satisfies this requirement.

~~2.~~ b. Client information may be released without the client's written permission under the following conditions:

~~a.~~ (1) An emergency exists and prior attempts to contact the client or legally responsible persons for permission have been unsuccessful;

~~b.~~ (2) A court of competent jurisdiction has ordered the production of information and the agency does not have sufficient time to notify the client or legally responsible person before responding to the order;

~~e.~~ (3) The release of such client information is necessary to prevent loss of, or risk to, life or health of the client;

~~d.~~ (4) In the case of third party liability, as explained in ~~subsection 7C~~ subdivision G 2 of this section; or

~~e.~~ (5) Release is not otherwise prohibited by law or regulation.

~~3.~~ c. Notification. If one of the conditions above is met and consent is not obtained before the release of the information, the agency must provide written notification to the client or legally responsible person within five work days after disclosure.

~~4.~~ d. Consent ~~Process~~ process. The consent for release of information shall contain the following:

~~a.~~ (1) The name of the agency or entity supplying the information and the name of the requesting party;

~~b.~~ (2) A description of the information to be released;

~~e.~~ (3) A statement that the consent is limited to the purpose designated;

~~d.~~ (4) The length of time the consent is valid; and

~~e.~~ (5) The consent must be signed and dated by the client. The client may add other information which may include, but is not limited to, a statement specifying the date, event or condition upon which the consent expires.

7. ~~G.~~ G. Information ~~Exchanges~~ exchanges.

~~A. 1. Governmental Agencies agencies.~~

~~1. a.~~ Confidential information can be released to other governmental agencies without the consent of the client for purposes of complying with state or federal statutes or regulations pursuant to written data exchange agreements. Such agreements will ~~(1)~~ (i) specify the information to be exchanged; ~~(2)~~ (ii) the titles of all agency officials with the authority to request income and eligibility information; ~~(3)~~ (iii) the methods, including the formats to be used, and the timing for requesting and providing the information; ~~(4)~~ (iv) the safeguards limiting the use and disclosure of the information as required by ~~Federal~~ federal or ~~State~~ state law or regulations; ~~(5)~~ (v) the method, if any, the agency will use to reimburse reasonable costs of furnishing the information; and ~~(6)~~ (vi) in the case of an agreement between a SWICA or a UC agency and the Medicaid agency, that the Medicaid agency will obtain information on applicants at least twice monthly. Such information exchanged by governmental agencies is made available only to the extent necessary to assist in the valid administrative needs of the governmental agency receiving the information and adequate safeguards shall be maintained to protect the information from further disclosure. Information received under § 6103(1) of the Internal Revenue Code of 1954 is exchanged only with agencies or delegated entities authorized to receive such information.

~~2. b.~~ Medical assistance information contained in the records of the local departments of social services may be disclosed for purposes directly connected with the Medicaid program to providers of services enrolled in the Medical Assistance Program for the purpose of verifying a client's status as a Medicaid recipient.

~~B. 2. Information Exchanged exchanged in Third-Party Liability Cases third party liability cases.~~ Client information may be disclosed without consent in the recovery of monies for which third parties are liable for payment of claims. All such third parties shall be notified of the rules for safeguarding client information. The notification shall incorporate a written statement which advises third parties of the Medicaid program's client confidentiality regulations, specifies that clients' names, addresses and medical services data are confidential, must only be used in the administration of the Medicaid program and must not be released to any other person or entity in a manner inconsistent with the governing regulations. The notice shall further include the following statement. "Any willful violation of the governing regulations constitutes a Class 1 misdemeanor and may be punishable accordingly."

~~8. H. Client's Right right of Access access to Information information.~~

~~A. 1. Client's right to access.~~ Any client has the right to obtain personal information held by the agency or its representative. Upon written or verbal request, the client shall be permitted to review or obtain a copy of the information in his record with the following exceptions:

~~1. a.~~ Information that the agency is required to keep confidential from the client pursuant to ~~subdivision 1 of § 2.1-342(b)(3)~~ 2.2-3705.5 of the Code of Virginia, or any other applicable law; or;

~~2. b.~~ Information that would breach another individual's right to confidentiality.

~~B. 2. Process for disclosure.~~ Consistent with the Virginia Freedom of Information Act, § ~~2.1-342.4~~ 2.2-3704, Code of Virginia, the agency shall provide access within five work days after the receipt of the request. The agency shall make disclosures to applicants and recipients during normal business hours. Copies of the requested documents shall be provided to the client or a representative at reasonable standard charges for document search and duplication.

~~C. 3. Types of information available for client access.~~ The client shall be permitted to be accompanied by a person or persons of the client's choice and may grant permission verbally or in writing to the agency to discuss the client's file in such person's presence. Upon request and proper identification of any client or agent of the client, the agency shall grant to the client or agent the right to review the following:

~~1. a.~~ All personal information about the client except as provided in ~~subdivision 1 of § 2.1-342(b)(3)~~ 2.2-3705.5 of the Code of Virginia; and

~~2. b.~~ The identity of all individuals and organizations not having regular access authority that request access to the client's personal information.

~~D. 4. Contested information.~~ Pursuant to § ~~2.2-3806~~ 2.2-3806 of the ~~Virginia Privacy Government Data Collection and Dissemination Practices Act, § 2.1-382.5, Code of Virginia,~~ a client may contest the accuracy, completeness or relevancy of the information in his record. Correction of the contested information, but not the deletion of the original information if it is required to support receipt of state or federal financial participation, shall be inserted in the record when the agency concurs that such correction is justified. When the agency does not concur, the client shall be allowed to enter a statement in the record refuting such information. Corrections and statements shall be made a permanent part of the record and shall be disclosed to any person or entity that receives the disputed information.

~~9. I. Distribution of information to applicants and recipients.~~ All materials distributed to applicants, recipients, or medical providers must directly relate to the administration of the

Regulations

Medicaid program and have no political implications. The agency must not distribute materials such as holiday greetings, general public announcements, voting information, or alien registration notices. The agency may distribute materials directly related to the health and welfare of applicants and recipients, such as announcements of free medical examinations, availability of surplus food and consumer protection information.

~~40.~~ I. Publicizing safeguarding requirements. The agency shall inform clients in writing as follows:

~~A.~~ Personal information regarding applicants for or recipients of Medicaid must be maintained confidential pursuant to state and federal law. Consistent with §§ 32.1-325.4 and 18.2-11, of the Code of Virginia, any violation of state regulations governing applicant or recipient confidentiality is punishable by up to 12 months in jail and a \$2,500 fine.

Part XII Provider Appeals

12VAC30-20-500. Definitions.

The following words, when used in this part, shall have the following meanings:

"Day" means a calendar day unless otherwise stated.

"DMAS" means the Virginia Department of Medical Assistance Services or its agents or contractors.

"Hearing officer" means an individual selected by the Executive Secretary of the Supreme Court of Virginia to conduct the formal appeal in an impartial manner pursuant to §§ ~~9-6.14:12~~ 2.2-4020 and 32.1-325.1 of the Code of Virginia and this part.

"Informal appeals agent" means a DMAS employee who conducts the informal appeal in an impartial manner pursuant to §§ ~~9-6.14:11~~ 2.2-4019 and 32.1-325.1 of the Code of Virginia and this part.

"Provider" means an individual or entity that has a contract with DMAS to provide covered services and that is not operated by the Commonwealth of Virginia.

12VAC30-20-520. Provider appeals: general provisions.

A. This part governs all DMAS informal and formal provider appeals and shall supersede any other provider appeals regulations.

B. A provider may appeal any DMAS action that is subject to appeal under the Virginia Administrative Process Act (~~Chapter 1.1:1 of Title 9~~ (§ 2.2-4000 et seq. of the Code of Virginia), including DMAS' interpretation and application of payment methodologies. A provider may not appeal the actual payment methodologies.

C. DMAS shall mail all items to the last known address of the provider. It is presumed that DMAS mails items on the date noted on the item. It is presumed that providers receive items mailed to their last known address within three days after DMAS mails the item.

D. Whenever DMAS or a provider is required to file a document, the document shall be considered filed when it is date stamped by the DMAS Appeals Division in Richmond, Virginia.

E. Whenever the last day specified for the filing of any document or the performance of any other act falls on a day on which DMAS is officially closed, the time period shall be extended to the next day on which DMAS is officially open.

F. Conferences and hearings shall be conducted at DMAS' main office in Richmond, Virginia, or at such other place as agreed to by the parties.

G. Whenever DMAS or a provider is required to attend a conference or hearing, failure by one of the parties to attend the conference or hearing shall result in dismissal of the appeal in favor of the other party.

H. DMAS shall reimburse a provider for reasonable and necessary attorneys' fees and costs associated with an informal or formal administrative appeal if the provider substantially prevails on the merits of the appeal and DMAS' position is not substantially justified, unless special circumstances would make an award unjust. In order to substantially prevail on the merits of the appeal, the provider must be successful on more than 50% of the dollar amount involved in the issues identified in the provider's notice of appeal.

Part I Categorically Needy

12VAC30-50-10. Services provided to the categorically needy with limitations.

The following services are provided with limitations as described in Part III (12VAC30-50-100 et seq.) of this chapter:

1. Inpatient hospital services other than those provided in an institution for mental diseases.
2. Outpatient hospital services.
3. Other laboratory and x-ray services; nonemergency outpatient Magnetic Resonance Imaging (MRI), including Magnetic Resonance Angiography (MRA), Computerized Axial Tomography (CAT) scans, including Computed Tomography Angiography (CTA), and Positron Emission Tomography (PET) scans performed for the purpose of diagnosing a disease process or physical injury require prior authorization.

4. Rural health clinic services and other ambulatory services furnished by a rural health clinic.
5. Federally Qualified Health Center (FQHC) services and other ambulatory services that are covered under the plan and furnished by an FQHC in accordance with § 4231 of the State Medicaid Manual (HCFA Pub. 45-4).
6. Early and periodic screening and diagnosis of individuals under 21 years of age, and treatment of conditions found.
7. Family planning services and supplies for individuals of child-bearing age.
8. Physicians' services whether furnished in the office, the patient's home, a hospital, a skilled nursing facility, or elsewhere.
9. Medical and surgical services furnished by a dentist (in accordance with § 1905(a)(5)(B) of the Act).
10. Medical care or any other type of remedial care recognized under state law, furnished by licensed practitioners within the scope of their practice as defined by state law: podiatrists, optometrists and other practitioners.
11. Home health services: intermittent or part-time nursing service provided by a home health agency or by a registered nurse when no home health agency exists in the area; home health aide services provided by a home health agency; and medical supplies, equipment, and appliances suitable for use in the home; physical therapy, occupational therapy, or speech pathology and audiology services provided by a home health agency or medical rehabilitation facility.
12. Clinic services.
13. Dental services.
14. Physical therapy and related services, including occupational therapy and services for individuals with speech, hearing, and language disorders (provided by or under supervision of a speech pathologist or audiologist).
15. Prescribed drugs, prosthetic devices, and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist.
16. Other rehabilitative services, screening services, preventive services.
17. Nurse-midwife services.
18. Case management services as defined in, and to the group specified in, 12VAC30-50-95 et seq. (in accordance with § 1905(a)(19) or § 1915(g) of the Act).
19. Extended services to pregnant women: pregnancy-related and postpartum services for a 60-day period after the pregnancy ends and any remaining days in the month in

which the 60th day falls (see 12VAC30-50-510). (Note: Additional coverage beyond limitations.)

20. Pediatric or family nurse practitioners' service.
21. Any other medical care and any other type of remedial care recognized by state law, specified by the Secretary: transportation.
- ~~22. Program of All Inclusive Care for the Elderly (PACE) services as described and limited in Supplement 6 to Attachment 3.1 A (12VAC30-50-320).~~

12VAC30-110-40. Judicial review.

An appellant who believes a final decision as defined herein is incorrect may seek judicial review pursuant to The Administrative Process Act (§ 9-6.14:1 2.2-4000 et seq. of the Code of Virginia) and Part 2A, Rules of the Virginia Supreme Court.

12VAC30-110-370. Final decision and transmission of the hearing record.

A. After conducting the hearing, reviewing the record, and deciding questions of law, the hearing officer shall issue a written final decision which either sustains or reverses the agency action or remands the case to the agency for further action consistent with his written instructions. The hearing officer's final decision shall be considered as the agency's final administrative action pursuant to 42 CFR, 431.244(f). The final decision shall include:

1. A description of the procedural development of the case;
2. Findings of fact that identify supporting evidence;
3. Conclusions of law that identify supporting regulations and law;
4. Conclusions and reasoning;
5. The specific action to be taken by the agency to implement the decision;
6. The deadline date by which further action must be taken; and
7. A cover letter stating that the hearing officer's decision is final, and stating that the final decision may be appealed directly to circuit court as provided in 12VAC30-110-40.

B. The hearing record shall be forwarded to the appellant and his representative with the final decision.

Subpart III
Medical Assistance Appeals Panel

12VAC30-110-380. ~~Transmission of the hearing record.~~ (Repealed.)

~~The hearing record shall be forwarded to the appellant and his representative with the final decision.~~

Regulations

12VAC30-110-670. Aid to Dependent Children (ADC) Related Medically Needy Individuals.

A. Reserved.

B. Personal property.

1. Automobiles. The policy in § 4 of Supplement 8b (was Supplement 12) to Attachment 2.6-A of the state plan (12VAC30-40-290) applies.

2. Life ~~insurance~~ insurance. The policy in § 5 of Supplement 8b (was Supplement 12) to Attachment 2.6-A of the state plan (12VAC30-40-290) applies.

3. Burial ~~Plots~~ plots. The market value of burial plots owned by any member of the family unit are not counted toward the medical resource limit for the family.

4. Prepaid burial plans are counted as resources, except for the amounts of such funeral agreements that are disregarded under the Virginia ADC cash assistance program.

5. Assets which can be liquidated such as cash, bank accounts, stocks, bonds, and securities, are counted as resources.

C. The income eligibility determination methodology of the Virginia ADC cash assistance program applies.

12VAC30-110-680. SSI.

A SSI recipient who has transferred or given away property to become or remain eligible for SSI or Medicaid and who has not received compensation in return for the property approximating the tax assessed value of the property is ~~not covered~~ ineligible for long-term care (see 12VAC30-40-300).

Part III

Related More Liberal Methods of Treating Resources- Transfer of Assets

12VAC30-110-700. Transfer of assets.

A. Certain term life insurance policies purchased after April 7, 1993. When making eligibility determinations for institutional or community-based care to be paid for by the department, the department shall consider as an uncompensated transfer all resources that are used by an applicant to purchase any term life insurance policy that does not have a benefit payable at death that will equal or exceed twice the sum of all premiums paid for such policy if the policy was purchased within 30 months prior to the date of application for medical assistance unless the policy was purchased to fund a funeral in accordance with § 54.1-2820 of the Code of Virginia.

The purpose of the policy shall be determined by reviewing the policy. If the policy language specifies that the death benefits shall be used to purchase burial space items or funeral services then the purchase of such policy shall not be

considered a transfer of assets; however, the Department of Medical Assistance Services shall initiate action to recover from the beneficiary the amount of any benefit paid under the provisions of the policy which exceed the actual expense of the funeral and burial of the insured.

B. Inter vivos trusts.

1. Assets of inter vivos trusts available. When determining eligibility for medical assistance, the assets of any inter vivos trust, both principal and interest, shall be considered available to the grantor who is an applicant for or recipient of medical assistance without regard to any provision of the trust which provides directly or indirectly for the suspension, termination, or diversion of the principal, income or other beneficial interest of the grantor if he should apply for medical assistance or if he should require medical, hospital or nursing care or long-term custodial, nursing or medical care. The amount of principal or interest to be considered available shall be that amount of income or principal of the trust to which the grantor is entitled if no application for assistance had been made except for trusts created prior to August 11, 1993.

2. Trusts created prior to August 11, 1993. Up to \$25,000 of the corpus of an inter vivos trust created prior to August 11, 1993, shall not be a countable asset. If the grantor created more than one such trust, the corpora of the trusts shall be added together. If the sum of the corpora is less than \$25,000, no assets from any of the trusts shall be considered available. If the sum of the corpora exceeds \$25,000, then the total amount of the corpora less \$25,000 is a countable asset. In determining the amount of each trust to exempt, the \$25,000 exemption shall be prorated among the trusts.

In applying this section, if, prior to August 11, 1993, the grantor has made ~~uncompensated~~ transfers for an uncompensated value as defined in § 20-88.02 of the Code of Virginia within 30 months of applying for Medicaid and no payments were ordered pursuant to subsection D of that section, then no \$25,000 exemption shall be granted.

Part V

Married Institutionalized Individuals' Eligibility and Patient Pay

Subpart I Definitions

12VAC30-110-720. Definitions.

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

"Acceptable medical evidence" means either (i) certification by a nursing home preadmission screening committee; or (ii) certification by the individual's attending physician.

"Actual monthly expenses" means the total of:

1. Rent or mortgage, including interest and principal;
2. Taxes and insurance;
3. Any maintenance charge for a condominium or cooperative; and
4. The utility standard deduction under the Food Stamp Program that would be appropriate to the number of persons living in the community spouse's household, if utilities are not included in the rent or maintenance charge.

"Applicable percent" means that percentage as defined in § 1924(d)(3)(B) of the Social Security Act.

"As soon as practicable" (as it relates to transfer of resources from the institutionalized spouse to the community spouse for the purpose of the community spouse resource allowance) means within 90 days from the date the local agency takes action to approve the institutionalized spouse's initial eligibility for medical assistance long-term care services when the institutionalized spouse agrees to transfer resources to the community spouse.

"At the beginning of the first continuous period of institutionalization" means the first calendar month of a continuous period of institutionalization in a medical institution or of receipt of a Medicaid community-based care waiver service or hospice.

"Community spouse" means a person who is married to an institutionalized spouse and is not himself an inpatient at a medical institution or nursing facility.

"Community spouse monthly income allowance" means an amount by which the minimum monthly maintenance needs allowance exceeds the amount of monthly income otherwise available to the community spouse.

"Community spouse resource allowance" means the amount of the resources in the institutionalized spouse's name that can be transferred to the community spouse to bring the resources in the community spouse's name up to the protected resource amount.

"Continuous period of institutionalization" means 30 consecutive days of institutional care in a medical institution or nursing facility, or 30 consecutive days of receipt of Medicaid waiver or hospice services, or 30 consecutive days of a combination of institutional care and waiver and hospice services. Continuity is broken only by 30 or more days absence from a medical institution or 30 or more days of nonreceipt of waiver services.

"Couple's countable resources" means all of the couple's nonexcluded resources regardless of state laws relating to community property or division of marital property. For purposes of determining the combined and separate resources of the institutionalized and community spouses when

determining the institutionalized spouse's eligibility, the couple's home, contiguous property, household goods and one automobile are excluded.

"Department" means the Department of Medical Assistance Services.

"Dependent child" means a child under age 21 and a child age 21 years old or older, of either spouse, who lives with the community spouse and who may be claimed as a dependent by either member of the couple for tax purposes pursuant to the Internal Revenue Code.

"Dependent family member" means a parent, minor child, dependent child, or dependent sibling, including half brothers and half sisters and siblings gained through adoption, of either member of a couple who resides with the community spouse and who may be claimed as a dependent by either member of the couple for tax purposes pursuant to the Internal Revenue Code.

"Exceptional circumstances resulting in significant financial duress" means circumstances other than those taken into account in establishing the spousal maintenance allowance for which the community spouse incurs expenses in amounts that he cannot be expected to pay from the spousal maintenance allowance or from amounts held in the community spouse resource allowance.

"Excess shelter allowance" means the amount by which the actual monthly expense of maintaining the community spouse's residence plus the standard utility allowance exceeds the excess shelter standard.

"Excess shelter standard" means 30% of the monthly maintenance needs standard.

"Family member's income allowance" means an allowance for each dependent family member residing with the community spouse. The family member's income allowance is equal to 1/3 of the amount by which the monthly maintenance needs standard exceeds the family member's income.

"Federal Poverty Level" or "FPL" means the annual Federal Poverty Level as computed by the Office of Management and Budget and published in the Federal Register.

"First continuous period of institutionalization" means the first day of the first month of the first continuous period of institutionalization, which began on or after September 30, 1989.

"Initial eligibility determination" means:

1. An eligibility determination made in conjunction with a medical assistance application filed during an individual's most recent continuous period of institutionalization; or
2. The initial redetermination of eligibility for a medical assistance eligible institutionalized spouse after being

Regulations

admitted to an institution or receiving medical assistance community-based care waiver services.

"Initial redetermination" means the first redetermination of eligibility for a medical assistance eligible spouse which is regularly scheduled, or which is made necessary by a change in the individual's circumstances.

"Institutionalized spouse" means an individual who is an inpatient at a medical institution, who is receiving medical assistance community-based care waiver services, or who has elected hospice services, and who is likely to remain in such facility or to receive waiver or hospice services for at least 30 consecutive days, and who has a spouse who is not in a medical institution or nursing facility.

"Likely to remain in an institution" means a reasonable expectation based on acceptable medical evidence that an individual will be in a medical institution or will receive medical assistance waiver or hospice services for 30 consecutive days, even if receipt of institutional care or waiver or hospice services actually terminates in less than 30 days. Individuals who have been screened and approved for medical assistance community-based waiver services or who have elected hospice services shall be considered likely to remain in an institution.

"Maximum monthly maintenance needs standard" is the upper limit, i.e., cap established under § 1924(d)(3)(C) of the Social Security Act.

"Maximum spousal resource standard" means the maximum amount of the couple's combined countable resources established for a community spouse to maintain himself in the community calculated in accordance with § 1924(f)(2)(A)(ii)(II) of the Social Security Act. This amount increases annually by the same percentage as the percentage increase in the Consumer Price Index for all urban consumers between September 1988 and the September before the calendar year involved as required in § 1924(g) of the Social Security Act.

"Medical institution" or "nursing facility" means hospitals and nursing facilities (~~including ICF/MR~~), including an intermediate care facility for the mentally retarded (ICF/MR), consistent with the definitions of such institutions found in the Code of Federal Regulations at 42 CFR 435.1009, 42 CFR 435.1010, 42 CFR 440.40 and 42 CFR 440.150 and which are authorized under Virginia law to provide medical care.

"Minimum monthly maintenance needs allowance" means the monthly maintenance needs standard, plus an excess shelter allowance, if applicable, not to exceed the maximum monthly maintenance needs standard. The minimum monthly maintenance needs allowance is the amount to which a community spouse's income is compared in order to determine the community spouse's monthly income allowance.

"Minor" means a child under age 21, of either spouse, who lives with the community spouse.

"Monthly maintenance needs standard" means an amount no less than 150% of 1/12 of the Federal Poverty Level for a family of two in effect on July 1 of each year.

"Other family members" means dependent children and dependent parents and siblings of either member of a couple who reside with the community spouse.

"Otherwise available income or resources" means income and resources which are legally available to the community spouse and to which the community spouse has access and control.

"Promptly assess resources" means within 45 days of the request for resource assessment unless the delay is due to nonreceipt of documentation or verification, if required, from the applicant or from a third party.

"Protected period" means a period of time, not to exceed 90 days after an initial determination of medical assistance eligibility. During the protected period, the amount of the community spouse resource allowance will be excluded from the institutionalized spouse's countable resources if the institutionalized spouse expressly indicates his intention to transfer resources to the community spouse.

"Resource assessment" means a computation, completed by request or upon medical assistance application, of a couple's combined countable resources at the beginning of the first continuous period of institutionalization of the institutionalized spouse beginning on or after September 30, 1989.

"Resources" means real and personal property owned by a medical assistance applicant or his spouse. Resources do not include resources excluded under subsection (a) or (d) of § 1613 of the Social Security Act and resources that would be excluded under § 1613(a)(2)(A) but for the limitation on total value described in such section.

"Significant financial duress" means, but is not limited to, threatened loss of basic shelter, food or medically necessary health care or the financial burden of caring for a disabled child, sibling or other immediate relative.

"Spousal protected resource amount" means (at the time of medical assistance application as an institutionalized spouse) the greater of: (i) the spousal resource standard in effect at the time of application; (ii) the spousal share, not to exceed the maximum spousal resource standard in effect at the time of application; (iii) the amount actually transferred to the community spouse by the institutionalized spouse pursuant to a court spousal support order; or (iv) the amount of resources designated by a department hearing officer.

"Spousal resource standard" means the minimum amount of a couple's combined countable resources calculated in

accordance with § 1924(f)(2)(A)(i) of the Social Security Act necessary for the community spouse to maintain himself in the community. The amount increases each calendar year after 1989 by the same percentage increase as in the Consumer Price Index as required by § 1924(g) of the Social Security Act.

"Spousal share" means 1/2 of the couple's total countable resources at the beginning of the first continuous period of institutionalization as determined by a resource assessment.

"Spouse" means a person who is legally married to another person under Virginia law.

"State Plan" means the State Plan for Medical Assistance.

"Undue hardship" means that the provisions listed under 12VAC30-110-831 have been met. The absence of an undue hardship provision would result in the institutionalized spouse being ineligible for Medicaid payment of long-term care services and unable to purchase life-sustaining medical care.

"Waiver services" means medical assistance reimbursed home or community-based services covered under a § 1915(c) waiver approved by the Secretary of the United States Department of Health and Human Services.

Article 2

Assessments of Couple's Resources

12VAC30-110-741. Resource assessment required.

A resource assessment shall be completed by the entity determining medical assistance eligibility on all medical assistance applications for married institutionalized individuals who have a community spouse. If an applicant alleges that his marital status is unknown, it shall be his responsibility to establish his marital status. It shall be the applicant's responsibility to locate his community spouse. If attempts to establish marital status or locate the separated spouse are unsuccessful or the community spouse does not provide the required information necessary to complete the resource assessment, the medical assistance eligibility application will be denied due to inability to complete the required resource assessment, unless undue hardship, as defined ~~herein~~ in 12VAC30-110-831, is met.

Subpart IV
Appeals

12VAC30-110-980. Applicability, notices and regulatory authority.

A. The appeals process contained in this subpart shall apply to appeals of resource assessments, initial determinations and redeterminations of resources, and income amounts and allowances made in connection with applications for medical assistance benefits by spouses institutionalized for a continuous period on or after September 30, 1989, or receiving waiver or hospice services for a continuous period on or after September 30, 1989, pursuant to existing Client

Appeals regulations (Part I (12VAC30-110-10 et seq.) of this chapter).

B. Written notices are to be provided to the institutionalized spouse and the community spouse advising them of:

1. Resource assessments;
2. The amounts deducted for spousal and family allowances used in the post-eligibility calculation; and
3. Their rights to appeal the amounts deducted in the calculations for determining the spousal and family allowances used in the post-eligibility calculation.

C. Hearings and appeals held pursuant to this subpart are consistent with regulations at 42 CFR Part 431, Subpart E.

12VAC30-110-990. Notices. (Repealed.)

~~Written notices are to be provided to the institutionalized spouse and the community spouse advising them of:~~

- ~~1. Resource assessments;~~
- ~~2. The amounts deducted for spousal and family allowances used in the post-eligibility calculation; and~~
- ~~3. Their rights to appeal the amounts deducted in the calculations for determining the spousal and family allowances used in the post-eligibility calculation.~~

12VAC30-110-1000. Regulatory authority. (Repealed.)

~~Hearings and appeals held for the purpose of 12VAC30-110-980 are consistent with regulations at 42 CFR Part 431, Subpart E.~~

12VAC30-110-1040. Spenddown calculation.

A. When countable income exceeds the ~~MNI~~ Medically Needy Income Level (MNIL) for the budget period, certain medical and remedial care expenses incurred by an individual, family or financially responsible relative that are not subject to payment by a third party unless the third party is a public program of a state or territory or political subdivision of a state or territory shall be deducted ~~from~~ from countable income.

B. Medical and remedial care expenses paid by a public program (other than a Medicaid program) of a state or territory shall be deducted from countable income. Once countable income is reduced (by applying these deductions) to an amount equal to the MNIL, the individual or family shall be income eligible.

C. Reasonable measures to determine the legal liability of third parties to pay for incurred expenses shall be taken. However, eligibility determination shall not be forestalled simply because third party liability cannot be ascertained or payment by the third party has not been received.

D. The time standards for reaching decisions on Medicaid eligibility must be met when determining eligibility through

Regulations

spenddown: 90 days for applicants who apply on the basis of disability and 45 days for all other applicants. These limits shall apply for receipt of third party payment or verification of third party intent to pay in order to determine deductible expenses under spenddown. Efforts to determine the liability of a third party shall continue through the last day of this period. If information regarding third party liability is not received by this date, eligibility must be established based upon the information available.

E. If the amount subject to payment by a third party cannot be determined based on information available, the bill in question to which the third party liability applies cannot be used in determining the spenddown. However, if information becomes available at a later date, the spenddown shall be recalculated and the effective date of eligibility revised.

Part III

Home and Community-Based Services for Individuals with Acquired Immunodeficiency Syndrome (AIDS) and AIDS-Related Complex

12VAC30-120-140. Definitions.

"Acquired Immune Deficiency Syndrome" or "AIDS" means the most severe manifestation of infection with the Human Immunodeficiency Virus (HIV). The Centers for Disease Control and Prevention (CDC) lists numerous opportunistic infections and cancers that, in the presence of HIV infection, constitute an AIDS diagnosis.

"Activities of daily living" or "ADL" means personal care tasks, e.g., bathing, dressing, toileting, transferring, and eating/feeding. An individual's degree of independence in performing these activities is part of determining appropriate level of care and service needs.

"Agency-directed services" means services for which the provider agency is responsible for hiring, training, supervising, and firing of the staff.

"Appeal" means the process used to challenge DMAS when it takes action or proposes to take action that will adversely affect, reduce, or terminate the receipt of benefits.

"Asymptomatic" means without symptoms. This term is usually used in the HIV/AIDS literature to describe an individual who has a positive reaction to one of several tests for HIV antibodies but who shows no clinical symptoms of the disease.

"Case management" means continuous reevaluation of need, monitoring of service delivery, revisions to the plan of care and coordination of services for individuals enrolled in the HIV/AIDS waiver.

"Case manager" means the person who provides services to individuals who are enrolled in the waiver that enable the continuous assessment, coordination, and monitoring of the needs of the individuals who are enrolled in the waiver. The

case manager must possess a combination of work experience and relevant education that indicates that the case manager possesses the knowledge, skills, and abilities at entry level, as established by the Department of Medical Assistance Services in 12VAC30-120-170 to conduct case management.

"Cognitive impairment" means a severe deficit in mental capability that affects areas such as thought processes, problem solving, judgment, memory, or comprehension and that interferes with such things as reality orientation, ability to care for self, ability to recognize danger to self or others, or impulse control.

"Consumer-directed services" means services for which the individual or family/caregiver is responsible for hiring, training, supervising, and firing of the staff.

"Consumer-directed (CD) services facilitator" means the DMAS-enrolled provider who is responsible for supporting the individual and family/caregiver by ensuring the development and monitoring of the consumer-directed plan of care, providing employee management training, and completing ongoing review activities as required by DMAS for consumer-directed personal assistance and respite care services. The CD services facilitator cannot be the individual, the individual's case manager, direct service provider, spouse, or parent of the individual who is a minor child, or a family/caregiver who is responsible for employing the assistant.

"Current functional status" means the degree of dependency in performing activities of daily living.

"DMAS" means the Department of Medical Assistance Services.

"DMAS-96 form" means the Medicaid Funded Long-Term Care Service Authorization Form, which is a part of the preadmission screening packet and must be completed by a Level One screener on a Preadmission Screening Team. It designates the type of service the individual is eligible to receive.

"DMAS-122 form" means the Patient Information Form used by the provider and the local DSS to exchange information regarding the responsibility of a Medicaid-eligible individual to make payment toward the cost of services or other information that may affect the eligibility status of an individual.

"DSS" means the Department of Social Services.

"Designated preauthorization contractor" means the entity that has been contracted by DMAS to perform preauthorization of services.

"Enteral nutrition products" means enteral nutrition listed in the durable medical equipment manual that is prescribed by a physician to be necessary as the primary source of nutrition for the individual's health care plan (due to the prevalence of

conditions of wasting, malnutrition, and dehydration) and not available through any other food program.

"Fiscal agent" means an agency or organization that may be contracted by DMAS to handle employment, payroll, and tax responsibilities on behalf of the individual who is receiving consumer-directed personal assistance services and consumer-directed respite services.

"HIV-symptomatic" means having the diagnosis of HIV and having symptoms related to the HIV infection.

"Home and community-based care" means a variety of in-home and community-based services reimbursed by DMAS (case management, personal care, private duty nursing, respite care consumer-directed personal assistance, consumer-directed respite care, and enteral nutrition products) authorized under a Social Security Act § ~~1915~~(e) 1915(c) AIDS Waiver designed to offer individuals an alternative to inpatient hospital or nursing facility placement. Individuals may be preauthorized to receive one or more of these services either solely or in combination, based on the documented need for the service or services to avoid inpatient hospital or nursing facility placement. DMAS, or the designated preauthorization contractor, shall give prior authorization for any Medicaid-reimbursed home and community-based care.

"Human Immunodeficiency Virus (HIV)" means the virus which leads to acquired immune deficiency syndrome (AIDS). The virus weakens the body's immune system and, in doing so, allows "opportunistic" infections and diseases to attack the body.

"Instrumental activities of daily living" or "IADL" means tasks such as meal preparation, shopping, housekeeping, laundry, and money management.

"Participating provider" means an individual, institution, facility, agency, partnership, corporation, or association that has a valid contract with DMAS and meets the standards and requirements set forth by DMAS and has a current, signed provider participation agreement with DMAS to provide Medicaid waiver services.

"Personal assistant" means a domestic servant for purposes of this part and exemption from Worker's Compensation.

"Personal services" or "PAS" means long-term maintenance or support services necessary to enable an individual to remain at or return home rather than enter an inpatient hospital or a nursing facility. Personal assistance services include care specific to the needs of a medically stable, physically disabled individual. Personal assistance services include, but are not limited to, assistance with ADLs, bowel/bladder programs, range of motion exercises, routine wound care that does not include sterile technique, and external catheter care. Supportive services are those that substitute for the absence, loss, diminution, or impairment of a physical function. When specified, supportive services may

include assistance with IADLs that are incidental to the care furnished or that are essential to the health and welfare of the individual. Personal assistance services shall not include either practical or professional nursing services as defined in Chapters 30 (§ 54.1-3000 et seq.) and 34 (§ 54.1-3400 et seq.) of Title 54.1 of the Code of Virginia, as appropriate.

"Personal care agency" means a participating provider that renders services designed to offer an alternative to institutionalization by providing eligible individuals with personal care aides who provide personal care services.

"Personal care services" means long-term maintenance or support services necessary to enable the individual to remain at or return home rather than enter an inpatient hospital or a nursing facility. Personal care services are provided to individuals in the areas of activities of daily living, instrumental activities of daily living, access to the community, monitoring of self-administered medications or other medical needs, and the monitoring of health status and physical condition. It shall be provided in home and community settings to enable an individual to maintain the health status and functional skills necessary to live in the community or participate in community activities.

"Plan of care" means the written plan developed by the provider related solely to the specific services required by the individual to ensure optimal health and safety for the delivery of home and community-based care.

"Preadmission Screening Authorization Form" means a part of the preadmission screening packet that must be filled out by a Level One screener on a preadmission screening team. It gives preadmission authorization to the provider and the individual for Medicaid services, and designates the type of service the individual is authorized to receive.

"Preadmission screening committee/team" or "PAS committee" or "PAS team" means the entity contracted with DMAS that is responsible for performing preadmission screening. For individuals in the community, this entity is a committee comprised of a nurse from the local health department and a social worker from the local department of social services. For individuals in an acute care facility who require preadmission screening, this entity is a team of nursing and social work staff. A physician must be a member of both the local committee and the acute care team.

"Preadmission screening" or "PAS" means the process to (i) evaluate the functional, nursing, and social needs of individuals referred for preadmission screening; (ii) analyze what specific services the individuals need; (iii) evaluate whether a service or a combination of existing community services are available to meet the individuals' needs; and (iv) develop the service plan.

"Private duty nursing" means individual and continuous nursing care provided by a registered nurse or a licensed practical nurse under the supervision of a registered nurse.

Regulations

"Program" means the Virginia Medicaid program as administered by ~~the Department of Medical Assistance Services~~ DMAS.

"Reconsideration" means the supervisory review of information submitted to DMAS or the designated preauthorization contractor in the event of a disagreement of an initial decision that is related to a denial in the reimbursement of services already rendered by a provider.

"Respite care" means services specifically designed to provide a temporary, periodic relief to the primary caregiver of an individual who is incapacitated or dependent due to AIDS. Respite care services include assistance with personal hygiene, nutritional support and environmental maintenance authorized as either episodic, temporary relief or as a routine periodic relief of the caregiver.

"Respite care agency" means a participating provider that renders services designed to prevent or reduce inappropriate institutional care by providing eligible individuals with respite care aides who provide respite care services.

"Service plan" means the written plan of services certified by the PAS team physician as needed by the individual to ensure optimal health and safety for the delivery of home and community-based care.

"State Plan for Medical Assistance" or "the Plan" or "the State Plan" means the document containing the covered groups, covered services and their limitations, and provider reimbursement methodologies as provided for under Title XIX of the Social Security Act.

"Uniform Assessment Instrument" or "UAI" means the standardized multidimensional questionnaire that assesses an individual's social, physical health, mental health, and functional abilities.

12VAC30-130-260. Appeals.

A. Following notification to the NF of the Level II assessment determination by the state MH/MRA, the NF must inform the individual of the decision indicating the reasons for acceptance or denial and the method of appeal. Any individual, regardless of method of payment, who wishes to appeal the decision of the Level II evaluation may do so by sending written notification to the Department of Medical Assistance Services, Division of Client Appeals.

B. Decisions made by the annual resident review teams shall also be appealable to DMAS. The reviewed individual shall send written notification to DMAS, Division of Client Appeals.

C. All appeal requests must be made within 30 days of the individual's notification of the review decision.

Part IV Drug Utilization Review Program

12VAC30-130-270. Definitions.

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

"Abuse" means (i) use of health services by recipients which is inconsistent with sound fiscal or medical practices and that results in unnecessary costs to the Virginia Medicaid program or in reimbursement for a level of use or a pattern of services that is not medically necessary, or (ii) provider practices which are inconsistent with sound fiscal or medical practices and that result in (a) unnecessary costs to the Virginia Medicaid program, or (b) reimbursement for a level of use or a pattern of services that is not medically necessary or that fails to meet professionally recognized standards for health care.

"Appropriate and medically necessary" means drug prescribing and dispensing practices which conform with the criteria and standards developed pursuant to this regulation and are consistent with the diagnosis or treatment of an identified condition.

"Criteria and standards" means predetermined objective tests established by or approved by the Drug Utilization Review Board for use in both retrospective and prospective screening of the quality and appropriateness of pharmacy services for Medicaid recipients. Objective tests shall include both criteria, which are based upon professional expertise, prior experience, and the professional literature with which the quality, medical necessity, and appropriateness of health care services may be compared, and standards, which are professionally developed expressions of the range of acceptable variation from a criterion.

"Code" means the Code of Virginia.

"DMAS" means the Department of Medical Assistance Services consistent with Chapter 10 (§ 32.1-323 et seq.) of Title 32.1 of the Code of Virginia.

"Director" means the Director of ~~the Department of Medical Assistance Services~~ DMAS.

"Drug Utilization Review (DUR)" means a formal continuing program for assessing medical and recipients' drug ~~use~~ utilization data against explicit standards and criteria and, as necessary, introducing remedial strategies.

"Drug Utilization Review Board (DUR Board)" means the group of health care professionals appointed by the director and established pursuant to § 1927(g)(3) Title XIX of the Social Security Act.

"Drug Utilization Review Committee (DUR Committee)" means a committee composed of health care professionals who make recommendations for developing and modifying

drug therapy review standards or criteria, participate in retrospective reviews, recommend remedial strategies, and evaluate the success of the interventions.

"Exceptional drug ~~use~~ utilization pattern" means a pattern of drug use that differs from the standards and criteria established pursuant to this part.

"Fraud" means any act including intentional deception or misrepresentation that constitutes fraud under applicable federal or state laws.

"OBRA 90" means the Omnibus Budget Reconciliation Act of 1990.

"Patient's agent" means the person or persons selected by the recipient to act on his behalf with regard to the recipient's receipt of Title XIX pharmacy services.

"Patient counseling" means communication of information by the pharmacist, in person whenever practicable, to patients receiving benefits under Title XIX of the Social Security Act or the patient's agent, to improve therapeutic outcomes by encouraging proper use of prescription medications and devices.

"Prospective drug utilization review" means a review by the pharmacist of the prescription medication order and the patient's drug therapy before each prescription is filled. The review shall include an examination of any patient profile (which has been maintained by the pharmacist) to determine the possibility of potential drug therapy problems due to therapeutic duplication, drug-disease contraindications, drug-drug interactions (including serious interactions with nonprescription or over-the-counter drugs, incorrect drug dosage or duration of drug treatment, drug-allergy interactions, and clinical abuse or misuse).

"Restriction" means (i) an administrative limitation imposed by DMAS on a recipient which requires the recipient to obtain access to specific types of health care services only through a designated primary provider or (ii) an administrative limitation imposed on a provider to prohibit participation as a designated primary provider, referral provider, or covering provider for restricted recipients.

"Retrospective drug ~~use~~ utilization review" means the drug use review process that is conducted by DMAS using historic or archived medical or drug use data which may include but is not restricted to patient profiles and historical trends.

12VAC30-130-290. Scope and purpose.

A. DMAS shall implement and conduct a drug utilization review program (DUR program) for covered drugs prescribed for eligible recipients. The program shall help to ensure that prescriptions are appropriate, medically necessary, and are not likely to cause medically adverse events. The program shall provide for ongoing retrospective DUR, prospective DUR and an educational outreach program to educate

practitioners on common drug therapy problems with the aim of improving prescribing practices. As needed, the program shall also provide for electronic messages as well as rejected or denied services when such claims are not consistent with DUR criteria and requirements. The primary objectives shall be:

1. Improving in the quality of care;
2. Maintaining program integrity (i.e., controlling problems of fraud and benefit abuse); and
3. Conserving program funds and individual expenditures.

B. Certain organized health care settings shall be exempt from the further requirements of retrospective and prospective DUR process as provided for in § 4401 of OBRA 90.

C. The purpose of retrospective ~~drug utilization review~~ DUR shall be to screen for:

1. Monitoring for therapeutic appropriateness;
2. Overutilization and underutilization;
3. Appropriate use of generic products;
4. Therapeutic duplication;
5. Drug-disease/health contraindications;
6. Drug-drug interactions;
7. Incorrect drug dosage or duration of treatment;
8. Clinical abuse/misuse and fraud, and as necessary
9. Introduce to physicians and pharmacists remedial strategies to improve the quality of care rendered to their patients.

D. The purpose of prospective ~~drug utilization review~~ DUR shall be to screen for:

1. Potential drug therapy problems due to therapeutic duplication;
2. Drug-disease/health contraindications;
3. Drug-drug interactions (including serious interactions with nonprescription or over-the-counter drugs);
4. Incorrect drug dosage or duration of drug treatment;
5. Drug-allergy interactions; and
6. Clinical abuse and misuse.

E. In instances where initial claims for reimbursement of covered services are determined to be in conflict with DUR criteria and requirements, such claims shall receive electronic messages or be rejected or denied, as appropriate, back to the dispensing pharmacist with notification as to the substance of the conflict. The dispensing pharmacist will be afforded the opportunity to provide an intervention, based on his professional expertise and knowledge, to modify the service

Regulations

to be claimed for reimbursement. If the modification no longer conflicts with the DUR criteria, the claim for the modified service shall be adjudicated for payment. If the modification requires additional information from the prescriber, the pharmacist shall advise the prescribing physician of the continuing conflict and advise the physician to seek prior authorization approval from either DMAS or the pharmacy benefits contractor for his treatment plans.

F. Designated interventions may include provider override, obtaining prior authorization via communication to a call center staffed with appropriate clinicians, or written communication to prescribers.

12VAC30-130-370. Medical quality assurance for nursing facility residents. (Repealed.)

Documentation of drug regimens shall, at a minimum:

- ~~1. Be included in a plan of care that must be established and periodically reviewed by a physician;~~
- ~~2. Indicate all drugs administered to the resident in accordance with the plan with specific attention to frequency, quantity, and type; and identify who administered the drug (including full name and title); and~~
- ~~3. Include the drug regimen review prescribed for nursing facilities in regulations implementing Section 483.60 of Title 42 of the Code of Federal Regulations.~~

Part V

Drug Utilization Review in Nursing Facilities

12VAC30-130-380. Definitions.

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

"DMAS" means the Department of Medical Assistance Services consistent with Chapter 10 (§ 32.1-323 et seq.) of Title 32.1 of the Code of Virginia.

"Drug utilization review" or "DUR" means a formal continuing program for assessing medical or drug use data against explicit standards and, as necessary, introducing remedial strategies.

"Drug Utilization Review Committee (DUR Committee)" means a committee composed of knowledgeable health care professionals who make recommendations for developing and modifying drug therapy review standards or criteria, participate in retrospective reviews, recommend remedial strategies, and evaluate the success of the interventions.

"Exceptional drug utilization pattern" means (i) a pattern of drug utilization within a nursing facility that differs substantially from predetermined standards established pursuant to 12VAC30-130-400 B; (ii) individual resident's drug use patterns that differ from the established standards; or

(iii) individual resident's drug use patterns that exhibit a high risk for drug therapy induced illness.

"Retrospective utilization drug review" means the drug utilization review process that is conducted using historic or archived medical or drug use data.

"Targeted facility" means a nursing facility where residents' patterns of drug utilization demonstrate an exceptional drug utilization pattern as defined herein.

~~12VAC30-130-410. Drug Use Review Committee. (Repealed.)~~

~~A. DMAS shall provide for the establishment of a drug use review committee (hereinafter referred to as the "DUR Committee"). The Director of DMAS shall determine the number of members and appoint the members of the DUR committee.~~

~~B. The membership of the DUR Committee shall include health care professionals who have recognized knowledge and expertise in one or more of the following areas:~~

- ~~1. The clinically appropriate prescribing of covered drugs;~~
- ~~2. The clinically appropriate dispensing and monitoring of covered drugs;~~
- ~~3. Drug use review, evaluation, and intervention;~~
- ~~4. Medical quality assurance; and~~
- ~~5. Clinical practice and drug therapy in the long term care setting.~~

~~C. The membership of the DUR Committee shall include physicians, pharmacists, and other health care professionals, including those with recognized expertise and knowledge in long term care.~~

~~D. Activities of the DUR Committee shall include, but not be limited to, the following:~~

- ~~1. Retrospective drug utilization review as defined in 12VAC30-130-390 B;~~
- ~~2. Application of standards as defined in 12VAC30-130-400 C; and~~
- ~~3. Ongoing interventions for physicians and pharmacists, targeted toward therapy problems of individuals identified in the course of retrospective drug use reviews.~~

~~E. The DUR Committee shall reevaluate interventions after an appropriate period of time to determine if the intervention improved the quality of drug therapy, to evaluate the success of the interventions and recommend modifications as necessary.~~

Part VIII

Community Mental Health and Mental Retardation Services

12VAC30-130-540. Definitions.

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

"Board" or "BMAS" means the Board of Medical Assistance Services.

"CMS" means the Centers for Medicare and Medicaid Services as that unit of the federal Department of Health and Human Services that administers the Medicare and Medicaid programs.

"Code" means the Code of Virginia.

"Consumer service plan" means that document addressing the needs of the recipient of mental retardation case management services, in all life areas. Factors to be considered when this plan is developed are, but not limited to, the recipient's age, primary disability, level of functioning and other relevant factors.

"DMAS" means the Department of Medical Assistance Services consistent with Chapter 10 (§ 32.1-323 et seq.) of Title 32.1 of the Code of Virginia.

"DMHMRSAS" means the Department of Mental Health, Mental Retardation and Substance Abuse Services consistent with Chapter 4 (§ 37.1-39 37.2-300 et seq.) of Title 37.1-37.2 of the Code of Virginia.

"DRS" means the Department of Rehabilitative Services consistent with Chapter 3 (§ 51.5-8 et seq.) of Title 51.5 of the Code of Virginia.

~~"HCFA" means the Health Care Financing Administration as that unit of the federal Department of Health and Human Services which administers the Medicare and Medicaid programs.~~

"Individual Service Plan" or "ISP" means a comprehensive and regularly updated statement specific to the individual being treated containing, but not necessarily limited to, his treatment or training needs, his goals and measurable objectives to meet the identified needs, services to be provided with the recommended frequency to accomplish the measurable goals and objectives, and estimated timetable for achieving the goals and objectives. Such ISP shall be maintained up to date as the needs and progress of the individual changes.

"Medical or clinical necessity" means an item or service that must be consistent with the diagnosis or treatment of the individual's condition. It must be in accordance with the community standards of medical or clinical practice.

"Mental retardation" means the ~~diagnostic classification of substantial subaverage general intellectual functioning which~~

~~originates during the developmental period and is associated with impairment in adaptive behavior~~ presence of a level of retardation (mild, moderate, severe, or profound) described in the American Association on Mental Retardation's Manual on Classification in Mental Retardation (1983) or a related condition. A person with related conditions (RC) means the individual has a severe chronic disability that meets all of the following conditions:

1. It is attributable to cerebral palsy or epilepsy or any other condition, other than mental illness, found to be closely related to mental retardation because this condition may result in impairment of general intellectual functioning or adaptive behavior similar to that of mentally retarded persons, and requires treatment or services similar to those required for these persons;
2. It is manifested before the person reaches age 22;
3. It is likely to continue indefinitely; and
4. It results in substantial functional limitations in three or more of the following areas of major life activity: self-care, understanding and use of language, learning, mobility, self-direction, and capacity for independent living.

"Preauthorization" means the approval by the DMHMRSAS staff of the plan of care which specifies recipient and provider. Preauthorization is required before reimbursement can be made.

"Qualified case managers for mental health case management services" means individuals possessing a combination of mental health work experience or relevant education which indicates that the individual possesses the knowledge, skills, and abilities, as established by DMHMRSAS, necessary to perform case management services.

"Qualified case managers for mental retardation case management services" means individuals possessing a combination of mental retardation work experience and relevant education which indicates that the individual possesses the knowledge, skills, and abilities, as established by DMHMRSAS, necessary to perform case management services.

"Related conditions," as defined for persons residing in nursing facilities who have been determined through Annual Resident Review to require specialized services, means a severe, chronic disability that (i) is attributable to a mental or physical impairment (attributable to mental retardation, cerebral palsy, epilepsy, autism, or neurological impairment or related conditions) or combination of mental and physical impairments; (ii) is manifested before that person attains the age of 22; (iii) is likely to continue indefinitely; (iv) results in substantial functional limitations in three or more of the following major areas: self-care, language, learning, mobility, self-direction, capacity for independent living and economic

Regulations

self-sufficiency; and (v) results in the person's need for special care, treatment or services that are individually planned and coordinated and that are of lifelong or extended duration.

"Serious emotional disturbance" means that mental health problem as defined by the Board of Mental Health, Mental Retardation, and Substance Abuse Services in Policy 1029, Definitions of Priority Mental Health Populations, effective June 27, 1990.

"Serious mental illness" means that mental health problem as defined by the Board of Mental Health, Mental Retardation, and Substance Abuse Services in Policy 1029, Definitions of Priority Mental Health Populations, effective June 27, 1990.

"Significant others" means persons related to or interested in the individual's health, well-being, and care. Significant others may be, but are not limited to, a spouse, friend, relative, guardian, priest, minister, rabbi, physician, neighbor.

"Substance abuse" means the use, without compelling medical reason, of any substance which results in psychological or physiological dependency as a function of continued use in such a manner as to induce mental, emotional or physical impairment and cause socially dysfunctional or socially disordering behavior.

"State Plan for Medical Assistance" or "Plan" means the document listing the covered groups, covered services and their limitations, and provider reimbursement methodologies as provided for under Title XIX of the Social Security Act.

Part XIII

Client Medical Management Program

12VAC30-130-800. Definitions.

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

"APA" means the Administrative Process Act established by Chapter ~~4-1-1~~ 40 (§ ~~9-6-14-1~~ 2.2-4000 et seq.) of Title ~~9~~ 2.2 of the Code of Virginia.

"Abuse by recipients" means practices by recipients which are inconsistent with sound fiscal or medical practices and result in unnecessary costs to the Virginia Medicaid Program.

"Abuse by providers" means practices which are inconsistent with sound fiscal, business, or medical practices and result in unnecessary costs to the Virginia Medicaid Program or in reimbursement for a level of utilization or pattern of services that is not medically necessary.

"Card-sharing" means the intentional sharing of a recipient eligibility card for use by someone other than the recipient for whom it was issued, or a pattern of repeated unauthorized use of a recipient eligibility card by one or more persons other

than the recipient for whom it was issued due to the failure of the recipient to safeguard the card.

"Client Medical Management Program (CMM) for recipients" means the recipients' utilization control program designed to prevent abuse and promote improved and cost efficient medical management of essential health care for noninstitutionalized recipients through restriction to one primary care provider, one pharmacy, and one transportation provider, or any combination of these three designated providers. Referrals may not be made to providers restricted through the Client Medical Management Program, nor may restricted providers serve as covering providers.

"Client Medical Management Program (CMM) for providers" means the providers' utilization control program designed to complement the recipient abuse and utilization control program in promoting improved and cost efficient medical management of essential health care. Restricted providers may not serve as designated providers for restricted recipients. Restricted providers may not serve as referral or covering providers for restricted recipients.

"Contraindicated medical care" means treatment which is medically improper or undesirable and which results in duplicative or excessive utilization of services.

"Contraindicated use of drugs" means the concomitant use of two or more drugs whose combined pharmacologic action produces an undesirable therapeutic effect or induces an adverse effect by the extended use of a drug with a known potential to produce this effect.

"Covering provider" means a provider designated by the primary provider to render health care services in the temporary absence of the primary provider.

"DMAS" means the Department of Medical Assistance Services.

"Designated provider" means the provider who agrees to be the designated primary physician, designated pharmacy, or designated transportation provider from whom the restricted recipient must first attempt to seek health care services. Other providers may be established as designated providers with the approval of DMAS.

"Diagnostic category" means the broad classification of diseases and injuries found in the International Classification of Diseases, 9th Revision, Clinical Modification (ICD-9-CM) which is commonly used by providers in billing for medical services.

"Drug" means a substance or medication intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease as defined by the Virginia Drug Control Act (§ ~~54-1-524.2~~ 54.1-3400 et seq. of the Code of Virginia).

"Duplicative medical care" means two or more practitioners concurrently treat the same or similar medical problems or

conditions falling into the same diagnostic category, excluding confirmation for diagnosis, evaluation, or assessment.

"Duplicative medications" means more than one prescription of the same drug or more than one drug in the same therapeutic class.

"Emergency hospital services" means those hospital services that are necessary to treat a medical emergency. Hospital treatment of a medical emergency necessitates the use of the most accessible hospital available that is equipped to furnish the services.

"EPSDT" means the Early and Periodic Screening, Diagnosis, and Treatment Program which is federally mandated for eligible individuals under the age of 21.

"Excessive medical care" means obtaining greater than necessary services such that health risks to the recipient or unnecessary costs to the Virginia Medicaid Program may ensue from the accumulation of services or obtaining duplicative services.

"Excessive medications" means obtaining medication in ~~excess of~~ greater than generally acceptable maximum therapeutic dosage regimens or obtaining duplicative medication from more than one practitioner.

"Excessive transportation services" means obtaining or rendering greater than necessary transportation services such that unnecessary costs to the Virginia Medicaid Program may ensue from the accumulation of services.

"Fraud" means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or some other person. It includes any act that constitutes fraud under applicable federal or state laws.

"Health care" means any covered services, including equipment, supplies, or transportation services, provided by any individual, organization, or entity that participates in the Virginia Medical Assistance Program.

"Medical emergency" means the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) that the absence of immediate medical attention could reasonably be expected to result in (i) placing the client's health in serious jeopardy, (ii) serious impairment of bodily functions, or (iii) serious dysfunction of any bodily organ or part.

"Medical management of essential health care" means a case management approach to health care in which the designated primary physician has responsibility for assessing the needs of the patient and making referrals to other physicians and clinics as needed. The designated pharmacy has responsibility for monitoring the drug regimen of the patient.

"Noncompliance" means failing to follow Client Medical Management Program procedures, or a pattern of utilization which is inconsistent with sound fiscal or medical practices. Noncompliance includes, but is not limited to, failure to follow a recommended treatment plan or drug regimen; failure to disclose to a provider any treatment or services provided by another provider; requests for medical services or medications which are not medically necessary; or excessive use of transportation services.

"Not medically necessary" means an item or service which is not consistent with the diagnosis or treatment of the patient's condition or an item or service which is duplicative, contraindicated, or excessive.

"Pattern" means duplication or frequent occurrence.

"Practitioner" means a health care provider licensed, registered, or otherwise permitted by law to distribute, dispense, prescribe, and administer drugs or otherwise treat medical conditions.

"Primary care provider" or "PCP" means the designated primary physician responsible for medical management of essential health care for the restricted recipient.

"Provider" means the individual, facility or other entity registered, licensed, or certified, as appropriate, and enrolled by DMAS to render services to Medicaid recipients eligible for services.

"Psychotropic drugs" means drugs which alter the mental state. Such drugs include, but are not limited to, morphine, barbiturates, hypnotics, antianxiety agents, antidepressants, and antipsychotics.

"Recipient" means the individual who is eligible, under Title XIX of the Social Security Act, to receive Medicaid covered services.

"Recipient eligibility card" means the document issued to each Medicaid ~~family unit, listing names and Medicaid numbers of all eligible individuals within the family unit, or enrollee~~; an individual document issued to each Medicaid recipient listing the name and Medicaid number (either the identification or billing number) of the eligible individual. This document may be in the form of a plastic card magnetically encoded, allowing electronic access to inquiries for eligibility status.

"Restriction" means an administrative action imposed on a recipient which limits access to specific types of health care services through a designated primary provider or an administrative action imposed on a provider to prohibit participation as a designated primary provider, referral, or covering provider for restricted recipients.

"Social Security Act" means the Act, enacted by the 74th Congress on August 14, 1935, which provides for the general welfare by establishing a system of federal old age benefits,

Regulations

and by enabling the states to make more adequate provisions for aged persons, blind persons, dependent and crippled children, maternal and child welfare, public health, and the administration of their unemployment compensation laws.

"State Plan for Medical Assistance" or "the Plan" means the document listing the covered groups, covered services and their limitations, and provider reimbursement methodologies as provided for under Title XIX of the Social Security Act.

"Surveillance and Utilization Review Subsystem (SURS)" or "Automated Exception Analysis (AEA)" means a computer subsystem of the Medicaid Management Information System (MMIS) which collects claims data and computes statistical profiles of recipient and provider activity and compares them with that of their particular peer group.

"Therapeutic class" means a group of drugs with similar pharmacologic actions and uses.

"Utilization control" means the control of covered health care services to assure the use of cost efficient, medically necessary or appropriate services.

12VAC30-130-820. Client Medical Management Program for providers.

A. Purpose. The Client Medical Management Program is a utilization control program designed to promote improved and cost-efficient medical management of essential health care.

B. Authority.

1. Federal regulations at 42 CFR 456.3 require the Medicaid agency to implement a statewide surveillance and utilization control program and 42 CFR 455.1 through 455.16 require the Medicaid agency to conduct investigations of abuse by providers.

2. Federal regulations at 42 CFR 431.54 (f) allow states to restrict providers' participation in the Medicaid program if the agency finds that providers of items or services under the State Plan have provided items or services at a frequency or amount not medically necessary in accordance with utilization guidelines established by the state, or have provided items or services of a quality that do not meet professionally recognized standards of health care.

C. Identification of Client Medical Management Program participants. DMAS shall identify providers for review through computerized reports such as but not limited to Provider SURS or AEA or by referrals from agencies, health care professionals, or other individuals.

D. Provider evaluation for restriction.

1. DMAS shall review providers to determine if health care services are being provided at a frequency or amount that is not medically necessary or that are not of a quality to

meet professionally recognized standards of health care. Evaluation of utilization patterns can include but is not limited to review by the department staff of medical records or computerized reports generated by the department reflecting claims submitted for physician visits, drugs/prescriptions, outpatient and emergency room visits, lab or diagnostic procedures, hospital admissions, and referrals.

2. DMAS may restrict providers if any one or more of the following conditions is identified in a significant number or proportion of cases. These conditions include but shall not be limited to the following:

- a. Visits billed at a frequency or level exceeding that which is medically necessary;
- b. Diagnostic tests billed in excess of what is medically necessary;
- c. Diagnostic tests billed which are unrelated to the diagnosis;
- d. Medications prescribed or prescriptions dispensed in excess of recommended dosages;
- e. Medications prescribed or prescriptions dispensed unrelated to the diagnosis.
- f. The provider's license to practice in any state has been revoked or suspended.
- g. Excessive transportation services rendered such that unnecessary costs to the Virginia Medicaid Program ensue from the accumulation of services.

E. Provider restriction procedures.

1. DMAS shall advise affected providers by written notice of the proposed restriction under the Client Medical Management Program. Written notice shall include an explanation of the basis for the decision, request for additional documentation, if any, and notification of the provider's right to appeal the proposed action.

2. DMAS shall restrict providers from being the designated provider, a referral provider, or a covering provider for recipients in the Client Medical Management Program for 24 months.

3. DMAS shall notify the ~~Health Care Financing Administration (HCFA)~~ Centers for Medicare and Medicaid Services (CMS) and the general public of the restriction and its duration.

4. DMAS shall not implement provider restriction if a valid appeal is noted.

F. Review of provider restriction status.

1. DMAS shall review a restricted provider's claims history record prior to the end of the restriction period to determine restriction termination or continuation (See

subsection D of this section). DMAS shall extend provider restriction for 24 months in one or more of the following situations:

- a. Where abuse by the provider is identified.
 - b. Where the practices which led to restriction continue.
2. In cases where the provider has submitted an insufficient number of claims during the restriction period to enable DMAS to conduct a claims history review, DMAS shall continue restriction until a reviewable six-month claims history is available for evaluation.
 3. If DMAS continues restriction following the review, the provider shall be notified of the agency's proposed action, the basis for the action, and appeal rights. (See subsection E of this section).
 4. If the provider continues a pattern of inappropriate health care services, DMAS may make a referral to the appropriate peer review group or regulatory agency for recommendation and action as appropriate.

G. Provider appeals.

1. Providers shall have the right to appeal any adverse action taken by the department under these regulations.
2. Provider appeals shall be held pursuant to the provisions of Article 3 (§ ~~9-6.14:14~~ 2.2-4018 et seq.) of the Administrative Process Act.

12VAC30-130-890. Plans of care; review of plans of care.

A. For Residential Treatment Services (Level C), an initial plan of care must be completed at admission and a Comprehensive Individual Plan of Care (CIPOC) must be completed no later than 14 days after admission.

B. Initial plan of care (Level C) must include:

1. Diagnoses, symptoms, complaints, and complications indicating the need for admission;
2. A description of the functional level of the recipient;
3. Treatment objectives with short-term and long-term goals;
4. Any orders for medications, treatments, restorative and rehabilitative services, activities, therapies, social services, diet, and special procedures recommended for the health and safety of the patient;
5. Plans for continuing care, including review and modification to the plan of care;
6. Plans for discharge, and
7. Signature and date by the physician.

C. The ~~Comprehensive Individual Plan of Care (CIPOC)~~ CIPOC for Level C must meet all of the following criteria:

1. Be based on a diagnostic evaluation that includes examination of the medical, psychological, social, behavioral, and developmental aspects of the recipient's situation and must reflect the need for inpatient psychiatric care;
2. Be developed by an interdisciplinary team of physicians and other personnel specified under subsection F of this section, who are employed by, or provide services to, patients in the facility in consultation with the recipient and his parents, legal guardians, or appropriate others in whose care he will be released after discharge;
3. State treatment objectives that must include measurable short-term and long-term goals and objectives, with target dates for achievement;
4. Prescribe an integrated program of therapies, activities, and experiences designed to meet the treatment objectives related to the diagnosis; and
5. Describe comprehensive discharge plans and coordination of inpatient services and post-discharge plans with related community services to ensure continuity of care upon discharge with the recipient's family, school, and community.

D. Review of the ~~Comprehensive Individual Plan of Care~~ CIPOC for Level C. The CIPOC must be reviewed every 30 days by the team specified in subsection F of this section to:

1. Determine that services being provided are or were required on an inpatient basis; and
2. Recommend changes in the plan as indicated by the recipient's overall adjustment as an inpatient.

E. The development and review of the plan of care for Level C as specified in this section satisfies the facility's utilization control requirements for recertification and establishment and periodic review of the plan of care, as required in 42 CFR 456.160 and 456.180.

F. Team developing the ~~Comprehensive Individual Plan of Care~~ CIPOC for Level C. The following requirements must be met:

1. At least one member of the team must have expertise in pediatric mental health. Based on education and experience, preferably including competence in child psychiatry, the team must be capable of all of the following:
 - a. Assessing the recipient's immediate and long-range therapeutic needs, developmental priorities, and personal strengths and liabilities;
 - b. Assessing the potential resources of the recipient's family;
 - c. Setting treatment objectives; and

Regulations

d. Prescribing therapeutic modalities to achieve the plan's objectives.

2. The team must include, at a minimum, either:

- a. A board-eligible or board-certified psychiatrist;
- b. A clinical psychologist who has a doctoral degree and a physician licensed to practice medicine or osteopathy; or
- c. A physician licensed to practice medicine or osteopathy with specialized training and experience in the diagnosis and treatment of mental diseases, and a psychologist who has a master's degree in clinical psychology or who has been certified by the state or by the state psychological association.

3. The team must also include one of the following:

- a. A psychiatric social worker;
- b. A registered nurse with specialized training or one year's experience in treating mentally ill individuals;
- c. An occupational therapist who is licensed, if required by the state, and who has specialized training or one year of experience in treating mentally ill individuals; or
- d. A psychologist who has a master's degree in clinical psychology or who has been certified by the state or by the state psychological association.

G. All Medicaid services are subject to utilization review. Absence of any of the required documentation may result in denial or retraction of any reimbursement.

H. For Therapeutic Behavioral Services for Children and Adolescents under 21 (Level B), the initial plan of care must be completed at admission by the licensed mental health professional (LMHP) and a ~~comprehensive individual plan of care (CIPOC)~~ CIPOC must be completed by the LMHP no later than 30 days after admission. The assessment must be signed and dated by the LMHP.

I. For Community-Based Services for Children and Adolescents under 21 (Level A), the initial plan of care must be completed at admission by the QMHP and a CIPOC must be completed by the QMHP no later than 30 days after admission. The individualized plan of care must be signed and dated by the program director.

J. Initial plan of care for Levels A and B must include:

1. Diagnoses, symptoms, complaints, and complications indicating the need for admission;
2. A description of the functional level of the child;
3. Treatment objectives with short-term and long-term goals;
4. Any orders for medications, treatments, restorative and rehabilitative services, activities, therapies, social services,

diet, and special procedures recommended for the health and safety of the patient;

5. Plans for continuing care, including review and modification to the plan of care; and

6. Plans for discharge.

K. The CIPOC for Levels A and B must meet all of the following criteria:

1. Be based on a diagnostic evaluation that includes examination of the medical, psychological, social, behavioral, and developmental aspects of the child's situation and must reflect the need for residential psychiatric care;
2. The CIPOC for both levels must be based on input from school, home, other healthcare providers, the child and family (or legal guardian);
3. State treatment objectives that include measurable short-term and long-term goals and objectives, with target dates for achievement;
4. Prescribe an integrated program of therapies, activities, and experiences designed to meet the treatment objectives related to the diagnosis; and
5. Describe comprehensive discharge plans with related community services to ensure continuity of care upon discharge with the child's family, school, and community.

L. Review of the CIPOC for Levels A and B. The CIPOC must be reviewed, signed, and dated every 30 days by the QMHP for Level A and by the LMHP for Level B. The review must include:

1. The response to services provided;
2. Recommended changes in the plan as indicated by the child's overall response to the plan of care interventions; and
3. Determinations regarding whether the services being provided continue to be required.

Updates must be signed and dated by the service provider.

M. All Medicaid services are subject to utilization review. Absence of any of the required documentation may result in denial or retraction of any reimbursement.

12VAC30-130-910. Targeted case management for foster care children in treatment foster care (TFC) covered services.

Service description. Case management is a component of ~~treatment foster care (TFC)~~ TFC through which a case manager monitors the treatment plan and links the child to other community resources as necessary to address the special identified needs of the child. Services to the children shall be delivered primarily by treatment foster parents who are

trained, supervised and supported by professional child-placing agency staff. TFC case management focuses on a continuity of services, is goal directed and results oriented. Services shall not include room and board. The following activities are considered covered services related to TFC case management services:

1. Care planning, monitoring of the plan of care, and discharge planning;
2. Case management; and
3. Evaluation of the effectiveness of the child's plan of treatment.

12VAC30-141-60. Request for review.

A. Requests for review of MCHIP adverse actions shall be submitted in writing to the MCHIP.

B. Requests for review of adverse actions made by the local department of social services, the CPU, or DMAS shall be submitted in writing to DMAS.

C. Any written communication clearly expressing a desire to have an adverse action reviewed shall be treated as a request for review.

D. To be timely, requests for review of a MCHIP determination shall be received by the MCHIP no later than 30 calendar days from the date of the MCHIP's notice of adverse action.

E. To be timely, requests for review of a local department of social services, DMAS, or CPU determination shall be ~~received by~~ filed with DMAS no later than 30 calendar days from the date of the CPU's, LDSS' or DMAS' notice of adverse action. Requests for review of a local department of social services, DMAS, or CPU determination shall be considered ~~received by~~ filed with DMAS ~~when on the date the request is date stamped postmarked, if mailed, or on the date the request is received, if delivered other than by mail, by the DMAS Appeals Division in Richmond, Virginia.~~

12VAC30-141-120. Children ineligible for FAMIS.

A. If a child is:

1. Eligible for Medicaid, or would be eligible if he applied for Medicaid, he shall be ineligible for coverage under FAMIS. A child found through the screening process to be potentially eligible for Medicaid but who fails to complete the Medicaid application process for any reason, cannot be enrolled in FAMIS;
2. A member of a family eligible for coverage under any Virginia state employee health insurance plan, he shall be ineligible for FAMIS;
3. An inmate of a public institution as defined in 42 CFR 435.1009, he shall be ineligible for FAMIS; or

4. An inpatient in an institution for mental disease (IMD) as defined in 42 CFR ~~435.1009~~ 435.1010, he shall be ineligible for FAMIS.

B. If a child's parent or other authorized representative does not meet the requirements of assignment of rights to benefits or requirements of cooperation with the agency in identifying and providing information to assist the Commonwealth in pursuing any liable third party, the child shall be ineligible for FAMIS.

C. If a child, if age 18, or if under age 18, a parent, adult relative caretaker, guardian, or legal custodian obtained benefits for a child or children who would otherwise be ineligible by willfully misrepresenting material facts on the application or failing to report changes, the child or children for whom the application is made shall be ineligible for FAMIS. The child, if age 18, or if under age 18, the parent, adult relative caretaker, guardian, or legal custodian who signed the application shall be liable for repayment of the cost of all benefits issued as the result of the misrepresentation.

12VAC30-141-720. Request for review.

A. Requests for review of MCHIP adverse actions shall be submitted in writing to the MCHIP.

B. Requests for review of adverse actions made by the local department of social services, the CPU, or DMAS shall be submitted in writing to DMAS.

C. Any written communication clearly expressing a desire to have an adverse action reviewed shall be treated as a request for review.

D. To be timely, requests for review of a MCHIP determination shall be received by the MCHIP no later than 30 calendar days from the date of the MCHIP's notice of adverse action.

E. To be timely, requests for review of a local department of social services, DMAS, or CPU determination shall be ~~received by~~ filed with DMAS no later than 30 calendar days from the date of the CPU's, LDSS' or DMAS' notice of adverse action. Requests for review of a local department of social services, DMAS, or CPU determination shall be considered ~~received by~~ filed with DMAS ~~when on the date the request is date stamped postmarked, if mailed, or on the date the request is received, if delivered other than by mail, by the DMAS Appeals Division in Richmond, Virginia.~~

12VAC30-141-760. Pregnant women ineligible for FAMIS MOMS.

A. If a pregnant woman is:

1. Eligible for Medicaid, or would be eligible if she applied for Medicaid, she shall be ineligible for coverage under FAMIS MOMS. A pregnant woman found through the screening process to be potentially eligible for Medicaid

Regulations

but who fails to complete the Medicaid application process for any reason, cannot be enrolled in FAMIS MOMS;

2. A member of a family eligible for coverage under any Virginia state employee health insurance plan, she shall be ineligible for FAMIS MOMS;

3. An inmate of a public institution as defined in 42 CFR 435.1009, she shall be ineligible for FAMIS MOMS; or

4. An inpatient in an institution for mental disease (IMD) as defined in 42 CFR ~~435.1009~~ 435.1010, she shall be ineligible for FAMIS MOMS.

B. If a pregnant woman age 18 or older or, if under age 18, a parent or other authorized representative does not meet the requirements of assignment of rights to benefits or requirements of cooperation with the agency in identifying and providing information to assist the Commonwealth in pursuing any liable third party, the pregnant woman shall be ineligible for FAMIS MOMS.

C. If a pregnant woman age 18 or older, or if under age 18, a parent, adult relative caretaker, guardian, or legal custodian obtained benefits for a pregnant woman who would otherwise be ineligible by willfully misrepresenting material facts on the application or failing to report changes, the pregnant woman for whom the application is made shall be ineligible for FAMIS MOMS. The pregnant woman age 18 or older, or if under age 18, the parent, adult relative caretaker, guardian, or legal custodian who signed the application shall be liable for repayment of the cost of all benefits issued as the result of the misrepresentation.

12VAC30-150-40. Eligibility criteria.

An individual is eligible to receive Uninsured Medical Catastrophe Funds for the period of time that he:

1. Is a citizen of the United States or a legally resident alien;
2. Is a resident of the Commonwealth (eligibility will end if the recipient is no longer a resident);
3. Has a gross income equal to or less than 300% of the current federal nonfarm poverty income guidelines ~~as published in the United States Code of Federal Regulations, 66 CFR 10695 (Feb. 16, 2001), updated each July 1;~~
4. Has a life-threatening illness or injury;
5. Is uninsured for the needed treatment on the date of application and is not eligible for coverage for the needed treatment through private insurance or federal, state, or local government medical assistance programs. If an individual becomes insured for the needed treatment after the date of application, the UMCF will only pay for services not otherwise covered by the existing insurance.

VA.R. Doc. No. R09-1562; Filed February 12, 2009, 10:44 a.m.

TITLE 14. INSURANCE

STATE CORPORATION COMMISSION

Proposed Regulation

<p><u>REGISTRAR'S NOTICE:</u> 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.</p>

Title of Regulation: **14VAC5-43. Rules Governing Use of Senior-Specific Certifications and Professional Designations in Sale of Life or Accident and Sickness Insurance or Annuities (adding 14VAC5-43-10, 14VAC5-43-20, 14VAC5-43-30).**

Statutory Authority: §§ 12.1-13 and 38.2-223 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 April 15, 2009.

Agency Contact: Scott A. White, Associate General Counsel, State Corporation Commission, Office of General Counsel, 1300 East Main Street, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9671, FAX (804) 371-9240, or email scott.white@scc.virginia.gov.

Summary:

The proposed regulation is based on a National Association of Insurance Commissioners Model Regulation and sets forth standards to protect consumers from misleading and fraudulent marketing practices with respect to the use of senior-specific certifications and designations in the sale or purchase of, or advice made in connection with, a life or accident and sickness insurance or annuity product.

AT RICHMOND, FEBRUARY 24, 2009

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. INS-2008-00267

Ex Parte: In the matter of Adopting Rules Governing Use of Senior-Specific Certifications and Professional Designations

In the Sale of Life or Accident and Sickness Insurance or Annuities

ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia provides that the State Corporation Commission ("Commission") shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction, and § 38.2-223 of the Code of Virginia provides that the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of Title 38.2 of the Code of Virginia.

The rules and regulations issued by the Commission pursuant to § 38.2-223 of the Code of Virginia are set forth in Title 14 of the Administrative Code. The Bureau of Insurance ("Bureau") has submitted to the Commission proposed rules entitled "Rules Governing Use of Senior-Specific Certifications and Professional Designations in the Sale of Life or Accident and Sickness Insurance or Annuities," which are to be published in Chapter 43 of Title 14 of the Virginia Administrative Code as rules at 14 VAC 5-43-10 through 14 VAC 5-43-30.

The proposed new rules closely follow the National Association of Insurance Commissioners Model Regulation on the same subject. Unlike the model regulation, however, the proposed new rules apply to the sale of accident and sickness insurance. They also track a model regulation adopted by the North American Securities Administrators Association. The purpose of the rules is to establish standards for the use of senior-specific certifications and professional designations by insurance agents in the sale of life or accident and sickness insurance or annuities to all consumers regardless of age.

The Commission is of the opinion that the proposed rules submitted by the Bureau should be considered for adoption with an effective date of May 1, 2009.

IT IS THEREFORE ORDERED THAT:

(1) The proposed rules entitled "Rules Governing Use of Senior-Specific Certifications and Professional Designations in the Sale of Life or Accident and Sickness Insurance or Annuities," which are recommended to be set out at 14 VAC 5-43-10 through 14 VAC 5-43-30, be attached hereto and made a part hereof.

(2) All interested persons who desire to comment in support or in opposition to, or request a hearing to oppose the adoption of, the proposed new rules shall file such comments or hearing request on or before April 15, 2009, in writing with the Clerk of the Commission, Document Control Center, P.O. Box 2118, Richmond, Virginia 23218 and shall refer to Case No. INS-2008-00267.

(3) If no written request for a hearing on the proposed new rules is filed on or before April 15, 2009, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposed new rules, may adopt the proposed new rules as submitted by the Bureau.

(4) AN ATTESTED COPY hereof, together with a copy of the proposed new rules, shall be sent by the Clerk of the Commission to the Bureau in care of Deputy Commissioner Brian P. Gaudiose, who forthwith shall give further notice of the proposed adoption of the new rules by mailing a copy of this Order, together with the proposed new rules, to all insurers licensed by the Commission to sell accident and sickness insurance, life insurance, variable life insurance, annuities, or variable annuities in Virginia, as well as all interested parties.

(5) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, together with the proposed new rules, to be forwarded to the Virginia Registrar of the Regulations for appropriate publication in the Virginia Register of Regulations and shall make available this Order and the attached proposed new rules on the Commission's website, <http://www.scc.virginia.gov/case>.

(6) The Bureau shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of paragraph (4) above.

CHAPTER 43
RULES GOVERNING USE OF SENIOR-SPECIFIC
CERTIFICATIONS AND PROFESSIONAL
DESIGNATIONS IN SALE OF LIFE OR ACCIDENT AND
SICKNESS INSURANCE OR ANNUITIES

14VAC5-43-10. Applicability.

A. The purpose of this chapter is to set forth standards to protect consumers from misleading and fraudulent trade practices with respect to the use of senior-specific certifications and professional designations in the marketing, solicitation, sale or purchase of, or advice made in connection with, a life or accident and sickness insurance or an annuity product.

B. This chapter shall apply to any marketing, solicitation, sale or purchase of, or advice made in connection with, a life or accident and sickness insurance policy or annuity product by an insurance agent, whether issued on an individual or group basis. This includes, but is not limited to, fixed and variable annuities, long-term care insurance, including long-term partnership plans, Medicare Supplement, Medicare Part C, and Medicare Part D.

Regulations

14VAC5-43-20. Senior-specific certifications and professional designations.

A. No insurance agent shall use a senior-specific certification or professional designation that indicates or implies in such a way as to mislead a purchaser or prospective purchaser that the insurance agent has special certification or training in advertising or servicing seniors in connection with the marketing, solicitation, sale or purchase of a life or accident and sickness insurance policy or annuity product, or in the provision of advice as to the value of or the advisability of purchasing or selling a life or accident and sickness insurance policy or annuity product, either directly or indirectly through publications or writings, or by issuing or promulgating analyses or reports related to a life or accident and sickness insurance policy or annuity product.

B. The prohibited use of senior-specific certifications or professional designations includes, but is not limited to, the following:

1. Use of a certification or professional designation by an insurance agent who has not actually earned or is otherwise ineligible to use such certification or designation;

2. Use of a nonexistent or self-conferred certification or professional designation;

3. Use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training or experience that the insurance agent using the certification or designation does not have; and

4. Use of a certification or professional designation that was obtained from a certifying or designating organization that:

a. Is primarily engaged in the business of instruction in sales or marketing;

b. Does not have reasonable standards or procedures for assuring the competency of its certificants or designees;

c. Does not have reasonable standards or procedures for monitoring and disciplining its certificants or designees for improper or unethical conduct; or

d. Does not have reasonable continuing education requirements for its certificants or designees in order to maintain the certificate or designation.

C. There is a rebuttable presumption that a certifying or designating organization is not disqualified solely for purposes of subdivision B 4 of this section when the certification or designation issued from the organization does not primarily apply to sales or marketing and when the organization or the certification or designation in question has been accredited by: (i) the American National Standards Institute (ANSI); (ii) the National Commission for Certifying Agencies; or (iii) any organization that is on the United States

Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes."

D. In determining whether a combination of words or an acronym standing for a combination of words constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing seniors, factors to be considered shall include:

1. Use of one or more words such as "senior," "retirement," "elder," or like words combined with one or more words such as "certified," "registered," "chartered," "advisor," "specialist," "consultant," "planner," or like words, in the name of the certification or professional designation; and

2. The manner in which those words are combined.

E. For purposes of this section, a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency is not a certification or professional designation, unless it is used in a manner that would confuse or mislead a reasonable consumer, when the job title: (i) indicates seniority or standing within the organization; or (ii) specifies an individual's area of specialization within the organization.

For purposes of this subsection, financial services regulatory agency includes, but is not limited to, an agency that regulates insurers, insurance producers, broker-dealers, investment advisers, or investment companies as defined under the Investment Company Act of 1940 (15 USC § 80).

14VAC5-43-30. Severability.

If any section or a portion of this chapter, or the applicability thereof to any person or circumstance is held to be invalid by a court, the remainder of this chapter, or the applicability of such provisions to other persons shall not be affected thereby.

VA.R. Doc. No. R09-1799; Filed February 24, 2009, 2:14 p.m.



TITLE 16. LABOR AND EMPLOYMENT

SAFETY AND HEALTH CODES BOARD

Proposed Regulation

Title of Regulation: 16VAC25-60. Administrative Regulation for the Virginia Occupational Safety and Health Program (amending 16VAC25-60-240; adding 16VAC25-60-245).

Statutory Authority: § 40.1-22 of the Code of Virginia.

Public Hearing Information:

April 16, 2009 - 10 a.m. - State Corporation Commission, Tyler Building, 1300 East Main Street, Richmond, VA

Public Comments: Public comments may be submitted until 5 p.m. on May 15, 2009.

Agency Contact: John J. Crisanti, Planning and Evaluation Manager, Department of Labor and Industry, Powers-Taylor Building, 13 South Thirteenth Street, Richmond, VA 23219, telephone (804) 786-4300, FAX (804) 786-8418, TTY (804) 786-2376, or email john.crisanti@doli.virginia.gov.

Basis: The Safety and Health Codes Board is authorized by § 40.1-22 of the Code of Virginia to:

"... adopt, alter, amend, or repeal rules and regulations to further, protect and promote the safety and health of employees in places of employment over which it has jurisdiction and to effect compliance with the federal OSH Act of 1970...as may be necessary to carry out its functions established under this title.

In making such rules and regulations to protect the occupational safety and health of employees, the Board shall adopt the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence that no employee will suffer material impairment of health or functional capacity. However, such standards shall be at least as stringent as the standards promulgated by the federal OSH Act of 1970 (P.L.91-596). In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experiences gained under this and other health and safety laws."

Purpose: The purpose of the proposal is to provide VOSH personnel with procedures on how to exercise the commissioner's statutory authority to take and preserve testimony, examine witnesses and administer oaths, in instances where witnesses/employees/supervisors refuse requests for interviews or refuse to answer specific questions posed by a VOSH inspector.

Substance: The amendment establishes procedures for the commissioner or his appointed representatives under § 40.1-6 of the Code of Virginia to take and preserve testimony, examine witnesses and administer oaths under §§ 40.1-6 and 40.1-10. The proposed regulation specifies the wording of the oath to be administered and the manner in which it will be administered. It explains the manner in which the commissioner will appoint in writing department personnel as his representatives having the authority to administer such oaths and have the authority to examine witnesses in accordance with the procedures outlined in the regulation. It specifies that testimony preserved under the regulation would be recorded by a court reporter. It specifies the level of confidentiality that would attach to any testimony preserved under the statute. The amendment establishes a procedure for the commissioner or his authorized representatives to follow in the event that any employer refuses to make an employee

or supervisor available to provide testimony in accordance with § 40.1-6 of the Code of Virginia. The proposed regulation provides that an application for an inspection warrant under §§ 40.1-49.8 through 40.1-49.12 for VOSH investigations/inspections will be submitted to the local general district or circuit court with jurisdiction over the employer.

Lastly, it establishes a procedure for the commissioner or his authorized representatives to follow in the event that any person who has sworn to give testimony willfully refuses or fails to answer any legal and proper question in accordance with §§ 40.1-10 and 40.1-6, up to and including referring such refusal to the appropriate attorney for the Commonwealth for prosecution of the individual involved.

Issues: In fatal and nonfatal accident investigations particularly and more routine inspections as well, VOSH inspectors are required to interview one or more employees and supervisors. VOSH personnel sometimes encounter witnesses/employees/supervisors that refuse to talk with our inspectors or avoid answering specific questions for a variety of reasons. Although such refusals are rare, they can have a significant impact on the promptness, thoroughness and quality of the investigation.

It is a generally accepted investigative principle that the closer in time to an event that information about the event is obtained from witnesses, the better the chance is that the information will be accurate. Refusals can result in delays in obtaining witness statements immediately after the accident occurs, potentially resulting in altered memories and less accurate information concerning the cause of the accident.

In addition, the investigative process is often a very fluid one, where statements made by one witness can lead to additional questions being asked of other witnesses, or previously undisclosed documents being obtained from the employer. Such refusals not only result in the loss of the individuals' testimony, but can also result in the loss of other potential leads in the investigation. Early access to such information will result in higher quality investigations, and better and more accurate outcomes.

When such refusals do occur, the inability to gather crucial information from eyewitnesses and sometimes the testimony of the injured employee greatly hampers the VOSH program's ability to complete a full and fair investigation of the accident in a timely manner. Section 40.1-49.4 A 3 of the Code of Virginia requires VOSH to issue citations within six months following the occurrence of any alleged violation. The commissioner's statutory authority to take and preserve testimony, examine witnesses and administer oaths, if implemented through regulation, could be used to obtain necessary testimony very early in the investigative process, avoiding delays and potentially altered memories.

Regulations

Employers would have to make employees available for private interview as identified by the commissioner or his representative in accordance with procedures in the proposed regulation, implementing the statutory requirements in §§ 40.1-6 and 40.1-10 of the Code of Virginia.

The commissioner currently has the statutory authority to "question privately any such employer, owner, operator, agent or employee" during a VOSH inspection in accordance with § 40.1-49.8 of the Code of Virginia. As noted previously, VOSH investigation procedures provide for employee interviews on all inspections, and employers, as a regular course of business, make their employees available for such interviews without limitation. VOSH does not believe the proposed regulation will have a significant cost impact on employers for the following reasons:

1. VOSH estimates that it will seek to use the new procedures in the proposed regulation to require an employer to make an employee available for an interview on an average of five or fewer cases per year.
2. The average length of a VOSH interview is normally 15 minutes or less; however, in accident cases an interview may last up to 60-90 minutes. Significant down time for employers or employees is not anticipated.
3. Interview locations would normally be at the employer's worksite, an agreed to alternate site, or at the local VOSH Office. Significant travel costs are not anticipated.
4. VOSH will assume the cost of transcription services.

Employees would have to provide testimony, in accordance with any procedures implementing the statutory requirements in §§ 40.1-6 and 40.1-10. As noted previously, VOSH investigation procedures provide for employee interviews on all inspections, and employees and supervisory personnel regularly agree, without limitation, to be interviewed. VOSH does not believe the proposed regulation will have a significant cost impact on employees for the reasons listed above.

The department would have to designate and train personnel on the procedures implementing the statutory requirements in §§ 40.1-6 and 40.1-10. The average cost of transcriptions services ranges for a one hour interview is approximately \$200. The VOSH Program estimates that annual costs for interviews under the proposed regulations would be \$1,000 or less.

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

Summary of the Proposed Amendments to Regulation. The Safety and Health Codes Board (Board) proposes to amend its Administrative Rules for the Virginia Occupational Safety and Health (VOSH) Program to note the Department of Labor and Industry (DOLI) Commissioner's statutory power to take and preserve testimony, examine witnesses and administer

oaths, either personally or through appointed representatives. The Board also proposes to set procedures for investigations conducted by the Commissioner.

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

Estimated Economic Impact. Currently, DOLI does not have regulatory language that lays out the DOLI Commissioner's rights and responsibilities for collecting and preserving testimony related to VOSH hearings. Virginia statute does, however, list the powers and responsibilities of Commissioner, including the power to "take and preserve testimony, examine witnesses and administer oaths and file a written or printed list of relevant interrogatories and require full and complete answers to the same to be returned under oath within thirty days of the receipt (of interrogatories)." The Board proposes to amend these regulations so that the Commissioner's statutory power in this regard is laid out in administrative code as well as statute. This proposed amendment will not allow additional power for the Commissioner, or alter how investigations are conducted, so affected entities are very unlikely to incur any costs on account of this regulatory change. To the extent that any interested party has, in the past, had to search through two sets of rules (the Code of Virginia and the Virginia Administrative Code) to ascertain the role of the Commissioner in the hearing process, this amendment should provide the benefit of clarity.

The Board also proposes to add new regulatory language that will:

- Specify the wording of the oath the Commissioner (or his representative) can administer;
- Specify that the Commissioner may appoint, in writing, a representative and that such a written appointment must include the representative's name, the length of the appointment, how the appointment will be withdrawn (if necessary) and which of Commissioner's duties the representative will fulfill;
- Specify that any testimony given under oath must be recorded by a court reporter; and
- Reiterate the Commissioner's statutory authority to seek a court order to compel cooperation in VOSH investigations and list the statutory penalties that may accrue should such a court order be ignored.

All of the changes will tend to explain the investigative process for affected entities and interested parties without requiring anything additional from those entities. Accordingly, these changes will likely provide clarity without imposing additional costs.

Businesses and Entities Affected. DOLI estimates that the Commissioner has to assert his authority to take and preserve testimony in five or fewer cases annually.

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 Department of Labor and Industry has no additional comment in response to the economic impact analysis.

Summary:

The proposed amendment establishes procedures for the commissioner or his appointed representatives under § 40.1-6 of the Code of Virginia to take and preserve

testimony, examine witnesses and administer oaths under §§ 40.1-6 and 40.1-10.

16VAC25-60-240. Walkthrough.

Walkthrough by the commissioner for the inspection of any workplace includes the following privileges.

1. The commissioner shall be in charge of the inspection and, as part of an inspection, may question privately any employer, owner, operator, agent, or employee. The commissioner shall conduct the interviews of persons during the inspection or at other convenient times. The commissioner may take and preserve testimony, examine witnesses and administer oaths as provided for in 16VAC25-60-245.

2. As part of an inspection, the commissioner may take or obtain photographs, video recordings, audio recordings and samples of materials, and employ other reasonable investigative techniques as deemed appropriate. As used here, the term "employ other reasonable investigative techniques" includes, but is not limited to, the use of devices to measure employee exposures and the attachment of personal sampling equipment such as dosimeters, pumps, badges and other devices to employees in order to monitor their exposures.

3. Any employee representative selected to accompany the commissioner during the inspection of the workplace shall be an employee of the employer. Additional employer representatives and employee representatives may be permitted by the commissioner to accompany the inspection team where the commissioner determines such additional persons will aid in the inspection. A different employer representative or employee representative may accompany the commissioner during each phase of the inspection if, in the determination of the commissioner, this will aid in the conduct of the inspection.

4. The commissioner may limit the number of representatives when the inspection group would be of such size as to interfere with the inspection or create possible safety hazards, or when the representative does not represent an employer or employee present in the particular area under inspection.

5. In such cases as stated in subdivision 4 of this section, the commissioner must give each walkthrough representative the opportunity to advise of possible safety or health hazards and then proceed with the inspection without walkthrough representatives. Whenever the commissioner has limited the number of employee walkthrough representatives, a reasonable number of employees shall be consulted during the inspection concerning possible safety or health hazards.

6. Technical personnel such as safety engineers and industrial hygienists or other consultants to the

Regulations

commissioner or the employer may accompany the commissioner if the commissioner determines that their presence would aid in the conduct of the inspection and agreement is obtained from the employer or the commissioner obtains an order under § 40.1-6(8)(b) of the Code of Virginia. All such consultants shall be bound by the confidentiality requirements of § 40.1-51.4:1 of the Code of Virginia.

7. The commissioner is authorized to dismiss from the inspection party at any time any person or persons whose conduct interferes with the inspection.

16VAC25-60-245. Take and preserve testimony, examine witnesses and administer oaths.

A. Subdivision 4 of § 40.1-6 of the Code of Virginia authorizes the commissioner, in the discharge of his duties, to take and preserve testimony, examine witnesses and administer oaths. In accordance with subdivision 5 of § 40.1-6 of the Code of Virginia, the Commissioner of Labor and Industry may appoint such representatives as are necessary to carry out the functions outlined in subdivision 4 of § 40.1-6 of the Code of Virginia. Such appointments shall be made in writing; identify the individual being appointed, the length of appointment, the method of withdrawal of such appointment; and specify what duties are being prescribed.

B. The oath shall be administered by the commissioner's appointed representative to the witness as follows: "Do you swear or affirm to tell the truth."

C. Testimony given under oath shall be recorded by a court reporter.

D. Questioning of employers, owners, operators, agents or employees under oath shall be in private in accordance with subdivision 2 of § 40.1-49.8 of the Code of Virginia.

E. An employer's refusal to make an owner, operator, agent or employee available to the commissioner for examination under this section shall be considered a refusal to consent to the commissioner's inspection authority under § 40.1-49.8 of the Code of Virginia. Upon such refusal the commissioner may seek an administrative search warrant in accordance with the provisions contained in §§ 40.1-49.9 through 40.1-49.12 of the Code of Virginia, and obtain an order from the appropriate judge commanding the employer to make the subject owner, operator, agent or employee available for examination at a specified location by a date and time certain.

F. In accordance with § 40.1-10 of the Code of Virginia, if any person who may be sworn to give testimony shall willfully fail or refuse to answer any legal and proper question propounded to him concerning the subject of the examination under § 40.1-6 of the Code of Virginia, he shall be guilty of a misdemeanor. Such person, upon conviction thereof, shall be fined not exceeding \$100 nor less than \$25 or imprisoned in jail not exceeding 90 days or both. Any such

refusal on the part of any person to comply with this section may be referred by the Commissioner of Labor and Industry to the appropriate attorney for the Commonwealth for prosecution.

VA.R. Doc. No. R08-1046; Filed February 17, 2009, 2:42 p.m.

Proposed Regulation

Title of Regulation: 16VAC25-73. Tree Trimming Operations (adding 16VAC25-73-10, 16VAC25-73-20, 16VAC25-73-30, 16VAC25-73-40, 16VAC25-73-50, 16VAC25-73-60, 16VAC25-73-70, 16VAC25-73-80, 16VAC25-73-90, 16VAC25-73-100, 16VAC25-73-110, 16VAC25-73-120, 16VAC25-73-130, 16VAC25-73-140, 16VAC25-73-150).

Statutory Authority: § 40.1-22 of the Code of Virginia; the Federal OSH Act of 1970 (P.L. 91-596).

Public Hearing Information:

April 16, 2009 - 10 a.m. - State Corporation Commission, Tyler Building, 1300 East Main Street, Richmond, VA

Public Comments: Public comments may be submitted until May 15, 2009.

Agency Contact: Regina P. Cobb, Agency Management Analyst Senior, Department of Labor and Industry, Powers-Taylor Bldg., 13 S. 13th St., Richmond, VA 23219, telephone (804) 786-0610, FAX (804) 786-8418, TTY (804) 786-2376, or email regina.cobb@doli.virginia.gov.

Basis: The Safety and Health Codes Board is authorized by § 40.1-22 of the Code of Virginia to: "... adopt, alter, amend, or repeal rules and regulations to further, protect and promote the safety and health of employees in places of employment over which it has jurisdiction and to effect compliance with the federal OSH Act of 1970...as may be necessary to carry out its functions established under this title."

"In making such rules and regulations to protect the occupational safety and health of employees, the Board shall adopt the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence that no employee will suffer material impairment of health or functional capacity. However, such standards shall be at least as stringent as the standards promulgated by the Federal Occupational Safety and Health Act of 1970 (P.L. 91-596). In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experiences gained under this and other health and safety laws."

Purpose: The purpose of the proposed change is to reduce and eliminate employee injuries and fatalities by considering for adoption a comprehensive regulation to address nonlogging,

arborist/tree trimming and cutting operations on residential and commercial work sites.

Substance: The proposed regulation is based on the American National Standard's Institute (ANSI) Z133.1-2006, Safety Requirements for Arboricultural Operations (With Modifications), for Application to Tree Trimming Operations. The proposal addresses nonlogging, tree-trimming and cutting operations on residential and commercial work sites.

The proposed regulation contains the following components:

1. General safety requirements (traffic control around the jobsite, emergency procedures and readiness, personal protective equipment, fire protection);
2. Electrical hazards (working in proximity to electrical hazards, storm work and emergency conditions, line clearance);
3. Safe use of vehicles and mobile equipment used in arboriculture (aerial devices, brush chippers, sprayers and related equipment, stump cutters, vehicles, log loaders, knucklebooms, cranes and related hoists, specialized units, equipment-mounted winches);
4. Portable power hand tools (portable electric power tools, chain saws, powered pole tools and backpack power units);
5. Hand tools and ladders (cant hooks, cant dogs, peaveys and tongs, wedges, chisels, gouges, chopping tools, ladders);
6. Work procedures (ropes and arborist climbing equipment, pruning and trimming, cabling, rigging, tree removal, bush removal and chipping, limbing and bucking, pesticide application); and
7. Training.

The following issues have been addressed in recommended changes to the original text for ANSI Z133.1-2006:

1. Clarification is provided with regard to the following areas:
 - Line clearance tree-trimming (see 16VAC25-90-1910.269), and the Overhead High Voltage Line Safety Act, §§ 59.1-406 through 59.1-414 of the Code of Virginia;
 - Logging operations (see 16VAC25-90-1910.266); and
 - Lot-clearing activities involving felling of trees (see 16VAC25-90-1910.266).
2. The original text contained "should" or "may" language in some provisions, which are unenforceable from a compliance standpoint. Prescriptive language such as "shall" or "will" was added, as appropriate.
3. VOSH currently enforces Administrative Regulations Manual (16VAC25-60-120) requiring that employers

comply with manufacturer's specifications and limitations applicable to the operation, training, use, installation, inspection, testing, repair and maintenance of machinery, vehicles, tools, materials and equipment. ANSI Z133.1-2006 contains provisions that address the use and operation of machinery, vehicles, tools, etc., so any conflicts with 16VAC25-60-120 have been corrected (e.g., ANSI Z133.1-2006 contains provisions allowing the use of a crane to lift an individual in an arborist's saddle, but the ability to make such a lift would be contingent on the crane manufacturer's operating instructions).

4. The original text contains provisions addressing traffic safety and references the U.S. Department of Transportation (DOT) Manual on Uniform Traffic Control Devices (MUTCD) and applicable state and local laws and regulations. Although the MUTCD has been adopted by OSHA and VOSH, it has been found to contain a great deal of "should" or "may" language, which means those provisions are not enforceable in a compliance setting. In its stead, the Virginia Department of Transportation (VDOT) Manual on Uniform Traffic Control Devices has been substituted as it contains fewer "shoulds" and "mays."

5. The original text contains provisions addressing first aid and cardiopulmonary resuscitation (CPR). The board's current rulemaking, which proposes a change in the general industry requirements for first aid/CPR, is incorporated by reference.

6. The original text addresses the issue of exposure to noise hazards. Reference is made in the proposal to requirements contained in the VOSH Noise Standard, 16VAC25-90-1910.95.

7. The original text addresses the use of personal protective equipment (PPE). Reference is made in the proposal to requirements contained in the VOSH PPE Standards, 16VAC25-90-1910.132 through 16VAC25-90-1910-138.

8. The original text contains provisions addressing reverse signal operation of vehicles. The board's current rulemaking, which proposes a change in the general industry requirements for reverse signal operation of vehicles, is incorporated by reference.

9. The original text contains provisions addressing proper use of personal fall arrest systems while working from an aerial lift (permits use of either a full body harness and lanyard or a body belt and lanyard). In light of advances in PPE and current manufacturer's requirements for use of PPE in aerial lifts (full body harness and energy absorbing lanyard are normally required while working from aerial lifts), the option to allow an employee to use a body belt and lanyard in an aerial lift has been removed.

10. The original text addresses the use of cranes. In light of certain requirements contained in VOSH Standards 16VAC25-90-1910.180, Crawler, Locomotive and Truck

Regulations

Cranes, and 16VAC25-90-1910.184, Slings, certain additions have been made (e.g. the prohibition against employees working under a suspended load of a crane).

11. Certain arborist-related terms used in the original text were not defined in (e.g., "split-tail system" and "split tails"). Definitions have been added.

Issues: VOSH currently applies the Logging Standard, 16VAC25-90-1910.266, to arborists/tree trimming operations anytime a tree is "felled," or cut down. The Logging Standard does not apply to tree-trimming activities where the tree is not felled or cut down, so there is no specific regulation to address hazards associated with just trimming trees.

In instances where the Logging Standard does not apply, VOSH has had to use regulations of general application to address some hazards (e.g., 16VAC25-90-1910.95, Occupational Noise Exposure; 16VAC25-90-1910.132, Personal protective equipment; 16VAC25-90-1910.133, Eye and face protection; 16VAC25-90-1910.135, Head Protection; 16VAC25-90-1910.136, Foot protection; 16VAC25-90-1910.151, Medical services and first aid; 16VAC25-90-1910.67, Vehicle-mounted elevating and rotating work platforms; etc.), and the "general duty clause," § 40.1-51.1 A of the Code of Virginia, which provides that:

"It shall be the duty of every employer to furnish to each of his employees safe employment and a place of employment which is free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees...."

As is evident from the wording of the statute, it does not address in anyway the issue of hazards associated with tree-trimming operations. Instead VOSH procedures and court

case law would allow the VOSH Program to issue a general duty violation and base it on a national consensus standard addressing tree-trimming hazards (such as the ANSI Z133.1-2006 standard), or some other reliable industry standard the tree trimmer knew of or should have known about. While preferable to no enforcement tool at all, the general duty clause does not provide either the regulated community, employees or the VOSH Program with substantive and consistent procedures and guidance on how to reduce or eliminate tree-trimming hazards. Other problems with the use of the general duty clause include the inability to use it to enforce and consensus standard provisions that use "should" or "may" language, and the inability to cite other-than-serious violations.

The arborist industry has complained at times about application of the Logging Standard to their industry because they work in residential neighborhoods and commercial areas, not in a forest; and because they often use teams of workers in directional felling of trees (with the use of ropes) and "piecing out" of trees or cutting down trees in sections (loggers usually do not operate in teams or piece out trees). They consider their work and the hazards they face to be fundamentally different from hazards faced by loggers.

The need for the regulation is very evident when fatality statistics are reviewed. As the chart below demonstrates, since 1993 we have had 46 nonlogging, tree trimming/cutting/felling fatalities (7.0% of all fatalities since 1993), with 34 of those occurring since 2000 (9.0% of all fatalities since 2000). For an industry of the relatively small size of the tree care industry, this is a very high number of fatal accidents.

Virginia Occupational Safety and Health

Tree-Related Fatality Statistics (Non-Logging) as of September 28, 2007

Year	Chipper	Tree Trimming	Aerial Lift	Power Line	Struck-by Vehicle	Site Clearance	Total	Total VOSH Fatalities	Percentage of Tree Fatalities
2007		2					2	30	7%
2006		4		3	1		8	56	14%
2005		1			1		2	59	3%
2004		2		1		1	4	51	8%
2003		4		1			5	47	11%
2002		4					4	48	8%
2001		4			2		6	54	11%

2000		1		2			3	59	5%
subtotal		22	0	7	4	1	34	404	8%
1999		2					2	45	4%
1998				2			2	40	5%
1997	1	1	1			1	4	56	7%
1996		2					2	49	4%
1995							0	32	0%
1994						1		50	0%
1993				1			1	26	4%
subtotal	1	5	1	3	0	2	12	298	4%
Total	1	27	1	10	4	3	46	702	7%

SIC Codes: 0782, 0783, 0191, 1623, 1629 and 2411

NOTE: Logging fatalities are not included in the above table.

Employers should benefit from reductions in injuries and fatalities associated with current unsafe tree-trimming practices that would be addressed by any comprehensive regulation. On average over the last 15 years there are three fatal tree-trimming accidents that occur per year that could be prevented if the proposed regulation is fully complied with.

Employers with employees in the affected industry would have to familiarize themselves with the requirements of any new regulation and train employees on the requirements of the regulation. As the proposed regulation is based on a national consensus standard (ANSI Z-133.1-2006) originally developed by industry representatives and currently followed by many affected employers, the cost impact of the proposed regulation on affected employers should be significantly less than would be imposed by a completely new regulation.

Employees would benefit from increased safety protections provided by a comprehensive regulation to address hazards of arborist/tree trimming and cutting operations on residential and commercial work sites. Employees in the affected industry would have to be trained on the requirements of any new regulation.

Department personnel will have to be trained in the requirements of any new regulation. The department plans to develop a standardized training program for employers that can be placed on the department's website for easy access by employers. No significant financial impact is anticipated for the department.

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

Summary of the Proposed Amendments to Regulation. The Safety and Health Codes Board (Board) proposes to promulgate new safety regulations for employers who are in

the business of arboriculture (the care, trimming or removal of trees).

Result of Analysis. As currently written, costs associated with these regulations would likely outweigh benefits. The Department of Labor and Industry (DOLI), however, has agreed to make changes to these regulations that would significantly lower associated costs. Once these changes are made, the benefits of promulgating these regulations will likely outweigh the costs.

Estimated Economic Impact. Currently, arboriculture employers must follow the safety requirements contained in the federal Occupational Safety and Health Administration's (OSHA's) regulations for logging operations when they are cutting down whole trees. Arboriculture activities that do not involve cutting down whole trees are currently governed by several of DOLI's general regulations (regulations that cover occupational noise, regulations that mandate personal protective equipment, regulations governing medical services and first aid, etc.).

The board proposes to promulgate new regulations that are aimed at specifically reducing the risk of engaging in arboriculture activities. These regulations vary from the cumulative regulations that now govern this industry in several substantive ways that will likely reduce the costs borne by regulated employers and/or decrease safety risks for arboriculture employees. OSHA logging regulations require all employees on logging sites to be trained in first aid and CPR; these proposed regulations incorporate by reference other proposed VOSH regulations that will only require work sites to have one employee who is trained in first aid and CPR present at all (working) times. Meeting the requirements of this proposed regulatory provision will likely cost less for all arboriculture employers who have more than one employee. Training in first aid/CPR is available through the Red Cross

Regulations

for a fee of \$65 (certification is good for one year before renewal is required). Using this figure, employers will save \$65 per year for each employee that will not need to be first aid/CPR certified. Employers may also save additional moneys if they have been paying employee wages for time spent in first aid/CPR training. Employees who were not paid to attend required first aid/CPR classes, and who will not need to attend these classes under these proposed regulations, will save costs associated with lost wages or non-work hours that would have had to be spent in training. Having one first aid/CPR trained employee on a worksite at any given time will likely be adequate to ensure timely first aid for anyone who might become injured.

OSHA regulations also require loggers to wear cut resistant (steel-toed) boots even in situations where trees are cut and removed starting at the top and working to the bottom. This type of tree removal requires loggers (arborists) to be up in the trees where heavy, nonflexible footwear might make work more, rather than less, dangerous; these proposed regulations will require arborists to wear "clothing and footwear appropriate to the known job hazards." This will allow arborists flexibility to wear footwear other than steel-toed boots when such footwear is more appropriate. This will likely decrease the risk inherent in climbing, and safely remaining in, trees. This, in turn, may reduce the costs associated with accidental falls that accrue to both employers and affected employees.

Both current regulations and these proposed regulation require employers to train their employees on the requirements of regulation as well as any tasks that they will be expected to safely perform. Although this proposed requirement does not differ in any significant way from that contained in current regulations, employers will likely incur extra costs for training current employee about these new regulations. For any employees hired after these regulations are promulgated, training on the new regulations will replace training on the old so no extra costs will be incurred. To the extent that imparting information about one set of regulations is less time consuming than imparting information about several, employers may see a reduction in training costs.

DOLI estimates that it will take approximately 10 hours to train each current arboriculture employee on the requirements of these proposed regulations. DOLI also reports that the median hourly wage for these employees is \$17. Using these figures, employers will incur a one time training cost of \$170 for each of their current employees. This cost will only be incurred for employees who are unfamiliar with the American National Standard's Institute (ANSI) guidelines on which these proposed regulations are based.

These proposed regulations currently contains language that, if left unedited, is likely to significantly increase the costs of regulatory compliance for both employers and employees and might act as a significant barrier to entry of this trade.

Current language requires that certain tasks only be performed by "qualified arborists." Current language also states that a qualified arborist is "an individual who, by possession of a recognized degree, certification, or professional standing, or through related training and on-the-job experience" is competent to perform various arboriculture tasks safely. Because it is likely much easier for an individual to prove he is "qualified" by producing paperwork to prove degree or certification status than it would be to prove qualifications through "training and on-the-job experience" with no credentialing backup, this language could fairly be read as discouraging employers from hiring even highly qualified non-credentialed individuals.

A representative of the Tree Care Industry Association (TCIA) reports that the application fee to become a certified arborist is \$225. He reports that applicants will also incur "additional out-of-pocket expense to register for a preparation session and take the certification exam" as well as "expenses attendant with travel as well as lost revenue associated with time lost at work." Certificate holders are required to complete 30 continuing education units every three years to keep their certificate active. The cost of a four year degree in horticulture (using 2008-2009 tuition and fees for all four years) is \$29,600. DOLI has agreed to remove the language that references "possession of a recognized degree, certification, or professional status" from the proposed regulations; when this happens these certification and education costs will no longer be a concern.

DOLI has also agreed to amend provisions in these proposed regulations that contain pesticide application requirements to clarify that they are intended to only apply to tree care operations and are not intended to be more widely applicable to landscaping operations. If these regulations were more widely applicable, costs accrued state-wide on account of their promulgation would obviously be far greater.

Finally, DOLI will be amending language that defines job briefings to clarify that these briefings are meant to provide information before work begins, about what tasks, equipment, etc will be required to compete a job.

Businesses and Entities Affected. These proposed regulations will affect all tree care businesses that operate in the Commonwealth. DOLI estimates that there are between 570 and 840 tree care businesses in the Commonwealth and that these businesses employ between 1,700 and 3,400 people.

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

Projected Impact on Employment. Once revised, these proposed regulations will likely have a slight positive impact on employment in the Commonwealth. If the costs associated with complying with regulations decrease slightly for tree care businesses, and they pass those savings on to their customers, more people will likely choose to pay for tree care

or removal (rather than doing this work themselves). An increased workload for these businesses would likely necessitate the hiring of additional employees.

Effects on the Use and Value of Private Property. Once revised, these proposed regulations will likely have a slight positive impact on the value of private property in the Commonwealth. If the costs associated with complying with regulations decrease slightly for tree care businesses, and they pass those savings on to their customers, more people will likely choose to pay for tree care or removal (rather than doing this work themselves). This will likely increase both revenue and profits for these businesses thus increasing their value.

Small Businesses: Costs and Other Effects. All affected businesses likely meet the statutory definition of small businesses. Because of this, all economic costs and benefits discussed above will be experienced by small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. There are likely no other changes that the Board could make to these proposed regulations that would further minimize any adverse impact on affected small businesses.

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

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has 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 Department of Labor and Industry agrees with the economic impact analysis, and to make the recommended changes to the proposed regulatory language in the following areas:

1. Remove language that references "possession of a recognized degree, certification or professional status" from the proposed definition of a "qualified arborist."
2. Amend language concerning pesticide application requirements to clarify that the regulation is only intended to apply to tree care operations and not intended to be more widely applicable to landscaping operations.
3. Amend language that defines job briefings to clarify that the briefings are meant to provide information before work begins and about what tasks, equipment, etc., will be required to complete a job.

Summary:

The proposed regulations applicable to tree-trimming operations are based on the American National Standard's Institute (ANSI) Z133.1-2006, Safety Requirements for Arboricultural Operations (With Modifications), for Application to Tree Trimming Operations. The proposal addresses nonlogging, tree-trimming and cutting operations on residential and commercial work sites. The proposed regulation based on ANSI-Z133.1-2006 contains components such as general safety requirements (traffic control around the jobsite, emergency procedures and readiness, personal protective equipment, fire protection); electrical hazards; safe use of vehicles and mobile equipment used in arboriculture portable power hand tools; hand tools and ladders; work procedures (ropes and arborist climbing equipment, pruning and trimming, cabling, rigging, tree removal, bush removal and chipping, limbing and bucking, pesticide application); and training.

CHAPTER 73

REGULATION APPLICABLE TO TREE TRIMMING OPERATIONS

16VAC25-73-10. Scope, purpose and applicability.

A. This regulation contains arboriculture safety requirements for pruning, repairing, maintaining, and removing trees; cutting brush; and for using equipment in such operations. (Note: Terms specific to the safe practice of arboriculture are defined in 16VAC25-73-20.)

B. The purpose of this regulation is to provide safety criteria for arborists and other workers engaged in arboricultural operations.

C. This regulation is intended to apply to all employers engaged in the business, trade, or performance of arboriculture, including employers engaged in tree pruning, repairing, maintaining; removing trees; cutting brush; or

Regulations

performing pest or soil management who hire one or more persons to perform such work. This regulation may require situational modifications in response to personnel emergencies and is not intended to limit the options available to emergency responders. This regulation does not apply to logging operations covered by 16VAC25-90-1910.266. This regulation does not apply to tree removal activities where the primary objective is land clearing in preparation for construction, real estate development, or other related activities, unless directly supervised by a qualified arborist. Such activities are covered by 16VAC25-90-1910.266.

16VAC25-73-20. Definitions.

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

"Aerial device" means any one of the following types of vehicle-mounted apparatus used to elevate personnel to jobsites above ground:

1. Extensible boom platform.
2. Aerial ladder.
3. Articulating boom platform.
4. Vertical tower.
5. A combination of any of the above, as defined in ANSI A92.2.

"Anti-two block device" means a device consisting of a hollow weight suspended from the boom nose or jib of log loaders, cranes, or related hoists by a chain. The weight hangs with hoist cable running through its center. An electromechanical switch mounted on the boom nose or jib is connected to the chain via a retractable steel cable. When contact is made with the suspended weight by the hook block or any other lifting device nearing the nose or jib, the anti-two block switch circuit is deactivated, and hoist up or telescope out is prevented.

"Apex" means the point at which two saw cuts meet to form a notch.

"Applicator" means a qualified person engaged in the application of materials such as, but not limited to, pesticides, growth regulators, and fertilizers.

"Approved" means acceptable to the federal, state, or local jurisdiction having enforcement authority.

"Arboriculture" means the art, science, technology, and business of utility, commercial, and municipal tree care.

"Arborist" means an individual engaged in the profession of arboriculture.

"Arborist climbing line" means a line designated to support the climber while aloft in a tree or attached to a crane,

constructed according to specifications outlined in 16VAC25-73-90 A 8.

"Arborist saddle" means an arrangement of straps, fittings, and buckles or other elements in the form of a waist belt with a low attachment element or elements and connecting support encircling the legs, suitably arranged to support the body in a sitting position.

"Ascender" means a mechanical device used for climbing rope.

"Authorized" means designated by the entity that has care, custody, and control of the unit.

"Back cut" means the cut made in a tree limb or trunk on the side opposite the intended direction of fall.

"Belay" means roping technique, managed by the ground person, to safeguard the arborist while climbing.

"Brush hog" means a heavy-duty rotary mower, normally pulled by a farm-type tractor, used for cutting and mulching brush.

"Bucket" means a basket-type platform approximately four feet (1.22 m) high, which is attached to the end of the upper boom on an aerial device, providing a work platform for working aloft.

"Bucking" means the act of sawing trees, limbs, or both, into smaller sections once they are on the ground.

"Cant hook" means a long-handled lever fixed with a blunt metal end to handle logs; includes a swinging, metal hook opposing the blunt end to create leverage.

"Carabiner" means a connector generally composed of a trapezoidal or oval-shaped body with a closed gate or similar arrangement that may be opened to receive an object and, when released, automatically closes to retain the object.

"Chopping tool" means a wooden, fiberglass, or steel-handled tool with a sharp, single- or double-edged steel head or blade mounted to it that is used to cut or split wood (for example, an ax or machete).

"Climbing/friction hitch" means a hitch used for securing a tree climber to the climbing line, permitting controlled ascent, descent, and work positioning. Examples of climbing hitches include, but are not limited to, the tautline hitch, Blake's hitch, and the Prusik hitch/knot.

"Conventional notch" means a directional felling cut into the side of a tree, facing the intended direction of fall and consisting of a horizontal face cut and an angle cut above it, creating a notch of approximately 45 degrees.

"Crew leader" means the qualified arborist designated as the individual in charge of a specific job or group of workers.

"Crotch" (n.) means branch union; the angle formed by two branches in the tree. "Crotch" (v.) means to place a line through a branch union.

"Damaged" means a defect, impairment or injury to machinery, vehicle, tool, material or equipment that would meet the manufacturer's criteria for removal from service, or in the absence of such criteria, would materially effect the safe operation or safe use of the item during tree trimming operations.

"DBH" means acronym for diameter at breast height; diameter of a tree measured at 4.5 feet (1.3 m) above ground.

"Deadman control" means a safety switch, electrical or mechanical, that deactivates the equipment's function when released by the operator.

"Dielectric" means nonconductive of electrical current.

"Direct contact" means a direct contact is made when any part of the body touches or contacts an energized electrical conductor.

"Direct supervision" means direct supervision occurs when a qualified arborist or a qualified arborist supervisor is physically present on the jobsite.

"Drop-starting" means the act of starting a chain saw by pushing the saw away from the body with one hand while simultaneously pulling on the starter cord handle with the other.

"Electrical conductor" means any overhead or underground electrical device capable of carrying an electric current, including communications wires and cables, power lines, and other such fixtures or apparatus.

"Electrical hazard" means an object or situation that poses risk of injury or death due to direct or indirect contact with an electrical conductor. Where unguarded, energized electrical conductors are present, specific minimum approach distances based on the arborist's or worker's level of training, as set forth in this regulation, shall be followed.

"Electrical system owner/operator" means an organization that operates or controls the transmission and/or distribution of electric power through electrical conductors.

"Electric supply" means conductors used to transmit electric energy and their necessary supporting or containing structures. Signal lines of more than 400 volts are always supply lines, and those of less than 400 volts are considered as supply lines if so run and operated throughout.

"Energy (shock) absorber" means a component of a climbing system whose primary function is to dissipate energy and limit deceleration forces that the system imposes on the body during fall arrest.

"Fall-arrest lanyard" means a rope or strap designed to be used with a full-body harness to limit maximum arresting force on a climber to 1,800 pounds (8 kN) in a fall.

"False crotch" means a device installed in a tree to set ropes during climbing or rigging because there is not a suitable natural crotch available, or to protect an available crotch, and/or to reduce wear on ropes.

"False crotch for rigging" means a pulley, block, sling, lashing, or metal ring affixed to a tree's leader or limb, through which a load line is passed, to lower or raise limbs or equipment.

"False crotch redirect" means consists of the use of a false crotch in conjunction with either a natural crotch or a second false crotch in instances where the arborist is working away from the trunk of the tree and could otherwise be subject to an uncontrolled pendulum swing in the event of a slip.

"Footlock" means to climb up a suspended rope by pulling with the hands and arms and pushing upward with the feet. The loose end of the rope is wrapped under the middle and over the top of one foot and is locked in place with pressure from the other foot.

"Friction point" means the point at which the rope surface of the climber's hitch rubs against the climbing line.

"Good working condition" means a term describing a piece of equipment that has no mechanical defects, has all guards in place, and is operated as intended by the manufacturer.

"Ground fault" means any undesirable current path from a current-carrying conductor to ground.

"Guarded" means covered, fenced, enclosed, or otherwise protected by suitable covers or casings, barrier rails or screens, mats, or platforms that have been designed by the electrical system owner/operator to minimize the possibility of dangerous approach or accidental contact by persons or objects under normal conditions. Also see unguarded.

"Handline" means a length of rope designated as a tool to leverage, lift, and hold tools, equipment, wood, or other objects; the proper rope strength is specified for each particular use.

"High-pressure excavation" means the removal or displacement of soil using pressurized air or water.

"Humboldt notch" means a directional felling cut into the side of a tree, facing the intended direction of fall and consisting of a horizontal face cut and an angled cut below it, creating a notch of approximately 45 degrees. A Humboldt cut is usually reserved for larger trees on steep slopes.

"Indirect contact" means indirect contact is made when any part of the body touches any conductive object, including tools, tree branches, trucks, equipment, or other objects, that is in contact with an energized electrical conductor. Such

Regulations

contact can also be made as the result of communication wires and cables, fences, or guy wires being accidentally energized.

"Job briefing" means the communication of at least the following subjects for arboricultural operations: hazards associated with the job, work procedures involved, special precautions, electrical hazards, job assignments, and personal protective equipment.

"Kilovolt, kV (Tables 1 and 2)" means the term for 1,000 volts, abbreviated as kV. Higher voltages are generally given as kilovolts. Example: 12.5 kV (12,500 volts) and 19.9 kV (19,900 volts).

"Kilonewton, kN" means the measurement of force, abbreviated as kN. Equal to 224.8 pounds. Example: 24.02 kilonewtons equals 5,400 pounds.

"Ladder" means a two-, three-, or four-legged structure that utilizes vertical side legs with cross sections uniformly placed between the side legs to be used as steps; available in wood, aluminum, or fiberglass; used to ascend to and descend from a height. Also see tripod/orchard ladder.

"Lanyard" means a component of a climbing system consisting of a flexible line of rope, wire rope, or a strap that generally has a connector at each end for connecting the body support to a fall arrester, energy absorber, anchorage connector, or anchorage.

"Leg protection" means personal protective equipment constructed with cut-resistant material, such as ballistic nylon, intended to reduce the risk of injury to the legs during chain-saw operations.

"Line clearance" means the pruning, trimming, repairing, maintaining, removing, treating, or clearing of trees or the cutting of brush (vegetation management) that is within 10 feet (3.05 m) of electric supply lines and equipment; and vegetation management work performed by qualified line-clearance arborists or qualified line-clearance arborist trainees for the construction or maintenance of electric supply lines and/or the electric utility right-of-way corridor. Line clearance activities are performed by the employees of the owner or operator of the electrical or communication systems, or independent contractors engaged on behalf of the owner or operator of the system to perform the work.

"Load binder" means a synthetic strap with a ratchet mechanism or a properly secured rope or chain to encircle a tree trunk or limb as a means of preventing splitting.

"Manual land clearing" means the removal of trees, shrubs, and vines using chain saws or other cutting tools where there are no structures or objects that need to be avoided and pull lines are not used to pull or drop a tree and/or trunk to the ground.

"Maul" means a heavy-handled hammer, sometimes made with a single edge; used to drive wedges or split wood.

"Minimum approach distance" means safe working distances from overhead electrical conductors as defined in Tables 1 and 2 of 16VAC25-73-50.

"Open-face notch" means a directional felling cut into the side of the tree, facing the intended direction of fall and consisting of two cuts creating a notch greater than 70 degrees.

"Outrigger" means built-in device used to stabilize cranes, aerial devices, and similar equipment.

"Phase" means any current-carrying conductor that has an electric potential other than ground (ground is assumed to be 0 volts).

"Phase to ground (Tables 1 and 2)" means the electric potential (voltage) between a conductor and ground.

"Phase to phase" means the electrical potential (voltage) between two conductors, each having its own electric potential relative to ground.

"Primary conductor" means any conductor, including aluminum, copper, or aluminum conductor steel reinforced (ACSR), that is bare, covered, or insulated, with a nominal voltage above 750 volts.

"Proximity" means an area within 10 feet (3.05 m) of energized overhead electrical conductors rated 50 kV phase to phase or less. For overhead electrical conductors rated more than 50 kV phase to phase, the distance is increased 4/10 inch (10 mm) for each additional kV.

"Prusik knot" means a sliding friction knot, as in a work-positioning lanyard.

"Prusik loop" means an endless loop of rope used to fashion a Prusik knot. The endless loop may be spliced or knotted with, at minimum, a double fisherman's knot.

"Qualified arborist" means an individual who, by possession of a recognized degree, certification, or professional standing, or through related training and on-the-job experience, is familiar with the equipment and hazards involved in arboricultural operations and who has demonstrated ability in the performance of the special techniques involved.

"Qualified arborist trainee" means an individual undergoing on-the-job training under the direct supervision of a qualified arborist. In the course of such training, the trainee becomes familiar with the hazards and equipment involved in arboricultural operations and demonstrates ability in the performance of the special techniques involved.

"Qualified crane operator" means an individual who, by reason of a recognized credential or professional standing, or through related training and on-the-job experience, is familiar with the equipment and hazards involved with arboriculture

crane operations and who has demonstrated competence in operating a crane and performing the special techniques involved.

"Qualified line-clearance arborist" means an individual who, through related training and on-the-job experience, is familiar with the equipment and hazards in line clearance and has demonstrated the ability to perform the special techniques involved. This individual may or may not currently be employed by a line-clearance contractor.

"Qualified line-clearance arborist trainee" means an individual undergoing line-clearance training under the direct supervision of a qualified line-clearance arborist. In the course of such training, the trainee becomes familiar with the equipment and hazards in line clearance and demonstrates ability in the performance of the special techniques involved.

"Qualified personnel" means an individual who, by reason of training and experience, has demonstrated the ability to safely perform assigned duties and, where required, is properly licensed in accordance with federal, state, or local laws and regulations.

"Quick-acting connector" means hose connectors in a hydraulic or pneumatic system designed to allow rapid connection or disconnection without leakage when the system is pressurized.

"Saddle, arborist": see arborist saddle.

"Secured (object)" means made firm or tight; fastened. Example: The load is secured to the truck.

"Secured (person)" means when an arborist is safeguarded from unintended movement by utilizing a climbing system that is attached to the arborist and connected to a tree or other stable support. Examples of being secured include, but are not limited to, (i) being tied in, (ii) using a work-positioning lanyard, (iii) being on belay, and (iv) ascending the arborist climbing line using the footlock technique while utilizing a Prusik loop or ascenders.

"Shall," as used in this regulation, denotes a mandatory requirement.

"Should," as used in this regulation, denotes an advisory recommendation.

"Snap hook" means commonly called a self-locking or double-locking rope snap. The locking type (required by this regulation for climbing) has a self-closing, self-locking gate that remains closed and locked until intentionally opened by the user for connection or disconnection. A captive eye is an integral part of a snap hook but is independent of the hook and gate portion.

"Split tail system and split tail" refers to a system in which the climbing line is tied to the saddle, preferably indirectly with an ANSI-compliant carabiner or locking rope snap, without leaving a tail beyond the termination. The

climbing/friction hitch is then tied onto the climbing line with a separate short section of climbing line called a split tail. The split tail is separately connected to a designated anchor point on the saddle.

"Spotter" means a person within voice and visual communication of the driver and located in a position to view the area in which the vehicle (unit) is backing to help ensure that the backing operation is, and will remain, safe.

"Step potential" means the voltage between the feet of a person standing near an energized grounded object. It is equal to the difference in voltage, given by the voltage distribution curve, between two points at different distances from the electrode. A person could be at risk of injury during a fault simply by standing near the grounding point.

"Tackle blocks and pulleys" means equipment used in most tree situations to take a strain rather than move a load. Critical components of the system are the appropriate ropes, blocks, and, especially, the lock or connecting link.

"Termination knot" means any knot suitable for rope termination, including, but not limited to, double fisherman's loop (scaffold hitch), anchor hitch, and buntline hitch.

"Tied in" means the term that describes an arborist whose climbing line has been run through a natural or false crotch attached to an arborist's saddle and completed with a climbing hitch or mechanical device, permitting controlled movement and work positioning.

"Tool lanyard" means short line or strap used to secure a tool while working aloft.

"Tripod/orchard ladder" means a three-legged ladder that utilizes the third leg to form a tripod to stabilize itself among orchard trees and/or shrubs. It is recommended for use on turf for better stability and to avoid slippage of the legs. Not recommended for use on hard surfaces.

"Unguarded" means not guarded from approach or contact with electrical conductors.

"Volt" means a unit of electric potential difference between two points. Lower-voltage systems are generally expressed in terms of volts, for example, 120 volts or 240 volts.

"Wedge" means a piece of material with two sides meeting at an angle; used to raise or split objects by applying a driving force, such as with a hammer.

"Wheel chock" means wedge-shaped block manufactured or employer approved to prevent unintentional movement of vehicle. Wheel chocks are placed in front of or in back of a vehicle's tires or tracks. If necessary, the chocks can be placed both in front and in back of the tires or tracks.

"Worker" means an individual involved in an arboricultural operation, such as ground operations, equipment operations, and removal operations.

Regulations

"Working load" means limiting load values derived from the minimum breaking strength of a cord or rope divided by the design factor. For example, given a minimum breaking strength of 10,000 pounds (44.48 kN) and a design factor of 10: $10,000/10 = 1,000$ (working load, in pounds) or given a minimum breaking strength of 10,000 pounds (44.48 kN) and a design factor of 5: $10,000/5 = 2,000$ (working load, in pounds).

"Working-load limit" means the working load that must not be exceeded for a particular application as established by a regulatory or standards-setting agency.

"Workline" means rope used for lifting, lowering, or guiding limbs or equipment, or both, into or out of the tree.

"Work-positioning system" means an arborist climbing system designed to be used under tension to support the arborist or other worker on an elevated vertical surface, such as a tree limb, and allow him to work with both hands free.

16VAC25-73-30. Orientation and training.

A. Prior to permitting an employee to engage in any arboricultural activity covered by this regulation, the employer shall ensure that each employee receives orientation and training on the requirements of this regulation.

B. Refresher training on applicable provisions of this regulation shall be provided by the employer for any employee who has:

1. Been observed to violate the requirements of this regulation;
2. Been involved in an accident or near miss accident; or
3. Received an evaluation that reveals the employee is not working in a safe manner in accordance with the requirements of this regulation.

16VAC25-73-40. General safety requirements.

A. General.

1. Machinery, vehicles, tools, materials and equipment shall conform to the requirements of this regulation. 16VAC25-60-120 is hereby incorporated by reference.
2. Employers shall instruct their employees in the proper use, inspection, and maintenance of tools and equipment, including ropes and lines, and shall require that appropriate working practices be followed.
3. A qualified arborist shall determine whether direct supervision is needed on a jobsite.
4. A job briefing shall be performed by the qualified arborist in charge before the start of each job. The briefing shall be communicated to all affected workers. An employee working alone need not conduct a job briefing. However, the employer shall ensure that the tasks are being performed as if a briefing were required.

B. Traffic control around the jobsite.

1. High-visibility safety apparel and headgear, when required, shall conform to the Virginia Department of Transportation's (VDOT) Virginia Work Area Protection Manual.
2. Effective means for controlling pedestrian and vehicular traffic shall be instituted on every jobsite where necessary, in accordance with the VDOT's Virginia Work Area Protection Manual and applicable state and local laws and regulations.
3. Temporary traffic-control devices used in arboricultural operations shall conform to the VDOT Virginia Work Area Protection Manual and applicable federal and state regulations.

C. Emergency procedures and readiness.

1. Emergency phone numbers shall be available when and where arboricultural operations are being carried out. Arborists and other workers shall be instructed as to the specific location of such information.
2. A first-aid kit, adequately stocked and maintained in accordance with 16VAC25-95, shall be provided by the employer, when and where arboricultural operations are being carried out. Arborists and other workers shall be instructed in its use and specific location.
3. Instruction shall be provided in the identification, preventive measures, and first-aid treatment of common poisonous plants (poison ivy, poison oak, and poison sumac), stinging and biting insects, and other pests indigenous to the area in which work is to be performed.
4. Employees who may be faced with a rescue decision shall receive training in emergency response and rescue procedures appropriate and applicable to the work to be performed, as well as training to recognize the hazards inherent in rescue efforts (see 16VAC25-73-140, Appendix E).
5. Cardiopulmonary resuscitation (CPR) and first-aid training shall be provided in accordance with 16VAC25-95.

D. Personal protective equipment (PPE).

1. Personal protective equipment (PPE), as outlined in this section, shall be required when there is a reasonable probability of injury or illness that can be prevented by such protection, and when required by 16VAC25-90-1910.132. Training shall be provided in the use, care, maintenance, fit, and life of personal protective equipment.
2. Workers engaged in arboricultural operations shall wear head protection (helmets) that conforms to ANSI Z89.1, and in accordance with 16VAC25-90-1910.135. Class E helmets shall be worn when working in proximity to

electrical conductors, in accordance with ANSI Z89.1. Workers shall not place reliance on the dielectric capabilities of such helmets.

3. Face protection shall comply with 16VAC25-90-1910.133.

4. Clothing and footwear appropriate to the known job hazards shall be approved by the employer and worn by the employee in accordance with 16VAC25-90-1910.132.

5. Respiratory protection shall comply with 16VAC25-90-134.

6. Hearing protection provided by the employer shall be worn when it is not practical to decrease or isolate noise levels that exceed acceptable standards and in accordance with 16VAC25-90-1910.95.

7. Eye protection shall comply with 16VAC25-90-1910.133 and shall be worn when engaged in arboricultural operations.

8. Chain-saw resistant leg protection shall be worn while operating a chain saw during ground operations.

E. Fire protection.

1. Equipment shall be refueled only after the engine has stopped. Spilled fuel shall be removed from equipment before restarting.

2. Equipment shall not be operated within 10 feet (3.05 m) of refueling operations or areas in which refueling has recently taken place.

3. Flammable liquids shall be stored, handled, and dispensed from approved containers.

4. Smoking shall be prohibited when handling or working around flammable liquids.

5. Clothing contaminated by flammable liquid shall be changed as soon as possible.

6. Open flame and other sources of ignition shall be avoided.

16VAC25-73-50. Electrical hazards.

A. General.

1. All overhead and underground electrical conductors and all communication wires and cables shall be considered energized with potentially fatal voltages.

2. The employer shall certify in writing that each employee has been trained to recognize and is appropriately qualified to work within proximity to electrical hazards that are applicable to the employee's assignment.

3. Arborists and other workers shall be instructed that:

a. Electrical shock will occur when a person, by either direct contact or indirect contact with an energized

electrical conductor, energized tree limb, tool, equipment, or other object, provides a path for the flow of electricity to a grounded object or to the ground itself. Simultaneous contact with two energized conductors phase to phase will also cause electric shock that may result in serious or fatal injury.

b. Electrical shock may occur as a result of ground fault when a person stands near a grounded object (for example, if an uninsulated aerial device comes into contact with a conductor with outriggers down).

c. In the event of a downed energized electrical conductor or energized grounded object, there exists the hazard of step potential.

4. If the minimum approach distance for a qualified line-clearance arborist (shown in Table 1 of this section) or for a qualified arborist (shown in Table 2 of this section) cannot be maintained during arboricultural operations, the electrical system owner/operator shall be advised and an electrical hazard abatement plan implemented before any work is performed in proximity to energized electrical conductors.

B. Working in proximity to electrical hazards.

1. The items contained in subsection A of this section shall always be included in the review of this section. Sections 59.1-406 through 59.1-414 of the Code of Virginia, Overhead High Voltage Line Safety Act (Act), are hereby incorporated by reference, and apply as specified in the Act anytime the voltage of overhead high voltage lines, as defined in the Act, exceeds 600 volts. The Act does not apply anytime line clearance activities are performed by the employees of the owner or operator of the electrical or communication systems, or independent contractors engaged on behalf of the owner or operator of the system to perform the work.

2. An inspection shall be made by a qualified arborist to determine whether an electrical hazard exists before climbing, otherwise entering, or performing work in or on a tree.

3. Only qualified line-clearance arborists or qualified line-clearance arborist trainees shall be assigned to work where an electrical hazard exists. Qualified line-clearance arborist trainees shall be under the direct supervision of qualified line-clearance arborists. A qualified line-clearance arborist trainee shall not serve as a ground observer for another qualified line-clearance arborist trainee who is engaged in line clearing operations aloft, unless a qualified arborist is also present at the work site.

4. A second qualified line-clearance arborist or line-clearance arborist trainee shall be within visual or normal (that is unassisted) voice communication during line-clearing operations aloft when an arborist must approach

Regulations

closer than 10 feet (3.05 m) to any energized electrical conductor in excess of 750 volts (primary conductor) or when:

- a. Branches or limbs closer than 10 feet (3.05 m) to any energized electrical conductor in excess of 750 volts (primary conductor) are being removed, which cannot first be cut (with a nonconductive pole pruner/pole saw)

to sufficiently clear electrical conductors, so as to avoid contact; or

- b. Roping is required to remove branches or limbs from such electrical conductors.

Table 1.

Minimum approach distances from energized conductors for qualified line-clearance arborists and qualified line-clearance arborist trainees.

Nominal voltage in kilovolts (kV) phase to phase	Includes 1910.269 elevation factor, sea level to 5,000 ft*		Includes 1910.269 elevation factor, 5,000–10,000 ft*		Includes 1910.269 elevation factor, 10,001–14,000 ft*	
	ft-in	m	ft-in	m	ft-in	m
0.051 to 0.3	Avoid contact		Avoid contact		Avoid contact	
0.301 to 0.75	1-01	0.33	1-03	0.38	1-04	0.41
0.751 to 15.0	2-05	0.7	2-09	0.81	3-00	0.88
15.1 to 36.0	3-00	0.91	3-05	1.04	3-09	1
36.1 to 46.0	3-04	1.01	3-10	1.16	4-02	1.09
46.1 to 72.5	4-02	1.26	4-09	1.44	5-02	1.3
72.6 to 121.0	4-06	1.36	5-02	1.55	5-07	1.68
138.0 to 145.0	5-02	1.58	5-11	1.8	6-05	1.96
161.0 to 169.0	6-00	1.8	6-10	2.06	7-05	2.23
230.0 to 242.0	7-11	2.39	9-00	2.73	9-09	2.95
345.0 to 362.0	13-02	3.99	15-00	4.56	16-03	4.94
500.0 to 550.0	19-00	5.78	21-09	6.6	23-07	7.16
765.0 to 800.0	27-04	8.31	31-03	9.5	33-10	10.29

*Exceeds phase to ground; elevation factor per 29 CFR 1910.269.

Note: At time of publication, the minimum approach distances in this table for voltages between 301 and 1,000 volts exceed those specified by 29 CFR 1910.269.

Table 2.

Minimum approach distances to energized conductors for persons other than qualified line-clearance arborists and qualified line-clearance arborist trainees

Nominal voltage in kilovolts (kV) phase to phase*	Distance	
	ft-in	m
0.0 to 1.0	10-00	3.05
1.1 to 15.0	10-00	3.05
15.1 to 36.0	10-00	3.05

<u>36.1 to 50.0</u>	<u>10-00</u>	<u>3.05</u>
<u>50.1 to 72.5</u>	<u>10-09</u>	<u>3.28</u>
<u>72.6 to 121.0</u>	<u>12-04</u>	<u>3.76</u>
<u>138.0 to 145.0</u>	<u>13-02</u>	<u>4</u>
<u>161.0 to 169.0</u>	<u>14-00</u>	<u>4.24</u>
<u>230.0 to 242.0</u>	<u>16-05</u>	<u>4.97</u>
<u>345.0 to 362.0</u>	<u>20-05</u>	<u>6.17</u>
<u>500.0 to 550.0</u>	<u>26-08</u>	<u>8.05</u>
<u>785.0 to 800.0</u>	<u>35-00</u>	<u>10.55</u>

*Exceeds phase to ground per 29 CFR 1910.333.

5. Qualified line-clearance arborists and line-clearance arborist trainees shall maintain minimum approach distances from energized electrical conductors in accordance with Table 1.

6. All other arborists and other workers shall maintain a minimum approach distance from energized electrical conductors in accordance with Table 2.

7. Branches hanging on an energized electrical conductor shall be removed using nonconductive equipment.

8. The tie-in position shall be above the work area and located in such a way that a slip would swing the arborist away from any energized electrical conductor or other identified hazard.

9. While climbing, the arborist shall climb on the side of the tree that is away from energized electrical conductors while maintaining the required distances shown in Table 1 or 2, as applicable.

10. Footwear, including lineman's overshoes or those with electrical-resistant soles, shall not be considered as providing any measure of safety from electrical hazards.

11. Rubber gloves, with or without leather or other protective covering, shall not be considered as providing any measure of safety from electrical hazards.

12. A rope that is wet, that is contaminated to the extent that its insulating capacity is impaired, or that is otherwise not to be considered insulated for the voltage involved shall not be used near exposed energy lines.

13. Ladders, platforms, and aerial devices, including insulated aerial devices, shall be subject to minimum approach distances in accordance with Table 1 or 2, as applicable.

14. Aerial devices with attached equipment (such as chippers) brought into contact with energized electrical

conductors shall be considered energized. Contact by people and/or equipment shall be avoided.

15. Emergency response to an electric contact shall be performed in accordance with 16VAC25-73-40 C.

C. Storm work and emergency conditions: line clearance.

1. The items contained in subsection A of this section shall always be included in the review of this section.

2. Line clearance shall not be performed during adverse weather conditions such as thunderstorms, high winds, and snow and ice storms.

3. Qualified line-clearance arborists and qualified line-clearance arborist trainees performing line clearance after a storm or under similar conditions shall be trained in the special hazards associated with this type of work.

4. Line-clearance operations shall be suspended when adverse weather conditions or emergency conditions develop involving energized electrical conductors. Electrical system owners/operators shall be notified immediately.

16VAC25-73-60. Safe use of vehicles and mobile equipment used in arboriculture.

A. General.

1. Prior to daily use of any vehicles and mobile equipment (units), visual walk-around inspections and operational checks shall be made in accordance with manufacturers' and owners' instructions (see 16VAC25-60-120) and applicable federal, state, and local requirements.

2. Units shall be equipped and maintained with manufacturers' safety devices, instructions, warnings, and safeguards. Arborists and other workers shall follow instructions provided by manufacturers.

3. Manufacturers' preventive maintenance inspections and parts replacement procedures shall be followed.

Regulations

4. Manufacturers' instructions shall be followed in detecting hydraulic leaks. No part of the body shall be used to locate or stop hydraulic leaks.

5. Units shall be operated or maintained only by authorized and qualified personnel in accordance with company policies and federal, state, or local laws.

6. Material and equipment carried on vehicles shall be properly stored and secured in compliance with the design of the unit in order to prevent the movement of material or equipment.

7. Step surfaces and platforms on mobile equipment shall be skid resistant.

8. Safety seat belts, when provided by the manufacturer, shall be worn while a unit is being operated.

9. Riding or working outside or on top of units shall not be permitted unless the units are designed for that purpose or the operator is performing maintenance or inspection. Fall protection shall be provided for employees performing maintenance or inspection on top of units six feet or more above a lower level.

10. Hoisting or lifting equipment on vehicles shall be used within rated capacities as stated by the manufacturers' specifications.

11. Units with obscured rear vision, particularly those with towed equipment, shall be backed up in accordance with 16VAC25-97.

12. When units are left unattended, keys shall be removed from ignition, the wheels chocked, and, if applicable, the parking brake applied.

13. Units shall be turned off, keys removed from the ignition, and rotating parts at rest prior to making repairs or adjustments, except where manufacturers' procedures require otherwise. Defects or malfunctions affecting the safe operation of equipment shall be corrected before such units are placed into use.

14. Personal protective equipment (for example, eye, head, hand, and ear protection) shall be worn in accordance with 16VAC25-73-40 D.

15. When towing, safety chains shall be crossed under the tongue of the unit being towed and connected to the towing vehicle.

16. The unit's exhaust system shall not present a fire hazard.

17. Towed units that detach from another unit (for example, a motorized vehicle) shall be chocked or otherwise secured in place.

18. Units operated off-road shall be operated in the proper gear and at the proper speed relative to the operating

environment and the manufacturers' instructions and guidelines.

B. Aerial devices.

1. The items contained in subsection A of this section shall always be included in the review of this section. 16VAC25-90-1910.67 is hereby incorporated by reference. Damaged aerial devices and vehicles shall be removed from service and tagged until repaired or discarded.

2. Aerial devices shall be provided with an approved point of attachment on which to secure a full-body harness with an energy-absorbing lanyard, which shall be worn when aloft.

3. Booms, buckets, or any other part of the aerial device shall not be allowed to make contact or violate minimum approach distances with energized electrical conductors, poles, or similar conductive objects. See Table 2 of 16VAC25-73-50 or §§ 59.1-406 through 59.1-414 of the Code of Virginia (Overhead High Voltage Line Safety Act), as applicable.

4. Aerial devices or aerial ladders shall not be used as cranes or hoists to lift or lower materials or tree parts, unless they were specifically designed by the manufacturer to do so (see 16VAC25-60-120).

5. Wheel chocks shall be set before using an aerial device unless the device has no wheels on the ground or is designed for use without chocks.

6. Units equipped with outriggers or a stabilizing system shall be operated in a manner consistent with manufacturers' requirements.

7. The operator shall ensure adequate clearance exists and give warning to all employees in the work area prior to lowering outriggers. Pads shall be placed under outrigger feet when they are needed to ensure stable footing.

8. When operating aerial devices, the operator shall look in the direction the bucket is traveling and be aware of the location of the booms in relation to all other objects and hazards.

9. Clearances from passing vehicles shall be maintained, or traffic control shall be provided when booms or buckets are operated over roads in accordance with VDOT's Virginia Work Area Protection Manual.

10. One-person buckets shall not have more than one person in them during operations.

11. Hydraulic/pneumatic tools shall be disconnected when they are being serviced or adjusted, except where manufacturers' procedures require otherwise.

12. To avoid flying particles or whipping hydraulic/pneumatic hoses, pressure shall be released before connections are broken, except where quick-acting

connectors are used. Hydraulic/pneumatic hoses shall never be kinked in order to cut off pressure.

13. No part of the body shall be used to locate or stop hydraulic leaks.

14. Hoses affecting dielectric characteristics of equipment shall meet manufacturers' requirements.

15. The flash point of hydraulic fluid shall meet the minimum set by the manufacturer.

16. Combined loads shall not exceed rated lift capacities. Load ratings shall be conspicuously and permanently posted on aerial devices in accordance with ANSI A92.2.

17. Electric cables/cords used with electric saws or lights, or other conductive material shall not be run from the vehicle to the bucket when arborists are working in proximity to energized electrical conductors.

18. Aerial devices shall not be moved with an arborist on an elevated platform (for example, a bucket) except when equipment is specifically designed for such operation.

19. Holes shall not be drilled in buckets or liners.

20. During aerial device operations, arborists and other workers who are not qualified line-clearance arborists shall maintain a minimum approach distance from energized electrical conductors in accordance with Table 2 of 16VAC25-73-50. Only qualified line-clearance arborists or qualified line-clearance arborist trainees using an insulated aerial device may operate in accordance with minimum approach distances provided in Table 1.

21. Arborists and other workers shall be instructed that insulated aerial buckets do not protect them from other electric paths to the ground, such as paths through trees, guy wires, or from one phase wire to the second phase wire, any one of which can be fatal.

22. All underground hazards shall be located prior to operating aerial lift devices off-road. These hazards could include natural gas tanks, underground oil tanks, and septic systems.

C. Brush chippers.

1. The items contained in subsection A of this section shall always be included in the review of this section. Damaged brush chippers shall be removed from service and tagged until repaired or discarded.

2. Access panels (for example, guards) for maintenance and adjustment, including discharge chute and cutter housing, shall be closed and secured prior to starting the engine of brush chippers. These access panels shall not be opened or unsecured until the engine and all moving parts have come to a complete stop (see 16VAC25-73-110, Appendix B, General Safety Procedures that Apply to All Tree Work).

3. Rotary drum or disc brush chippers not equipped with a mechanical infeed system shall be equipped with an infeed hopper not less than 85 inches (2.15 m) measured from the blades or knives to ground level over the center line of the hopper. Side members of the infeed hopper shall have sufficient height so as to prevent workers from contacting the blades or knives during operations.

4. Rotary drum or disc brush chippers not equipped with a mechanical infeed system shall have a flexible anti-kickback device installed in the infeed hopper to reduce the risk of injury from flying chips and debris.

5. Chippers equipped with a mechanical infeed system shall have a quick-stop and reversing device on the infeed system. The activating mechanism for the quick-stop and reversing device shall be located across the top, along each side, and close to the feed end of the infeed hopper within easy reach of the worker.

6. Vision, hearing, and other appropriate personal protective equipment shall be worn when in the immediate area of a brush chipper in accordance with 16VAC25-73-40 D.

7. Arborists, mechanics, and other workers shall not, under any circumstances, reach into the infeed hopper when the cutter disc, rotary drum, or feed rollers are moving.

8. When trailer chippers are detached from the vehicles, they shall be chocked or otherwise secured in place.

9. When in a towing position, chipper safety chains shall be crossed under the tongue of the chipper and properly affixed to the towing vehicle.

10. See 16VAC25-73-90 F, for additional requirements.

D. Sprayers and related equipment.

1. The items contained in subsection A of this section shall always be included in the review of this section. Damaged sprayers and related equipment shall be removed from service and tagged until repaired or discarded.

2. Walking and working surfaces of all sprayers and related equipment shall be covered with skid-resistant material.

3. Equipment on which the applicator/operator stands while the vehicle is in motion shall be equipped with guardrails around the working area. Guardrails shall be constructed in accordance with 16VAC25-90-1910.23.

4. The applicator/operator shall make a visual inspection of hoses, fittings, exposed plumbing, tanks, covers, and related equipment prior to its use each workday.

5. The applicator/operator shall not allow hoses or other parts of the equipment to create a tripping hazard for coworkers or the public.

Regulations

6. The applicator/operator shall have a firm grip on the spray gun/excavation tool when pulling the trigger.

7. The operator of high-pressure excavation equipment shall wear a face shield in addition to eye protection.

8. Related equipment:

a. The applicator/operator shall be aware of underground utility locations when drilling holes in the ground for fertilizer or pesticide applications.

b. The equipment shall have splash guards, and the applicator shall wear eye protection when injecting liquid fertilizer or pesticides into the ground.

c. The applicator shall wear eye protection and follow label instructions when injecting liquids into trees.

E. Stump cutters.

1. The items contained in subsection A of this section shall always be included in the review of this section. Damaged stump cutters shall be removed from service and tagged until repaired or discarded.

2. Stump cutters shall be equipped with enclosures or guards that reduce the risk of injury during operation. Enclosures or guards shall be kept in place when stump cutters are operative.

3. Arborists and other workers in the immediate stump-cutting work zone shall wear vision, hearing, and other personal protective equipment in accordance with 16VAC25-73-40 D.

4. When in a towing position, stump-cutter safety chains shall be crossed under the tongue of the stump cutter and properly affixed to the towing vehicle.

5. Towable stump cutters or stump-cutter trailers, when detached from the vehicle, shall be chocked or otherwise secured in place.

6. The operator shall be aware of underground utility locations prior to performing work.

F. Vehicles.

1. The items contained in subsection A of this section shall always be included in the review of this section. (See 16VAC25-60-120.) Damaged vehicles shall be removed from service and tagged until repaired or discarded.

2. A steel bulkhead or equivalent protective devices shall be provided to protect workers from load shifts in vehicles carrying logs or other material.

3. Load-securing procedures shall be followed to prevent accidental shifting or discharge of logs or other materials from the vehicle during transport.

4. Logs or other material shall not overhang the sides; obscure taillights, brake lights, or vision; or exceed height

limits per state and local requirements for bridges, overpasses, utility lines, or other overhead hazards.

5. To avoid the hazard of spontaneous combustion or the generation of undesirable odors, wood chips shall not be left in vehicles for extended periods.

G. Log loaders, knucklebooms, cranes, and related hoists

1. The items contained in subsection A of this section shall always be included in the review of this section. Damaged log loaders, knuckle booms, cranes and related hoists shall be removed from service and tagged until repaired or discarded.

2. Log loaders, cranes, and related hoisting equipment shall be inspected in accordance with applicable regulations as well as manufacturers' instructions and guidelines. Chokers, slings, and other means of lifting, lowering, or rigging equipment shall be inspected before each use. An inspection procedure checklist shall be available to the crew.

3. Operators of hoisting equipment shall be trained and shall maintain a minimum approach distance from energized conductors in accordance with Table 1 or 2 of 16VAC25-73-50, or §§ 59.1-406 through 59.1-414, Overhead High Voltage Line Safety Act, as applicable. A spotter shall be used when work is being performed in proximity to electrical conductors. Personnel assigned to work in proximity to the tree removal shall be trained and follow guidelines for electrical hazards (see 16VAC25-73-50).

4. The crane operator shall be familiar with the potential hazards encountered and operational techniques used in tree work.

5. Cranes with telescoping booms shall be equipped with an anti-two block device. A boom angle indicator and a device to indicate the boom's extended length shall be clearly visible to the operator at all times. A load rating chart with clearly legible letters and figures shall be provided with each crane and securely fixed at a location easily visible to the operator.

6. Operators of hoisting equipment shall remain at the controls while a load is lifted, suspended, or lowered.

7. Tree sections shall be rigged to minimize load shifting. Controlled load lowering shall be employed. Shock-loading shall be avoided, and free fall is prohibited. A green log weight chart (see 16 VAC25-73-130, Appendix D), shall be available to the crew. All workers shall be kept clear of loads about to be lifted and of suspended loads.

8. Riding the load line of a crane while it is under load tension shall be prohibited.

9. The use of a crane to hoist a qualified arborist into position is prohibited, except when the use of conventional

means of reaching the work area, such as, but not limited to, an aerial lift, would be more hazardous or is not physically possible because of worksite conditions. If the above exception applies, a qualified arborist may be hoisted into position utilizing a crane if the crane manufacturer's specifications and limitations do not prohibit such use, and any fall protection requirements of the crane manufacturer are complied with, and the arborist is tied in with an arborist climbing line and arborist saddle and secured to a designated anchor point on the boom line or crane. The following procedures shall be followed when an arborist is to be lifted by a crane:

a. The qualified crane operator, the signal person, the person responsible for the work to be performed and the arborist to be lifted shall meet prior to the work to review the procedures to be followed. A job briefing shall be done before any work begins, in accordance with 16VAC25-73-40 A 4.

b. The arborist climbing line shall be secured to the crane in such a way that it does not interfere with the function of any damage-prevention or warning device on the crane and so that no part of the crane compromises the climbing line or any component of the climbing system.

c. The crane operator shall test the adequacy of footing prior to any lifting, and shall conduct a trial lift immediately before lifting the arborist into position. The crane operator shall determine that all systems, controls and safety devices are activated and functioning properly; that no interferences exist; and that all configurations necessary to reach the intended work location will allow the operator to remain under the 50% limit of the hoist's rated capacity. The crane shall be uniformly level and located on firm footing. If necessary, blocking shall be used so that the support system does not exceed its load-bearing capabilities. Cranes equipped with outriggers shall have them all fully extended and properly set, as applicable, before lifting and lowering operations begin and/or before the qualified arborist is lifted.

d. Lifting and supporting shall be done under controlled conditions and under the direction of a qualified arborist or an appointed signal person. Lifting and supporting operations shall not be performed during adverse weather conditions such as thunderstorms, high winds, and snow and ice storms.

e. The load-line hoist drum shall have a system or other device on the power train, other than the load hoist brake, that regulates the lowering speed of the hoist mechanism. Load lines shall be capable of supporting, without failure, at least seven times the maximum intended load, except that where rotation resistant rope is used, the lines shall be capable of supporting without failure, at least 10 times the maximum intended load. The required design factor

is achieved by taking the current safety factor of 3.5 and applying 50% de-rating of the crane capacity.

f. Communication between the crane operator and the arborist being lifted shall be maintained either directly or through the appointed signal person. This communication shall either be visual, using the accepted hand signals, or audible, using voice or radio. Radio communication shall be used to control blind picks. The crew members shall know and follow hand signals for standard crane operations (see 16VAC25-73-150, Appendix F).

g. The crane operator shall remain at the controls when the qualified arborist is attached to the crane and during lifting and lowering operations.

h. The crane boom and load line shall be moved in a slow, controlled, cautious manner when the arborist is attached. Lifting or lowering speed shall not exceed 100 feet/minute (0.5 m/sec), and any sudden movements shall be avoided. The crane shall be operated so that lowering is power controlled.

i. The crane carrier shall not travel at any time while the qualified arborist is attached. An accurate determination of the load radius to be used during lifting shall be made before the qualified arborist is hoisted.

j. The qualified arborist shall be detached from the crane any time it comes under load tension.

H. Specialized units.

1. The items contained in subsection A of this section shall always be included in the review of this section.

2. Off-road and tracked vehicles shall be operated at the proper speed and in the proper gear relative to the operating environment and the manufacturer's instructions and guidelines.

3. Deadman controls on towing equipment for brush hogs and similar implements shall be used and maintained in good working condition. If the deadman control is malfunctioning or not operational, the equipment shall be removed from service and tagged until it has been repaired or discarded. When deadman controls were not provided by the manufacturer, the worker shall disengage the power source to the rotary or cutter head before dismounting.

I. Equipment-mounted winches.

1. The items contained in subsection A of this section shall always be included in the review of this section. Damaged equipment mounted winches shall be removed from service and tagged until repaired or discarded.

2. Operators shall wear the appropriate personal protective equipment during winch operations, including eye and head protection.

Regulations

3. The winch cable/synthetic line shall be inspected daily for broken or worn strands, bird caging, major kinks, and other defects. Damaged cables shall be removed from service and tagged until repaired or discarded.

4. Cable hooks and attachment points shall be inspected for damage. Damaged hooks or attachment assemblies shall be removed from service and tagged until repaired or discarded.

5. All mounting bolts and hardware shall be inspected for loose or missing components. The winch shall not be used until complete repairs are made to damaged or missing bolts and hardware.

6. Operators shall be aware of the dangers of load or cable breakage and ensure that all personnel remain clear of the recoil area in the event of load or cable breakage.

7. All winch operators shall be properly trained and be aware of the inherent dangers associated with winch operations.

8. Operators shall be aware of the winch cable at all times during extension and ensure that it does not become a hazard to personnel or machinery.

9. Winch systems and cables shall be used only as intended and instructed by the manufacturer.

10. The winch shall never be used with personnel, including the operator, within the span of the winch cable and the winch.

11. Pinch point hazards develop during winching operations; therefore, all operators involved in the winching operation shall constantly be aware of such hazards and stand clear of these areas.

12. All loads shall be pulled in such a manner as to avoid angles that may result in tipping, cause the vehicle to become unstable, or result in unintended movement of the vehicle.

13. Pulling loads from the side requires special equipment and techniques. Therefore, loads shall be pulled in line with the winch unless the winch is properly equipped with a fair lead and the operator is trained to pull loads at an angle.

14. The operator shall ensure that the vehicle supporting the winch is secured to avoid unintended movement.

15. The operator shall ensure that all rigging points comply with 16VAC25-73-90 D.

16. To ensure precise communication, an effective means of communication shall be established and used with all workers involved in the winching operations (see 16VAC25-73-90 D 14).

16VAC25-73-70. Portable power hand tools.

A. General.

1. The purpose of this section is to provide guidelines for arborists and other workers pertaining to the safe use and care of portable power hand tools. Damaged portable power tools shall be removed from service and tagged until repaired or discarded.

2. Manufacturers' operating and safety instructions shall be followed (see 16VAC25-60-120).

3. Before starting or otherwise using any portable power tools, a communication system shall be established in accordance with the requirements of 16VAC25-73-90 B 1.

B. Portable electric power tools.

1. The items contained in subsection A of this section shall always be included in the review of this section. Damaged portable electric power tools shall be removed from service and tagged until repaired or discarded.

2. Corded electric power tools shall not be used in trees or aerial devices near energized electrical conductors where there is a possibility of power tools or supply cords contacting the conductor.

3. All corded portable electric power tools shall be:

a. Equipped with three-wire cords having the ground wire permanently connected to the tool frame and a means for grounding the other end;

b. Double insulated and permanently labeled as "double insulated"; or

c. Connected to power supplies by means of an isolating transformer or other isolated power supply.

4. Extension cords shall be maintained in safe condition. Exposed metal sockets shall not be used. Worn or frayed extension cords shall be removed from service and tagged until repaired or discarded.

5. Arborists and other workers shall:

a. Prevent cords from becoming entangled, damaged, or cut by blades and bits;

b. Not lay extension cords in water; and

c. Support electric power tools and supply cords by a tool lanyard or separate line, when used aloft.

C. Chain saws.

1. The items contained in subsection A of this section shall always be included in the review of this section. Damaged chain saws shall be removed from service and tagged until repaired or discarded.

2. Chain saws shall not be operated unless the manufacturer's safety devices are in proper working order.

Chain-saw safety devices shall not be removed or modified.

3. When an arborist or other worker is working in a tree other than from an aerial device, chain saws weighing more than 15 pounds (6.8 kg) service weight shall be made safe against falling (i.e., supported by a separate line or tool lanyard).

4. Secure footing shall be maintained when starting the chain saw.

5. When starting a chain saw, the operator shall hold the saw firmly in place on the ground or otherwise support the saw in a manner that minimizes movement of the saw when pulling the starter handle. The chain saw shall be started with the chain brake engaged, on saws so equipped. Drop-starting a chain saw is prohibited.

6. Chain-saw engines shall be started and operated only when other arborists and workers are clear of the swing radius of the chain saw.

7. When operating a chain saw, the arborist or other worker shall hold the saw firmly with both hands, keeping the thumb and fingers wrapped around the handle.

8. Arborists shall use a second point of attachment (for example, lanyard or doublecrotched climbing line) when operating a chain saw in a tree, unless the employer demonstrates that a greater hazard is posed by using a second point of attachment while operating a chain saw in that particular situation. Using both ends of a two-in-one lanyard shall not be considered two points of attachment when using a chain saw.

9. Chain-saw mufflers and spark arresters (if the latter are provided) shall be maintained in good condition.

10. The chain brake shall be engaged, or the engine shut off, before setting a chain saw down.

11. When a chain saw is being carried more than two steps, the chain brake shall be engaged or the engine shut off. The chain saw shall be carried in a manner that will prevent operator contact with the cutting chain and the muffler.

12. The chain-saw operator shall be certain of footing before starting to cut. The chain saw shall not be used in a position or at a distance that could cause the operator to become off-balance, have insecure footing, or relinquish a firm grip on the saw.

D. Powered pole tools and backpack power units.

1. The items contained in subsection A of this section shall always be included in the review of this section. Damaged powered pole tools and backpack power units shall be removed from service and tagged until repaired or discarded.

2. Only workers operating the equipment shall be within 10 feet (3.05 m) of the cutting head of a brush saw during operations.

3. Power units shall be equipped with a readily accessible, quick shutoff switch.

4. Operators shall observe the position of all other workers in the vicinity while the equipment is running.

5. Engines shall be stopped for all cleaning, refueling, adjustments, and repairs to the saw or engine, except where manufacturers' procedures require otherwise.

6. Powered pole tools with poles made of metal or other conductive material shall not be used in operations where electrical hazards exist.

16VAC25-73-80. Hand tools and ladders.

A. General.

1. Correct hand tools and equipment shall be selected for the job.

2. Hand tools and equipment that have been made unsafe by damage or defect, including tools with loose or cracked heads or cracked, splintered, or weakened handles, shall be removed from service and tagged until repaired or discarded.

3. Workers shall maintain a safe working distance from other workers when using hand tools and equipment.

4. When climbing into a tree, arborists shall not carry hand tools and equipment in their hands unless the tools are used to assist them in climbing. Tools other than ropes or throwlines shall not be thrown into a tree or between workers aloft.

5. Arborist climbing lines or handlines shall be used for raising and lowering hand tools and equipment. Arborists shall raise or lower hand tools and equipment in a manner such that the cutting edge will not contact the arborist climbing line or handline.

6. Hand tools and equipment shall be properly stored or placed in plain sight out of the immediate work area when not in use.

B. Cant hooks, cant dogs, peaveys, and tongs.

1. The items contained in subsection A of this section shall always be included in the review of this section. Damaged cant hooks, cant dogs, peaveys and tongs shall be removed from service and tagged until repaired or discarded.

2. Cant hooks shall be firmly set before applying force.

3. Points of hooks shall be at least two inches (5 cm) long and kept sharp.

Regulations

4. Arborists and other workers shall always stand uphill from rolling logs, and all workers shall be warned and in the clear before logs are moved.

C. Wedges, chisels, and gouges.

1. The items contained in subsection A of this section shall always be included in the review of this section.

2. Wedges, chisels, and gouges shall be inspected for cracks and flaws before use. Tools with damaged heads shall be removed from service and tagged until repaired or discarded.

3. Wedges and chisels shall be properly pointed and tempered.

4. Eye protection shall be used during impact operations.

5. Only wood, plastic, or soft-metal wedges shall be used while operating chain saws.

6. Wood-handled chisels shall be protected with a ferrule on the striking end.

7. Wood, rubber, or high-impact plastic mauls, sledges, or hammers shall be used when striking wood-handled chisels or gouges.

D. Chopping tools.

1. The items contained in subsection A of this section shall always be included in the review of this section. Damaged chopping tools shall be removed from service and tagged until repaired or discarded.

2. Chopping tools shall not be used while working aloft.

3. Chopping tools shall not be used as wedges or used to drive metal wedges.

4. Chopping tools shall be swung away from the feet, legs, and body, using the minimum force practical for function and control.

5. When swinging tools such as grub hoes, mattocks, and axes, a secure grip, firm footing, and clearance of workers and overhead hazards shall be maintained.

E. Ladders.

1. The items contained in subsection A of this section shall always be included in the review of this section.

2. Ladders made of metal or other conductive material shall not be used where electrical hazards exist. Only wooden ladders or nonconductive ladders made of synthetic material equal to or exceeding the strength of wooden ladders shall be used. Portable wooden ladders shall be used in accordance with 16VAC25-90-1910.25.

3. Metal ladders used where no electrical hazard exists shall be used in accordance with 16VAC25-90-1910.26.

4. All ladders shall be inspected before use and removed from service if found defective, and tagged until repaired or discarded.

5. Cleats, metal points, skid-resistant feet, lashing, or other effective means of securing the ladder shall be used.

6. Ladders shall not be used as bridges or inclined planes to load or handle logs or other material.

7. Ladders shall be supported while in storage to prevent sagging. Except when on mobile equipment, ladders shall be stored under suitable cover, protected from the weather, and kept in a dry location away from excessive heat.

8. The third, or hinged, leg of a tripod/orchard ladder shall be braced or fastened when on hard or slick surfaces.

9. All ladders shall be used in accordance to the manufacturers' specifications and limitations and shall not be altered in a way that contradicts those specifications and limitations.

16VAC25-73-90. Work procedures.

A. Ropes and arborist climbing equipment.

1. A visual hazard assessment, including a root collar inspection, shall be performed prior to climbing, entering, or performing any work in a tree, and an ongoing hazard assessment shall be conducted as operations progress while the arborist is in the tree. If the hazard assessment reveals a serious hazard to the climber or ground personnel, work shall immediately stop and personnel shall be removed from the hazardous area until a work plan is developed to safely remove the hazard/tree. The following items, at a minimum shall be inspected:

a. Trunk and root hazards including, but not limited to, cracks, cavities, wood decay/rot, cut roots, mushrooms;

b. Lower stem hazards including, but not limited to, loose bark, open cavities, cracks, mushrooms, conks, and depressions or swelling in the stem;

c. Limb hazards including, but not limited to, watersprouts, hangers, cankers, dead branches, lightning damage, and weak crotches; and

d. Storm damage hazards including, but not limited to, cracked stems and crotches, broken limbs supported by cables, points of pressure, and tension on limbs or small trees underneath larger fallen trees.

2. A second arborist or other worker trained in emergency procedures shall be within visual or voice communication during arboricultural operations above 12 feet (3.65 m) that are not subject to the requirements of 16VAC25-73-50 B 4.

3. Climbing lines used in a split-tail system and split-tails shall be terminated with an eye splice or a knot that interfaces appropriately with the connecting link that it is

attached to. The termination knot selected shall remain secure under normal loading and unloading. When using a carabiner without a captive eye, the knot or eye splice shall cinch in place to prevent accidental opening and/or side-loading of the carabiner.

4. Arborists shall inspect climbing lines, worklines, lanyards, and other climbing equipment for damage, cuts, abrasion, and/or deterioration before each use and shall remove them from service if signs of excessive wear or damage are found. The items removed from service shall be tagged until repaired or discarded.

5. Arborist saddles and lanyards used for work positioning shall be identified by the manufacturer as suitable for tree climbing.

6. Arborist saddles and lanyards used for work positioning shall not be altered in a manner that would compromise the integrity of the equipment.

7. Hardware used in the manufacture of arborist saddles shall meet the hardware material, strength, and testing requirements outlined in ANSI 359.1.

8. Arborist climbing lines shall have a minimum diameter of 7/16 (11 mm) and be constructed from a synthetic fiber, with a minimum breaking strength of 5,400 pounds (24.02 kilonewtons (kN)) when new. Maximum working elongation shall not exceed 7.0% at a load of 540 pounds (2.402 kN). Arborist climbing lines shall be identified by the manufacturer as suitable for tree climbing.

9. All components of a climbing system (e.g., ropes, pulleys, etc.) shall meet the manufacturer's design, specifications, and limitations. Components from different climbing systems shall not be combined without prior approval of the manufacturers.

10. Prusik loops, split-tails, and work-positioning lanyards used in a climbing system shall meet the minimum strength standards for arborist climbing lines.

11. Snap hooks (rope snaps) used in climbing shall be self-closing and self-locking, with a minimum tensile strength of 5,000 pounds (22.24 kN).

12. Carabiners used in climbing shall be self-closing and self-locking, with a minimum tensile strength of 5,000 pounds (22.24 kN).

Carabiners shall be designed to release the load by requiring at least two consecutive, deliberate actions to prepare the gate for opening.

13. Splicing shall be done in accordance with cordage manufacturers' specifications.

14. All load-bearing components of the climbing system shall meet the minimum standards for arborist climbing equipment.

15. Equipment used to secure an arborist in the tree or from an aerial lift shall not be used for anything other than its intended purpose.

The arborist climbing line may be used to raise and lower tools.

16. Rope ends shall be finished in a manner to prevent raveling.

17. Ropes and climbing equipment shall be stored and transported in such a manner to prevent damage through contact with sharp tools, cutting edges, gas, oil, or chemicals.

18. Arborist climbing lines shall never be left in trees unattended.

19. Arborists shall have available a climbing line and at least one other means of being secured while working aloft; for example, an arborist climbing line and a work-positioning lanyard.

20. The arborist shall be secured while ascending the tree. The arborist shall be tied in once the work begins and shall be tied in until the work is completed and he has returned to the ground. The arborist shall be secured when repositioning the climbing line.

21. While ascending a ladder to gain access to a tree, the arborist shall not work from or leave the ladder until he is tied in or otherwise secured.

22. A false crotch and/or false crotch redirect may be used at the discretion of the arborist in lieu of a natural crotch.

23. The tie-in position shall be such that the arborist will not be subjected to an uncontrolled pendulum swing in the event of a slip.

24. When a climber is working at heights greater than one-half the length of the arborist climbing line, a figure-8 knot shall be tied in the end of the arborist climbing line to prevent pulling the rope through the climbing hitch.

B. Pruning and trimming.

1. Voice communications among arborists aloft and among arborists and other workers on the ground shall be established before cutting and dropping limbs. The communication method shall be clearly understood and used by all workers during all operations. The command "stand clear" from aloft and the response "all clear," "Underneath," or "No" from the ground are terms that may be used for this purpose. Prearranged, two-way hand signals may also be used when verbal communication is not possible because of distance or surrounding noise levels. Arborists and other workers returning to the work area shall be acknowledged by arborists aloft.

2. Pole pruners and pole saws, when hung, shall be securely positioned to prevent dislodgment. Pole pruners or

Regulations

pole saws shall not be hung on electrical conductors or left in a tree unattended. Pole saws and pole pruners shall be hung so that sharp edges are away from the arborist and shall be removed when the arborist leaves the tree.

3. Scabbards or sheaths shall be used to carry handsaws when not in use. Folding saws, when not in use, shall be closed and hooked to the arborist saddle.

4. Pole tools used in line-clearance operations shall be constructed with fiberglass reinforced plastic (FRP) or wooden poles meeting the requirements of 16VAC25-90-1910.269.

5. A separate workline shall be attached to limbs that cannot be dropped safely or controlled by hand. Arborist climbing lines and worklines shall not be secured to the same crotch.

6. Dry conditions and dead palm fronds present an extreme fire hazard. When dry conditions exist, arborists and other workers shall not smoke while working in or near dead palm fronds. All chain saws used under such conditions shall have mufflers and spark arresters in good working condition.

7. Palm frond skirts that have three years or more of growth shall be removed from the top down. Arborists performing this work shall be supported by an arborist climbing line and a false crotch. Arborists shall never attempt to remove skirts of three years or more by positioning themselves below work areas while being supported by a lanyard.

8. Cut branches shall not be left in trees upon completion of work.

C. Cabling.

1. Arborists and other workers on the ground shall not stand under the work area of a tree when a cabling system is being installed.

2. Tools used for cabling, bark tracing, and cavity work shall be carried in a bag, on a belt designed to hold such tools, or attached to a tool lanyard.

3. Arborists installing cabling systems in trees shall be positioned off to one side in order to avoid injury in case of cable system failure that could occur when a block and tackle or a hand winch is released.

4. When removing a cable from a tree, a block and tackle or come-along system shall be installed before removing the existing cable.

5. When installing a replacement cable, the replacement cable shall be fully installed before removing the outdated cable.

D. Rigging.

1. Arborists performing rigging operations shall inspect trees for their integrity to determine whether the trees have any visible defect that could affect the operation. If it is determined that the tree poses a risk of failure due to the forces and strains that will be created by the design of the rigging operation, an alternate plan shall be used that does not expose workers to the hazards of a failure.

2. The number of connecting links used for connecting components of a rigging system shall be minimized when possible. Connecting links shall interface properly and be in compliance with manufacturers' specifications and limitations (reference 16VAC26-60-120).

3. The qualified arborist shall ensure that load ratings shown on the rigging equipment or provided by the manufacturer for all ropes, connecting links, and rigging equipment are observed in all rigging operations. Rigging equipment shall be chosen for the specific task based on working-load limits and design specifications.

4. All equipment used for rigging operations shall be in good working condition. Equipment that has been damaged or overloaded shall be removed from service. Items removed from service shall be tagged until repaired or discarded.

5. To avoid confusion between rigging equipment and climbing equipment, the equipment shall be clearly marked to indicate their different purposes.

6. Rigging points shall be assessed for their structural integrity by a qualified arborist. The rigging plan and the tree shall be considered relative to the forces being applied to any part of the tree, including branch attachments and anchoring roots, before a rigging point is chosen and established.

7. Climbers shall choose tie-in points that will provide proper protection while allowing for a separation between the rigging system and the climbing system. Running rigging lines shall not be allowed to come into contact with any part of the climbing system.

8. Arborists performing rigging operations shall be educated to understand and trained to estimate the potential forces at any point in the rigging system being used. The system components shall comply with working-load limits relative to the operation and the maximum potential forces.

9. Careful consideration shall be given to the potential forces resulting from the specific influences of rope angles as well as the number of lines and/or line parts that will act on any rigging point.

10. Prior to the start of removal/rigging operations, a communication system shall be established in accordance with the requirements in subdivision B 1 of this section.

11. A work zone shall be established prior to the start of rigging operations. Workers not directly involved in the rigging operation shall stay out of the pre-established work zone until it has been communicated by a qualified arborist or qualified arborist trainee directly involved in the rigging operation that it is safe to enter the work zone. Workers shall be positioned and their duties organized so that the actions of one worker will not create a hazard for any other worker.

12. Only qualified arborists or qualified arborist trainees directly involved in the operation shall be permitted in the work zone when a load is being suspended by the rigging system. All workers shall be kept clear of suspended loads.

13. Taglines or other means may be used to help control and handle suspended loads.

14. Arborists working aloft shall position themselves so as to be above or to the side of the piece being rigged and out of the path of movement of the piece when it has been cut. Climbers and their climbing systems shall be positioned outside of the rigging system itself when a cut is being made or a load is being moved or lowered. Climbers shall have an escape plan prepared.

15. The spars, limbs, or leaders being worked on and the spars being used for tie-in and/or rigging points shall be assessed for structural integrity and potential reaction forces that could cause a spar to split when it is cut.

16. Steps shall be taken to prevent spars from splitting or tearing during the rigging operation, and climbers shall take steps to avoid trapping, pinning, or entangling themselves in the system should the tree split or the rigging fail. Load binders are one possible means of preventing splitting.

E. Tree removal.

1. Before beginning any tree removal operation, the chain-saw operator and/or crew leader shall carefully consider all relevant factors pertaining to the tree and site and shall take appropriate actions to ensure a safe removal operation. The following factors shall be considered:

- a. The area surrounding the tree to be removed, including nearby trees;
- b. Species and shape of the tree;
- c. Lean of the tree;
- d. Loose limbs, chunks, or other overhead material;
- e. Wind force and direction;
- f. Decayed or weak spots throughout the tree (be aware of additional hazards if these conditions exist in the hinge area);

g. Location and means to protect other persons, property, and electrical conductors;

h. Size and terrain characteristics or limitations of the work area; and

i. Evidence of bees or wildlife habitation in the tree.

2. Work plans for removal operations shall be communicated to all workers in a job briefing before commencing work.

3. Workers not directly involved in the removal operation shall be clear of the work area, beyond the length of the tree, unless a team of workers is necessary to remove a particular tree.

4. A planned escape route for all workers shall be prepared before cutting any standing tree or trunk. The preferred escape route is 45 degrees on either side of a line drawn opposite the intended direction of the fall. Obstructions shall be cleared along the escape path. The chain-saw operator shall use this path for egress once the cut has been completed.

5. When it is necessary to shorten or remove branches before removing the tree, the arborist shall determine whether the tree can withstand the strain of the lowering procedures. If not, other means of removing the tree shall be considered and used.

6. The crew leader shall determine the number of workers necessary for tree removal operations.

7. The crew leader shall develop a work plan so that operations do not conflict with each other, thereby creating a hazard.

8. Climbing spurs shall have gaffs of a type and length compatible for the tree being climbed.

9. Wedges, block and tackle, rope, wire cable (except where an electrical hazard exists), or other appropriate devices shall be used when there is a danger that the tree or trees being removed may fall in the wrong direction or damage property. All limbs shall be removed to a height and width sufficient to allow the tree to fall clear of any wires and other objects in the vicinity.

10. Tackle blocks and pulleys and their connecting links shall be inspected immediately before use and removed from service if they are found to be defective.

11. Workers returning to the work area shall not enter until the chain-saw operator has acknowledged that it is safe to do so.

12. When a pull line is being used, workers involved in removing a tree or trunk shall be clear by a minimum of one tree length.

Regulations

13. All workers other than the individual engaged in manual land-clearing operations shall be at least two tree lengths away from the tree or trunk being removed. This requirement does not apply in the presence of site restrictions, such as waterways or cliffs. Other arborists and workers shall be beyond the trees' striking range and at a distance as close to twice the tree's height as possible.

NOTE: This regulation does not apply to tree removal activities where the primary objective is land clearing in preparation for construction, real estate development, or other related activities, unless directly supervised by a certified arborist. Such activities are covered by 16VAC25-90-1910.266.

14. Notches shall be used on all trees and trunks greater than five inches (12.7 cm) in diameter at breast height.

15. Notches and back cuts shall be made at a height that enables the chain-saw operator to safely begin the cut, control the tree or trunk, and have freedom of movement for escape:

- a. The notch cut used shall be a conventional notch, an open-face notch, or a Humboldt notch.
- b. Notches shall be 45 degrees or greater and large enough to guide the fall of the tree or trunk to prevent splitting.
- c. Notch depth shall not exceed one-third the diameter of the tree.
- d. The back cut shall not penetrate into the predetermined hinge area.

16. With a conventional notch or Humboldt notch, the back cut shall be one to two inches (2.5 to 5 cm) above the apex of the notch to provide an adequate platform to prevent kickback of the tree or trunk. With an open-face notch (greater than 70 degrees), the back cut shall be at the same level as the apex of the notch.

17. The two cuts that form the notch shall not cross at the point where they meet.

18. Before making the back cut, there shall be a command such as "stand clear" from the arborist operating the chain saw and a response such as "all clear" from the workers supporting the removal operation. Pre-arranged, two-way hand signals may also be used in accordance with subdivision B 1 of this section. Only designated persons shall give such signals. All workers in the vicinity shall be out of range when the tree or trunk falls. Visual contact shall be maintained with the tree or trunk until it is on the ground.

19. When the back cut has been completed, the chain-saw operator shall immediately move a safe distance away from the tree or trunk using the planned escape route.

20. Workers shall not approach mechanical tree removal or mechanical re-clearing operations, such as with a rotary or flail mower, until the operator has acknowledged that it is safe to do so.

F. Brush removal and chipping.

1. Traffic control around the jobsite shall be established prior to the start of chipping operations along roads and highways (see 16VAC25-73-40 B).

2. Brush and logs shall not be allowed to create hazards in the work areas.

3. To prevent an entanglement hazard, loose clothing, climbing equipment, body belts, harnesses, lanyards, or gauntlet-type gloves (for example, long-cuffed lineman's or welder's gloves) shall not be worn while operating chippers.

4. Personal protective equipment shall be worn when in the immediate area of chipping operations in accordance with 16VAC25-73-40 D.

5. Training shall be provided in the proper operation, feeding, starting, and shutdown procedures for the chipper being used.

6. Maintenance shall be performed only by those persons authorized by the employer and trained to perform such operations.

7. Brush and logs shall be fed into chippers, butt or cut end first, from the side of the feed table center line, and the operator shall immediately turn away from the feed table when the brush is taken into the rotor or feed rollers. Chippers shall be fed in accordance with the manufacturer's instructions.

8. The brush chipper discharge chute or cutter housing cover shall not be raised or removed while any part of the chipper is turning or moving. Chippers shall not be used unless a discharge chute of sufficient length or design is provided that prevents personal contact with the blades (see 16VAC25-73-110, Appendix B, General Safety Procedures that Apply to All Tree Work).

9. Foreign material, such as stones, nails, sweepings, and rakings, shall not be fed into chippers.

10. Small branches shall be fed into chippers with longer branches or by being pushed with a long stick.

11. Hands or other parts of the body shall not be placed into the infeed hopper. Leaning into or pushing material into infeed hoppers with feet is prohibited.

12. While material is being fed into the chipper infeed hopper chute, pinch points continually develop within the material being chipped and between the material and machine. The operator shall be aware of this situation and respond accordingly.

13. When feeding a chipper during roadside operations, the operator shall do so in a manner that prevents him from stepping into traffic or being pushed into traffic by the material that is being fed into the chipper.

14. When using a winch in chipper operations, the operator shall ensure that the winch cable is properly stored before initiating chipper operations.

15. Refer to 16VAC25-73-60 C, for additional information.

G. Limbing and bucking.

1. Work plans for limbing and bucking operations shall be communicated to all workers in a job briefing before work begins.

2. When more than one worker is limbing or bucking a tree, each shall be positioned and their duties organized so that the actions of one worker will not create a hazard for any other worker.

3. Chain saws shall be operated away from the vicinity of the legs and feet. Natural barriers, such as limbs between the saw and the body, shall be employed where possible, while ensuring proper balance. While operating a chain saw, the preferred working position is on the uphill side of the work.

4. The worker shall make sure of firm footing before and during limbing and bucking.

The worker shall not stand on loose chunks or logs that will roll when the log being bucked is sawed off.

5. Trees, limbs, or saplings under tension shall be considered hazardous. Appropriate cutting techniques and precautions shall be followed.

6. Wedges shall be used as necessary to prevent binding of the guide bar or chain when bucking trunks of trees.

7. Cant hooks or peaveys shall be used as an aid in rolling large or irregular logs to complete bucking.

8. If mechanized equipment is to be used, the equipment operator shall establish an effective means of communication with other workers (see subdivisions B 1 and D 10 of this section).

9. Workers shall not approach mechanized equipment operations until the equipment operator has acknowledged that it is safe to do so.

H. Pesticide application.

1. The applicator shall follow label instructions in regard to pesticide applications.

2. The applicator shall follow pesticide label instructions in regard to laundering his clothing.

3. The applicator shall comply with the manufacturer's instructions with regard to showering or bathing at the end of each workday.

4. The employer shall provide a clean water source at the worksite, which can be used for emergency personal decontamination. Precautions shall be taken to prevent contamination of the clean water source. Drinking water and decontamination water shall be kept in separate containers.

5. The applicator shall not direct a solid spray column into contact with electrical conductors.

16VAC25-73-100. Appendix A (Informative): Recommended Guidelines for Standard Performance and Safety Training for Qualified Line-Clearance Arborists/Qualified Line-Clearance Arborist Trainees and Qualified Arborists/Qualified Arborist Trainees.

NOTE: The content of this training outline is generic and may be customized to achieve equivalent levels of safe practice by substituting or, where deemed appropriate to the circumstances, omitting portions of this outline. Use or nonuse of training aids that may be available shall not be evidence of noncompliance with this regulation.

A. General requirements. Specific training in the area of individual expertise and work required of a qualified line-clearance arborist or qualified arborist shall be provided by the employer and documentation of training retained on file for the duration of employment.

1. Introduction and employer/employee responsibilities.

2. Employee orientation, to include:

a. Job description appropriate to job assignment (qualified line-clearance arborist or qualified arborist).

b. Introduction to immediate supervisor and crew members.

c. Familiarization with appropriate personal protective clothing and equipment and its proper use and maintenance.

d. Familiarization with equipment.

e. Introduction to company policies, procedures, and safe work practices.

f. Safe work practices as related to job assignments.

g. Written acknowledgment by employee that he has participated in such training.

3. Line-clearance or tree care pruning techniques appropriate to job assignments, as follows:

a. Provide education and training in accordance with prevailing national standards for utility pruning. Refer to

Regulations

recommended resources in 16VAC25-73-120 (Appendix C) for further information.

b. Provide education and training in accordance with prevailing local, state, or regional standards for utility pruning, as well as those specified by utility contracts.

c. Provide tree knowledge for line-clearance or tree care techniques appropriate to job assignments.

d. Provide education and training relative to predominant tree species within geographic area, such as identification, growth habits, structure, and wood strength.

e. Provide education and training for recognition and evaluation of potentially hazardous conditions related to tree structure. Refer to recommended resources in 16VAC25-73-120 (Appendix C).

B. General safety.

1. VOSH regulations. Familiarize employees with the requirements of VOSH regulations as applicable to employee job assignments. Refer to recommended resources in 16VAC25-73-120 (Appendix C).

2. American national standards. Familiarize employees with the requirements in ANSI A300 as applicable to employee job assignments. Refer to additional recommended standards in 16VAC25-73-120 (Appendix C).

3. Public safety and traffic control. Provide education and training in the use of public safety and traffic control devices as applicable under federal, state, or local regulations.

4. Electrical hazards. Provide education and training in the recognition and avoidance of electrical hazards applicable to employee job assignments (line clearance or tree care).

5. Emergency conditions. Provide education and training in the proper procedures for safely performing work in emergency conditions applicable to employee job assignments.

6. Jobsite briefings. Provide education and training in jobsite-specific hazards associated with the job, work procedures, and practices involved. Instruct employees about special precautions, personal protective clothing, and equipment requirements as applicable to employee job assignments.

C. Personal safety.

1. Personal protective equipment. Provide personal protective equipment as required for applicable job assignments, and instruct employees in its proper use, fit, life, and maintenance.

2. Emergency response procedures. Furnish employees with appropriate information and training necessary to expedite a response to a worksite emergency, such as first aid, CPR, and aerial rescue (see 16VAC25-73-150, Appendix E, Aerial Rescue Flowchart).

3. Prevention of back and other injuries. Provide education and training in the techniques required to avoid back and other injuries applicable to job assignments.

4. Identification and avoidance of animals and poison plants. Provide education and training in the identification of and the need to avoid contact with poison plants and instructions for treating insect stings/bites and snake bites.

D. Equipment safety.

1. Mobile equipment and aerial lifts. Provide education and training in the inspection, operation, and maintenance of all vehicles and equipment, such as aerial lifts, brush chippers, stump grinders, log loaders, tree cranes, mowing equipment, and pesticide application equipment. All equipment shall comply with applicable federal and state regulations, local ordinances, and manufacturers' operating instructions (see 16VAC25-60-120). Such training shall be appropriate to employee job assignments.

2. Aerial equipment and electrical hazards. Provide education and training so that affected employees understand the required and recommended procedures for operating aerial devices in proximity to electrical hazards. Such training shall be appropriate to employee job assignments.

3. Chain saw, power tool, and hand tool use and safety. Provide education and training in the safe use of chain saws, power tools, and hand tools in accordance with manufacturers' instructions. Such training shall be appropriate to employee job assignments.

4. Climbing equipment use and safety. Provide education and training in the inspection, maintenance, and storage of climbing equipment such as ropes, saddles, personal lanyards, rope snaps, carabiners, and related equipment. Such training shall be appropriate to employee job assignments.

E. Operational safety.

1. Climbing techniques. Provide education and training in climbing techniques as appropriate to employee job assignments.

2. Rigging and tree removal:

a. Provide education and training appropriate to employee job assignments, such as knots and ropes, rigging techniques, tree strength and weight characteristics, and potential electrical hazards.

b. Provide education and training in the identification and removal of hazard trees. Such training shall be appropriate to employee job assignments.

3. Hazard communications. Provide education and training necessary to comply with federal and state regulations appropriate to employee job assignments.

4. Pesticide use. Provide education and training necessary to comply with federal and state regulations appropriate to employee job assignments.

16VAC25-73-110. Appendix B (Informative): General Safety Procedures that Apply to All Tree Work.

A. Lifting. Before lifting any weight, workers shall:

1. Be sure there is a clear path available if the weight is to be carried from one place to another;

2. Decide exactly how the object should be grasped to avoid sharp edges, splinters, or other factors that might cause injury;

3. Make a preliminary lift to be sure the load can be safely handled;

4. Place feet solidly on the walking surface;

5. Crouch as close to the load as possible, with legs bent at an angle of about 90 degrees;

6. Lift with the legs, not the back, keeping the weight as close to the body as possible; and

7. Use additional workers or material-handling equipment when necessary.

B. Control of hazardous energy. When a worker, hereafter referred to as the "authorized person," is doing mechanical work, precautions must be taken to prevent injury caused by moving or elevated parts, or the release of stored energy, such as hydraulic pressure. Failure to do so could result in a serious, potentially maiming, or fatal injury. The authorized person performing maintenance/repair shall comply with the employer's procedures. The specific Control of Hazardous Energy requirements established by VOSH may be obtained by consulting 16VAC25-90-1910.147.

1. The following is a sample procedure.

Sequence for Securing Equipment (Sample):

a. The authorized person shall notify the crew and/or affected employees that maintenance or repair is to be done and that such equipment must be shut down and secured.

b. The authorized person shall refer to the manufacturer's manual for proper procedures (as needed).

c. If equipment is in an operational mode, it shall be shut down by normal procedures.

d. Rotating parts, such as chipper blades, shall be stopped before maintenance or repair. Keyed ignition systems must be in working order.

e. Keys shall be removed and pocketed by the foreman or mechanic. When there is no keyed ignition system, the battery cables or spark plug wires shall be disconnected.

f. The power takeoff shall be disengaged before beginning service or repair tasks, such as hose replacement. All hydraulic tools shall be disconnected before equipment is adjusted or serviced.

g. An employee shall never attempt to stop a hydraulic leak with his body.

h. Materials or parts that must be raised or disconnected and suspended shall be properly secured, such as with an appropriate sling or jackstand. Flywheels, such as chipper cutter heads, are to be blocked to prevent pinch points.

i. Before proceeding with maintenance or repair, the authorized person shall ensure that equipment is isolated and will not operate.

j. Any piece of equipment being serviced or repaired shall not be started, energized, or used by any other worker not under the direction of the authorized person.

k. When the engine must be running for tuning or adjustment, special care must be given to moving parts.

2. Restoring equipment to service (sample). When maintenance or repair is complete and equipment is ready to return to normal operation, the following steps shall be taken by the authorized person to restore the equipment to service:

a. To prevent accidental contact with moving or electrical components when the equipment is engaged, check for loose parts or tools that may have been left in the immediate area.

b. Ensure that all guards are in place and employees are in the clear.

c. Confirm that controls are in neutral.

d. Reconnect key, cable, or plug wires.

e. Notify affected employees that equipment is ready to return to service.

16VAC25-73-120. Appendix C (Informative): Additional Resources.

A. Applicable American National Standards:

Fall protection systems for construction and demolition operations (A10.32-2004)

Personal fall arrest systems, subsystems, and components (Z359.1-1992 [R1999])

Regulations

Protective headgear for industrial workers (Z89.1-2003)

Tree care operations—tree, shrub, and other woody plant maintenance (A300, Parts 1 through 7)

Vehicle-mounted elevating and rotating aerial devices (A92.2-2001)

B. Cordage Institute Rope Standards

The Cordage Institute, www.ropecord.com

C. Applicable VOSH and U.S. Department of Labor/Federal Labor/Federal Motor Carrier Safety Administration Regulations

Electric Power Generation, Transmission, and Distribution, 16VAC25-90-1910.269

General Industry, 16VAC25-90-1910

Hazard Communication, 16VAC25-90-1910.1200

Medical Services and First Aid, 16VAC25-95 [PROPOSED REGULATION]

Occupational Noise Exposure, 16VAC25-90-1910.95

Personal Protective Equipment, 16VAC25-90-1910.132 to 16VAC25-90-1910.136

Electrical - Safety-Related Work Practices, 16VAC25-90-1910.331 to 16VAC25-90-1910.335

Telecommunication, 16VAC25-90-1910.268

Transportation (49 CFR, Subchapter B, Federal Motor Carrier Safety Regulations)

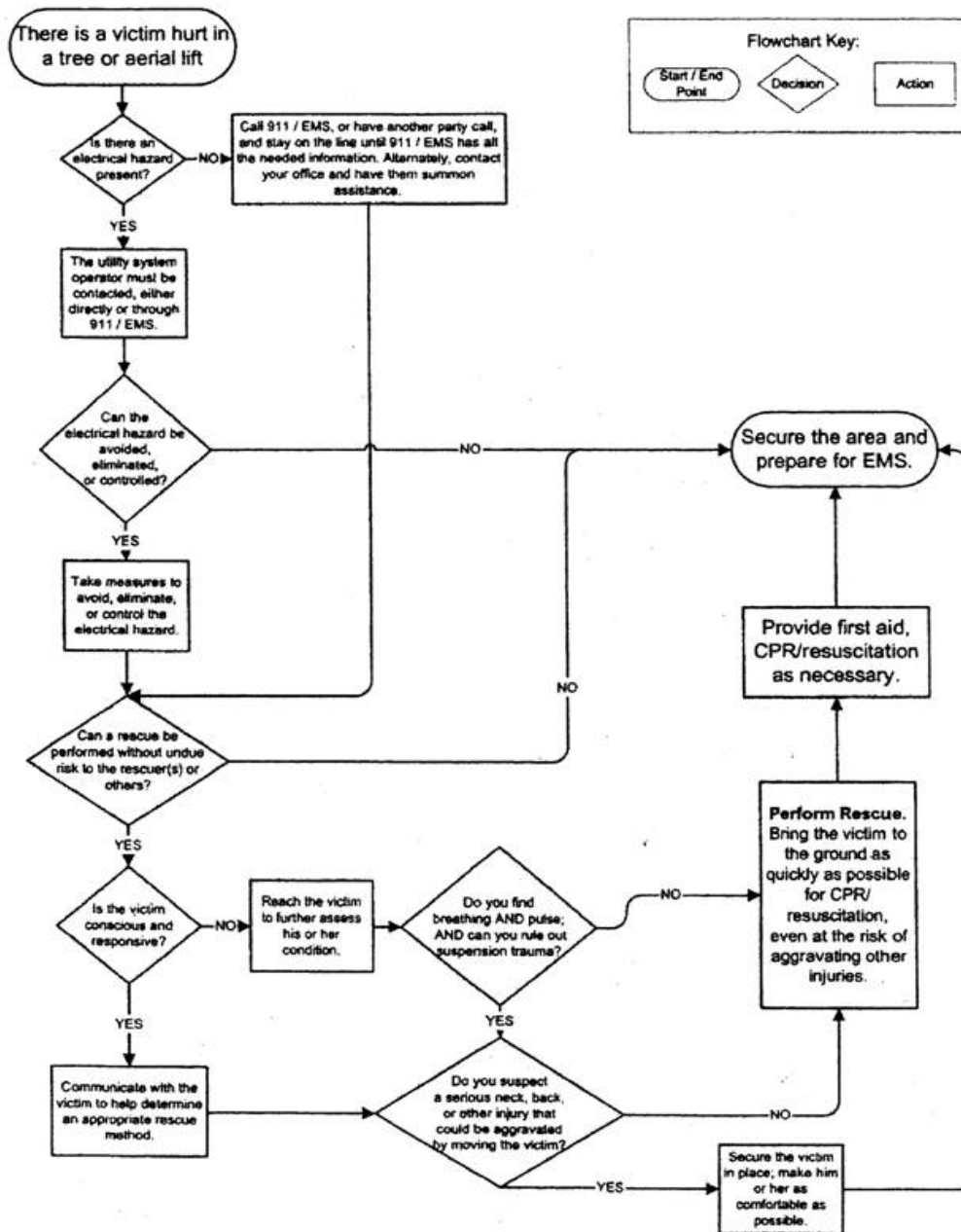
16VAC25-73-130. Appendix D (Informative): Weight of Green Logs.

Species	Weight, lb per ft	Weight of 1-ft section, based on average diameter							
		10"	12"	14"	16"	18"	20"	22"	24"
<u>Alder, red</u>	<u>46</u>	<u>25</u>	<u>36</u>	<u>49</u>	<u>64</u>	<u>81</u>	<u>100</u>	<u>121</u>	<u>144</u>
<u>Ash, green</u>	<u>47</u>	<u>25</u>	<u>37</u>	<u>50</u>	<u>66</u>	<u>83</u>	<u>102</u>	<u>124</u>	<u>148</u>
<u>Ash, Oregon</u>	<u>48</u>	<u>26</u>	<u>38</u>	<u>51</u>	<u>67</u>	<u>85</u>	<u>104</u>	<u>126</u>	<u>150</u>
<u>Ash, white</u>	<u>48</u>	<u>26</u>	<u>38</u>	<u>51</u>	<u>67</u>	<u>85</u>	<u>104</u>	<u>126</u>	<u>150</u>
<u>Aspen, quaking</u>	<u>43</u>	<u>23</u>	<u>34</u>	<u>46</u>	<u>60</u>	<u>76</u>	<u>94</u>	<u>114</u>	<u>135</u>
<u>Baldcypress</u>	<u>51</u>	<u>28</u>	<u>40</u>	<u>54</u>	<u>71</u>	<u>90</u>	<u>111</u>	<u>135</u>	<u>160</u>
<u>Basswood</u>	<u>42</u>	<u>23</u>	<u>33</u>	<u>45</u>	<u>59</u>	<u>74</u>	<u>92</u>	<u>111</u>	<u>132</u>
<u>Beech</u>	<u>54</u>	<u>29</u>	<u>42</u>	<u>58</u>	<u>75</u>	<u>95</u>	<u>118</u>	<u>142</u>	<u>169</u>
<u>Birch, paper</u>	<u>50</u>	<u>27</u>	<u>39</u>	<u>53</u>	<u>70</u>	<u>88</u>	<u>109</u>	<u>132</u>	<u>157</u>
<u>Cedar, incense</u>	<u>45</u>	<u>25</u>	<u>35</u>	<u>48</u>	<u>63</u>	<u>79</u>	<u>98</u>	<u>119</u>	<u>141</u>
<u>Cedar, western red</u>	<u>28</u>	<u>15</u>	<u>22</u>	<u>30</u>	<u>39</u>	<u>49</u>	<u>61</u>	<u>74</u>	<u>88</u>
<u>Cherry, black</u>	<u>45</u>	<u>25</u>	<u>35</u>	<u>48</u>	<u>63</u>	<u>79</u>	<u>98</u>	<u>119</u>	<u>141</u>
<u>Chinaberry</u>	<u>50</u>	<u>27</u>	<u>39</u>	<u>53</u>	<u>70</u>	<u>88</u>	<u>109</u>	<u>132</u>	<u>157</u>
<u>Cottonwood</u>	<u>49</u>	<u>27</u>	<u>38</u>	<u>52</u>	<u>68</u>	<u>86</u>	<u>107</u>	<u>129</u>	<u>154</u>
<u>Elm, American</u>	<u>54</u>	<u>29</u>	<u>42</u>	<u>58</u>	<u>75</u>	<u>95</u>	<u>118</u>	<u>142</u>	<u>169</u>
<u>Fir, Douglas</u>	<u>39</u>	<u>21</u>	<u>30</u>	<u>41</u>	<u>55</u>	<u>69</u>	<u>85</u>	<u>103</u>	<u>122</u>
<u>Fir, noble</u>	<u>29</u>	<u>16</u>	<u>23</u>	<u>31</u>	<u>41</u>	<u>51</u>	<u>63</u>	<u>77</u>	<u>91</u>
<u>Fir, white</u>	<u>47</u>	<u>25</u>	<u>37</u>	<u>50</u>	<u>66</u>	<u>83</u>	<u>102</u>	<u>124</u>	<u>148</u>
<u>Gum, black</u>	<u>45</u>	<u>25</u>	<u>35</u>	<u>48</u>	<u>63</u>	<u>79</u>	<u>98</u>	<u>119</u>	<u>141</u>
<u>Gum, red (Eucalyptus)</u>	<u>50</u>	<u>27</u>	<u>39</u>	<u>53</u>	<u>70</u>	<u>88</u>	<u>109</u>	<u>132</u>	<u>157</u>
<u>Hackberry</u>	<u>50</u>	<u>27</u>	<u>39</u>	<u>53</u>	<u>70</u>	<u>88</u>	<u>109</u>	<u>132</u>	<u>157</u>
<u>Hemlock, eastern</u>	<u>49</u>	<u>27</u>	<u>38</u>	<u>52</u>	<u>68</u>	<u>86</u>	<u>107</u>	<u>129</u>	<u>154</u>







<u>Hemlock, western</u>	<u>41</u>	<u>22</u>	<u>32</u>	<u>43</u>	<u>57</u>	<u>72</u>	<u>89</u>	<u>108</u>	<u>129</u>
<u>Hickory, shagbark</u>	<u>64</u>	<u>35</u>	<u>50</u>	<u>68</u>	<u>89</u>	<u>113</u>	<u>140</u>	<u>169</u>	<u>201</u>
<u>Horsechestnut</u>	<u>41</u>	<u>22</u>	<u>32</u>	<u>43</u>	<u>57</u>	<u>72</u>	<u>89</u>	<u>108</u>	<u>129</u>
<u>Larch</u>	<u>51</u>	<u>28</u>	<u>40</u>	<u>54</u>	<u>71</u>	<u>90</u>	<u>111</u>	<u>135</u>	<u>160</u>
<u>Locust, black</u>	<u>58</u>	<u>32</u>	<u>45</u>	<u>62</u>	<u>81</u>	<u>102</u>	<u>126</u>	<u>153</u>	<u>182</u>
<u>Locust, honey</u>	<u>61</u>	<u>33</u>	<u>48</u>	<u>65</u>	<u>85</u>	<u>108</u>	<u>133</u>	<u>161</u>	<u>192</u>
<u>Maple, red</u>	<u>50</u>	<u>27</u>	<u>39</u>	<u>53</u>	<u>70</u>	<u>88</u>	<u>109</u>	<u>132</u>	<u>157</u>
<u>Maple, silver</u>	<u>45</u>	<u>25</u>	<u>35</u>	<u>48</u>	<u>63</u>	<u>79</u>	<u>98</u>	<u>119</u>	<u>141</u>
<u>Maple, sugar</u>	<u>56</u>	<u>31</u>	<u>44</u>	<u>60</u>	<u>78</u>	<u>99</u>	<u>122</u>	<u>148</u>	<u>176</u>
<u>Oak, California black</u>	<u>66</u>	<u>36</u>	<u>51</u>	<u>70</u>	<u>92</u>	<u>116</u>	<u>144</u>	<u>174</u>	<u>207</u>
<u>Oak, English</u>	<u>52</u>	<u>28</u>	<u>41</u>	<u>55</u>	<u>72</u>	<u>92</u>	<u>113</u>	<u>137</u>	<u>163</u>
<u>Oak, live</u>	<u>76</u>	<u>41</u>	<u>60</u>	<u>81</u>	<u>106</u>	<u>134</u>	<u>166</u>	<u>200</u>	<u>238</u>
<u>Oak, pin</u>	<u>64</u>	<u>35</u>	<u>50</u>	<u>68</u>	<u>89</u>	<u>113</u>	<u>140</u>	<u>169</u>	<u>201</u>
<u>Oak, post</u>	<u>63</u>	<u>34</u>	<u>49</u>	<u>67</u>	<u>88</u>	<u>111</u>	<u>137</u>	<u>166</u>	<u>198</u>
<u>Oak, red</u>	<u>63</u>	<u>34</u>	<u>49</u>	<u>67</u>	<u>88</u>	<u>111</u>	<u>137</u>	<u>166</u>	<u>198</u>
<u>Oak, scarlet</u>	<u>64</u>	<u>35</u>	<u>50</u>	<u>68</u>	<u>89</u>	<u>113</u>	<u>140</u>	<u>169</u>	<u>201</u>
<u>Oak, white</u>	<u>62</u>	<u>34</u>	<u>48</u>	<u>66</u>	<u>86</u>	<u>109</u>	<u>135</u>	<u>163</u>	<u>194</u>
<u>Pecan</u>	<u>61</u>	<u>33</u>	<u>48</u>	<u>65</u>	<u>85</u>	<u>108</u>	<u>133</u>	<u>161</u>	<u>192</u>
<u>Persimmon</u>	<u>63</u>	<u>34</u>	<u>49</u>	<u>67</u>	<u>88</u>	<u>111</u>	<u>137</u>	<u>166</u>	<u>198</u>
<u>Pine, eastern white</u>	<u>36</u>	<u>20</u>	<u>28</u>	<u>38</u>	<u>50</u>	<u>64</u>	<u>78</u>	<u>95</u>	<u>113</u>
<u>Pine, loblolly</u>	<u>53</u>	<u>29</u>	<u>41</u>	<u>56</u>	<u>74</u>	<u>93</u>	<u>116</u>	<u>140</u>	<u>166</u>
<u>Pine, lodgepole</u>	<u>39</u>	<u>21</u>	<u>30</u>	<u>41</u>	<u>55</u>	<u>69</u>	<u>85</u>	<u>103</u>	<u>122</u>
<u>Pine, longleaf</u>	<u>55</u>	<u>30</u>	<u>43</u>	<u>58</u>	<u>77</u>	<u>97</u>	<u>120</u>	<u>145</u>	<u>173</u>
<u>Pine, ponderosa</u>	<u>46</u>	<u>25</u>	<u>36</u>	<u>49</u>	<u>64</u>	<u>81</u>	<u>100</u>	<u>121</u>	<u>144</u>
<u>Pine, slash</u>	<u>58</u>	<u>32</u>	<u>45</u>	<u>62</u>	<u>81</u>	<u>102</u>	<u>126</u>	<u>153</u>	<u>182</u>
<u>Pine, sugar</u>	<u>52</u>	<u>28</u>	<u>41</u>	<u>55</u>	<u>72</u>	<u>92</u>	<u>113</u>	<u>137</u>	<u>163</u>
<u>Pine, western white</u>	<u>36</u>	<u>20</u>	<u>28</u>	<u>38</u>	<u>50</u>	<u>64</u>	<u>78</u>	<u>95</u>	<u>113</u>
<u>Poplar, yellow</u>	<u>38</u>	<u>21</u>	<u>30</u>	<u>40</u>	<u>53</u>	<u>67</u>	<u>83</u>	<u>99</u>	<u>119</u>
<u>Redwood, coast</u>	<u>50</u>	<u>27</u>	<u>39</u>	<u>53</u>	<u>70</u>	<u>88</u>	<u>109</u>	<u>132</u>	<u>157</u>
<u>Spruce, red</u>	<u>34</u>	<u>19</u>	<u>27</u>	<u>36</u>	<u>47</u>	<u>60</u>	<u>74</u>	<u>90</u>	<u>106</u>
<u>Spruce, Sitka</u>	<u>32</u>	<u>17</u>	<u>25</u>	<u>34</u>	<u>45</u>	<u>56</u>	<u>70</u>	<u>84</u>	<u>100</u>
<u>Sweetgum</u>	<u>55</u>	<u>30</u>	<u>43</u>	<u>58</u>	<u>77</u>	<u>97</u>	<u>120</u>	<u>145</u>	<u>173</u>
<u>Sycamore</u>	<u>52</u>	<u>28</u>	<u>41</u>	<u>55</u>	<u>72</u>	<u>92</u>	<u>113</u>	<u>137</u>	<u>163</u>
<u>Walnut, black</u>	<u>58</u>	<u>32</u>	<u>45</u>	<u>62</u>	<u>81</u>	<u>102</u>	<u>126</u>	<u>153</u>	<u>182</u>
<u>Willow</u>	<u>32</u>	<u>17</u>	<u>25</u>	<u>34</u>	<u>45</u>	<u>56</u>	<u>70</u>	<u>84</u>	<u>100</u>










Regulations

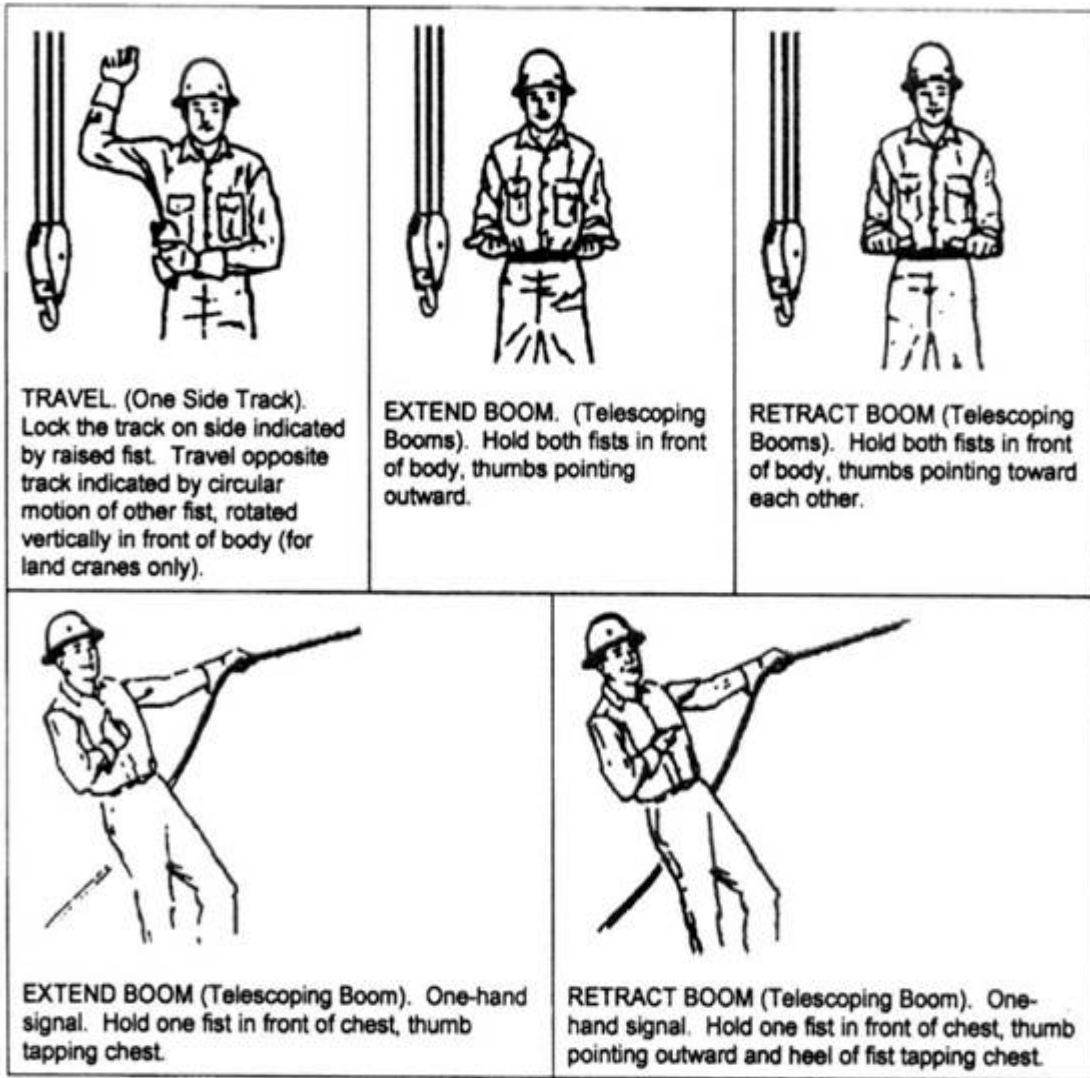
16VAC25-73-140. Appendix E (Informative): Aerial Rescue Flowchart.



16VAC25-73-150. Appendix F (Informative): Hand Signal Chart for Crane Operations.

 <p>HOIST. With forearm vertical, forefinger pointing up, move hand in small horizontal circles.</p>	 <p>LOWER. With arm extended downward, forefinger pointing down, move hand in small horizontal circles.</p>	 <p>USE MAIN HOIST. Tap fist on head, then use regular signals.</p>
 <p>USE WHIPLINE. (Auxiliary Hoist) Tap elbow with one hand, then use regular signals.</p>	 <p>RAISE BOOM. Extend arm, fingers closed, thumb pointing upward.</p>	 <p>LOWER BOOM. Extend arm, fingers closed, thumb pointing downward.</p>

 <p>MOVE SLOWLY. Use one hand to give any motion signal and place other hand motionless above the hand giving the motion signal. (Hoist slowly shown as example.)</p>	 <p>RAISE THE BOOM AND LOWER THE LOAD. With arm extended, thumb pointing up, flex fingers in and out as long as load movement is desired.</p>	 <p>LOWER THE BOOM AND RAISE THE LOAD. With arm extended, thumb pointing down, flex fingers in and out as long as load movement is desired.</p>
 <p>SWING. Extend arm, point with finger in direction of swing of boom.</p>	 <p>STOP. Extend arm, palm down; move arm back and forth horizontally.</p>	 <p>EMERGENCY STOP. Both arms extended, palms down, move arms back and forth horizontally.</p>
 <p>TRAVEL. Extend arm forward, hand open and slightly raised; make pushing motion in direction of travel.</p>	 <p>DOG EVERYTHING. Clasp hands in front of body.</p>	 <p>TRAVEL (Both Tracks). Use both fists in front of body, making a circular motion about each other, indicating direction of travel, forward or backward (for land cranes only).</p>



Regulations

DOCUMENTS INCORPORATED BY REFERENCE (16VAC25-73)

American National Standards Institute (ANSI), 11 West 42nd Street, New York, NY 10036:

ANSI/ASSE A10.32-2004, Fall Protection Systems for Construction and Demolition Operations.

ANSI Z359.1-1992 (R-1999), Personal Fall Arrest Systems, Subsystems, and Components.

ANSI Z89.1-2003, Protective Headgear for Industrial Workers.

ANSI A300, Tree Care Operations—Tree, Shrub, and Other Woody Plant Maintenance—Standard Practices:

Part 1-2001, Pruning, revised 2008.

Part 2-1998, Fertilization, revised 2004.

Part 3-2000, Supplemental Support Systems, revised 2006.

Part 4-2002, Lightning Protection Systems.

Part 5-2005, Management of Trees and Shrubs During Site Planning, Site Development, and Construction.

Part 6-2005, Transplanting.

Part 7-2006, Integrated Vegetation Management, Electric Utility Rights-of-Way.

ANSI/SIA A92.2-2001, Vehicle-Mounted Elevating and Rotating Aerial Devices.

Virginia Work Area Protection Manual, Standards and Guidelines for Temporary Traffic Control, Virginia Department of Transportation, May 2005.

VA.R. Doc. No. R08-1044; Filed February 17, 2009, 2:47 p.m.

GENERAL NOTICES/ERRATA

STATE CORPORATION COMMISSION

Bureau of Insurance

February 17, 2009

Administrative Letter 2009 – 01

TO: All Carriers Licensed to Market Credit Life Insurance or Credit Accident and Sickness Insurance in Virginia

RE: Credit Insurance Experience Exhibits - § 38.2-3730 of the Code of Virginia

In accordance with § 38.2-3730 B of the Code of Virginia, adjustments to the prima facie rates applicable to credit life and credit accident and sickness insurance for the triennium commencing January 1, 2010 will be established and published later this year. This letter serves as a reminder to all carriers licensed to write either or both of these coverages that the Credit Insurance Experience Exhibit (CIEE) for the 2008 reporting year, from which information will be obtained to properly calculate these rates, must be submitted to the Commission no later than April 1, 2009. All companies were instructed, by letter dated December 11, 2008, to submit a copy of this exhibit to the Life and Health Forms and Rates Section of the Bureau of Insurance, (the Bureau). Because of the time constraints under which the rate calculation must be completed, it is imperative that complete and accurate CIEEs are provided to the Bureau on or before April 1, 2009.

Attached to this administrative letter are examples of some of the problems identified with CIEE filings in previous years. In some instances, although information was correct, an explanation was necessary to properly evaluate the information. Companies are hereby directed to review the attachment to ensure that similar problems do not recur this year. Please note that the CIEE must be filed on a direct basis, i.e. before taking into account reinsurance ceded, and that "NONE" should be clearly stated on the first page of a CIEE that does not contain Virginia experience.

In order to expedite the review of each CIEE that contains Virginia experience, we encourage companies to complete the attached questionnaire and ask that it be submitted with the completed CIEE. To help facilitate the completion of the questionnaire, companies may download it from the Bureau's website at:

http://www.scc.virginia.gov/division/boi/webpages/inspagedocs/ci_ques.pdf

We also encourage companies to submit the CIEEs and the questionnaires to the Life and Health Forms and Rates Section via e-mail at the address noted below.

Please contact the Bureau with any questions or requests for clarification of any of the above as early as possible. The CIEE filings, as well as questions, should be directed to: Amanda G. McCauley, Senior Insurance Market Examiner,

Life and Health Division, P.O. Box 1157, Richmond, VA 23218, (804) 371-0034, FAX (804) 371-9944, or email amanda.mccauley@scc.virginia.gov.

/s/ Alfred W. Gross
Commissioner of Insurance

The following are examples of problems identified in filings of the Credit Insurance Experience Exhibits (CIEEs) in previous reporting years. Companies are directed to review the information below to ensure that similar problems do not recur in their 2008 CIEEs. Any of the following situations legitimately applicable to a 2008 CIEE should include an appropriate explanation in the attached questionnaire.

- Wrong state submitted, state not indicated, or Virginia experience not separated. The Bureau received a number of exhibits in which a section was missing, the wrong state or year was submitted, or Virginia experience was not provided separately, i.e. Grand Totals.
- Prima facie premium not listed. The prima facie premium is needed to evaluate the rates. Each company should explicitly state the prima facie premium on the appropriate exhibit line, even if it is the same as earned premium.
- Prima facie premiums greater than earned premiums. While this may not be a problem, our experience is that most companies charge the maximum rate allowed. This may be indicative of a miscalculation, especially on MOB business.
- Earned premiums greater than prima facie premium. For MOB business, this may be indicative of a miscalculation. Such premiums violate statutes unless the premium rates have been approved. If the premium rates have been approved, we ask that reporting carriers provide the Bureau with the approval date(s) to facilitate our analysis.
- Changes in the reserves reported from the end of one reporting year to the beginning of the subsequent reporting year. This can cause previously charged premium and claims to disappear. It can also cause claims without corresponding premium and vice versa. Restatement of opening reserves merely results in delay and unnecessary expense for the Bureau and, in light of the purpose of these CIEEs, companies should ensure that opening reserves (at the beginning of the year) are equal to closing reserves (at the end of the previous year).
- Claim reserve errors. These cause inaccurate incurred claims and may also indicate inadequate reserves for the product line.
- Premium reserve errors. These cause inaccurate premium reserve calculations.
- Assumption reinsurance transactions. If any business is transferred by assumption reinsurance, include a cover

General Notices/Errata

letter identifying the companies involved and the reserve amounts impacted by the transaction.

- **Company Name Changes or Mergers.** If the reporting company has changed its name and/or has been involved in a merger, full details should be provided to enable the Bureau of Insurance to appropriately combine experience for the past three years.
- **Calculation of Earned Premium at Prima Facie Rates.** Prima facie premium must be calculated using the prima facie rates approved and published by the Bureau effective January 1, 2007. Approval by the Bureau to charge alternate rates or use alternative rate structures does not constitute a change to the published prima facie rates, and these alternative rates or rates structures should not be used in calculating earned premium at prima facie rates.

Company Name: _____

NAIC #: _____

Questionnaire

1. Are both the earned premiums and earned premiums at prima facie rates stated?

____ Yes ____ No

What adjustments, if any, were made to the earned premiums at prima facie rates? Please explain in detail how the adjustments were made. If none were made, please explain why not.

2. Are incurred claims stated without stating earned premiums and earned premiums at prima facie rates?

____ Yes ____ No If "yes," please explain.

3. Are the beginning of year (BOY) reserves equal to the prior years' stated end of year (EOY) reserves?

____ Yes ____ No If "no," please provide a detailed explanation. (This applies to the premium, IBNR and claim reserves.)

4. Are the BOY reserves positive but no data was reported last year? ____ Yes ____ No If "yes," please explain.

5. Has the reserve methodology changed since the prior year's CIEE was filed in Virginia? ____ Yes ____ No If "yes," please explain.

6. Was any business transferred by assumption reinsurance? ____ Yes ____ No If "yes," identify the companies involved and explain how any values in the CIEE have been impacted by the transaction.

7. Has the Company changed its name or has the Company been involved in a merger since the prior year's CIEE was filed in Virginia? ____ Yes ____ No If "yes," please provide complete details in order that the Bureau of Insurance can appropriately combine experience for the past three years.

8. Have all totals been verified as correct? ____ Yes ____ No If "no," please explain.

9. Does the CIEE contain any negative numbers? ____ Yes ____ No If "yes," please provide a detailed explanation.

Completed by: _____

Title: _____

Date: _____

Phone #: _____

Email Address: _____

Please send response to:

Amanda G. McCauley
Senior Insurance Market Examiner
P.O. Box 1157
Richmond, VA 23218
amanda.mccauley@scc.virginia.gov.

(Revised 1/28/09)

February 23, 2009

Administrative Letter 2009 - 02

To: All Foreign Insurers Licensed in Virginia
Re: Prescribed or Permitted Accounting Practices

The purpose of this Administrative Letter is to notify all licensed foreign insurers that the Virginia Bureau of Insurance will be closely monitoring Footnote #1 of the filed Annual Statements. This footnote requires a disclosure if an insurer employs accounting practices that depart from the National Association of Insurance Commissioners' Accounting Practices and Procedures Manual, as required by § 38.2-1300 C of the Code of Virginia. The disclosure shall include a description of the accounting practice, a statement that the accounting practice differs from NAIC statutory accounting practices and procedures, and the monetary effect on net income and statutory surplus as a result of using an accounting practice that differs from NAIC statutory accounting practices and procedures. Additionally, if an insurer's risk-based capital would have triggered a regulatory event had it not used a prescribed or permitted accounting practice, that fact should be disclosed in the Annual Statement.

If a permitted accounting practice is determined to be material and, in the sole discretion of the Virginia Bureau of Insurance, not justified, the Virginia Bureau of Insurance may disallow the permitted accounting practice and may require the insurer to refile its Annual Statement.

Questions regarding this letter may be directed to: Edward J. Buyalos, Jr., Chief Financial Auditor, Financial Regulation Division, Bureau of Insurance, State Corporation

Commission, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9869, or email ed.buyalos@scc.virginia.gov.

/s/ Alfred W. Gross
Commissioner of Insurance

DEPARTMENT OF ENVIRONMENTAL QUALITY

Special Order by Consent- Blacksburg Country Club, Inc.

An enforcement action has been proposed for the Blacksburg Country Club, Inc., for alleged violations in Montgomery County, Virginia. The Special Order by Consent will address and resolve certain alleged violations of environmental law and regulations which resulted from an accidental unpermitted discharge into the North Fork of the Roanoke River. A description of the proposed action is available at the DEQ office named below or online at www.deq.virginia.gov. Jerry Ford, Jr. will accept comments by email jrford@deq.virginia.gov or postal mail Department of Environmental Quality, Blue Ridge Regional Office, 3019 Peters Creek Road, Roanoke, VA 24019, from March 17, 2009, to April 15, 2009.

Proposed Consent Order - R & K Foundations, Inc.

Citizens may comment on a proposed consent order for a facility in Franklin County, Virginia.

Public comment period: March 16, 2009, to April 16, 2009.

Purpose of notice: To invite the public to comment on a proposed consent order. A consent order is issued to a business owner or other responsible party to perform specific actions that will bring the entity into compliance with the relevant law and regulations. It is developed cooperatively with the facility and entered into by mutual agreement.

Project description: The Department of Environmental Quality (DEQ) proposes to issue a consent order to R & K Foundations, Inc. to address violations of the Virginia regulations. The location of the facility where the violation occurred is a property on Lost Mountain Road in Franklin County, Virginia. The consent order describes a settlement to resolve unpermitted alteration of a wetland. It requires payment of a civil charge, removal of an impoundment, and stabilization of the impacted stream.

How a decision is made: After public comments have been considered, DEQ will make a final decision.

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.

To review the consent order: The public may review the proposed consent order at the DEQ West Central Regional Office every work day by appointment or on the DEQ website at www.deq.virginia.gov.

Contact for public comments, document requests and additional information: Robert Steele, Department of Environmental Quality, West Central Regional Office, Roanoke, VA 24019, telephone (540) 562-6777, FAX (540) 562-6725, or email rpsteele@deq.virginia.gov.

Proposed Consent Order - S.E.A. Solutions Corporation

An enforcement action has been proposed for S.E.A. Solutions Corporation, A.J. Avery, President, for alleged violations in Chesapeake, Virginia. A consent order describes a settlement to resolve operating a ship dismantling facility without a permit at 5500 Bainbridge Boulevard. A description of the proposed order is available at the DEQ office named below or online at www.deq.virginia.gov. Daniel J. Van Orman will accept comments by email djvanorman@deq.virginia.gov, FAX (757) 518-2009 or postal mail Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA 23462, from March 16, 2009, to April 15, 2009.

Proposed Consent Order - Six L's Packing Company, Inc. and Kuzzens, Inc.

An enforcement action has been proposed for Six L's Packing Company, Inc., and Kuzzens, Inc., Accomack County and Northampton County, for alleged violations of the Virginia Groundwater Management Act. A description of the proposed action is available at the DEQ office named below or online at www.deq.virginia.gov. Mr. Robin Schuhmann will accept comments by email rjschuhmann@deq.virginia.gov, FAX (757) 518-2009, or postal mail Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Blvd, Virginia Beach, VA 23462, from February 2, 2009, to March 4, 2009.

Total Maximum Daily Load - Hunting Creek, Cameron Run, and Holmes Run

Announcement of a Total Maximum Daily Load (TMDL) study to restore water quality in the bacteria impaired waters of Hunting Creek, Cameron Run, and Holmes Run.

Purpose of notice: The Virginia Department of Environmental Quality (DEQ) and the Virginia Department of Conservation and Recreation (DCR) announce a Public Meeting to introduce the Hunting Creek, Cameron Run, and Holmes Run Bacteria TMDL Studies to members of the community.

Public meeting: Wednesday, March 25, 2009, 7 p.m. to 8:30 p.m., Dr. Oswald Durant Memorial Center, Meeting

General Notices/Errata

Rooms 3 and 4, 1605 Cameron Street, Alexandria, VA 22314.

Meeting description: This is the first meeting to introduce this project to the public. The purpose of this meeting is to gather information and discuss the study with community members.

Description of study: Portions of Hunting Creek, Cameron Run, and Holmes Run have been identified as impaired on the Clean Water Act § 303(d) list for not supporting the primary contact recreation use due to elevated levels of *E. coli* bacteria. Virginia agencies are working to identify the sources of bacteria contamination in these stream segments. The Hunting Creek, Cameron Run, and Holmes Run watersheds are located within Arlington County, the City of Alexandria, the City of Falls Church, and Fairfax County. Below are descriptions of the impaired segments that will be addressed in this study:

Stream Name	Impairments	Area	Upstream Limit	Downstream Limit
Hunting Creek (Tidal)	Recreational use Impairment due to <i>E. coli</i> bacteria	0.53 square miles	Route 241 (Telegraph Road) Bridge Crossing	Confluence with the Potomac River
Cameron Run (Non-Tidal)	Recreational use Impairment due to <i>E. coli</i> bacteria	2.08 miles	Confluence with Backlick Run	Route 241 (Telegraph Road) Bridge Crossing
Holmes Run (Non-Tidal)	Recreational use Impairment due to <i>E. coli</i> bacteria	3.58 miles	Mouth of Lake Barcroft	Confluence with Backlick Run

During this study, DEQ will develop a total maximum daily load, or a TMDL, for each of the impaired stream segments. A TMDL is the total amount of a pollutant a water body can receive and still meet water quality standards. To restore water quality, pollutant levels have to be reduced to the TMDL allocated amount.

How to comment: The public comment period on materials presented at the Public Meeting will extend from March 25, 2009, to April 24, 2009. DEQ accepts written comments by email, fax, or postal mail. Written comments should include the name, address, and telephone number of the person commenting, and be received by DEQ during the comment period. Please send all comments to the contact listed below.

Contact for additional information: Katie Conaway, Virginia Department of Environmental Quality, 13901 Crown Court, Woodbridge, VA 22193, telephone (703) 583-3804, or email mkconaway@deq.virginia.gov.

Total Maximum Daily Load - Little Calfpasture River

The Department of Environmental Quality (DEQ) and the Department of Conservation and Recreation (DCR) seek

written and oral comments from interested persons on the development of a Total Maximum Daily Load (TMDL) for the Little Calfpasture River in Rockbridge County. The Little Calfpasture River was listed on the 1996 § 303(d) TMDL Priority List and Report as impaired due to violations of the state's general (benthic) standard for aquatic life. This impairment extends for 0.82 miles from the Lake Merriweather Dam to the confluence with the Maury River.

Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's § 303(d) TMDL Priority List and Report.

The first public meeting on the development of this TMDL will be held on Tuesday, April 14, 2009, 7 p.m. at the Rockbridge Baths Volunteer Fire Department, 5024 Maury River Road, Rockbridge Baths, VA.

The public comment period for the first public meeting will end on May 14, 2009. Written comments should include the name, address, and telephone number of the person submitting the comments and should be sent to Robert Brent, Department of Environmental Quality, 4411 Early Road, P.O. Box 3000, Harrisonburg, VA 22801, telephone (540) 574-7848, FAX (540) 574-7878, or email rnbrent@deq.virginia.gov.

Total Maximum Daily Load - Spout Run

The Department of Environmental Quality (DEQ) and the Department of Conservation and Recreation (DCR) seek written and oral comments from interested persons on the development of Total Maximum Daily Loads (TMDLs) for the Spout Run watershed in Clarke County. Spout Run was listed on the 1998 § 303(d) TMDL Priority List and Report as impaired due to violations of the state's water quality standard for bacteria and violations of the state's general (benthic) standard for aquatic life. The benthic and bacteria impairments on the South Fork Shenandoah extend for 3.7 miles from the confluence of Page Brook and Roseville Run downstream to the confluence with the Shenandoah River. In addition, Page Brook was listed on the 2004 § 303(d) TMDL Priority List and Report as impaired due to violations of the State's water quality standard for bacteria. This impairment extends for 8.78 miles from the headwaters downstream to the confluence with Roseville Run.

Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's § 303(d) TMDL Priority List and Report.

The first public meeting on the development of these TMDLs will be held on Tuesday, March 24, 2009, 7 p.m. at the Boyce Fire Hall, 1 South Greenway Ave., Boyce, VA.

The public comment period for the first public meeting will end on April 24, 2009. Written comments should include the

name, address, and telephone number of the person submitting the comments and should be sent to Robert Brent, Department of Environmental Quality, 4411 Early Road, P.O. Box 3000, Harrisonburg, VA 22801, telephone (540) 574-7848, FAX (540) 574-7878, or email rnbrent@deq.virginia.gov.

STATE LOTTERY DEPARTMENT

Director's Orders

The following Director's Order of the State Lottery Department was filed with the Virginia Registrar of Regulations on February 19, 2009, and February 24, 2009. The order may be viewed at the State Lottery Department, 900 East 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 Ten (09)

Virginia's Instant Game Lottery 1112; "Joker's Wild" (effective 2/16/09)

Director's Order Number Eleven (09)

Virginia's Instant Game Lottery 1113; "On A Roll" (effective 2/16/09)

Director's Order Number Twelve (09)

Virginia Lottery's Bass Pro Shops™ Sweepstakes; (effective 2/16/09)

Director's Order Number Nineteen (09)

Virginia Lottery's Bass Pro Shops™ Sweepstakes; (effective 2/18/09)

STATE WATER CONTROL BOARD

Proposed Consent Order - Mr. Robert L. Ingram, Jr.

Purpose of notice: To seek public comment on a proposed consent order from the Department of Environmental Quality for a location in Norfolk, Virginia.

Public comment period: March 16, 2009, to April 15, 2009.

Consent order description: The State Water Control Board proposes to issue a consent order to Mr. Robert L. Ingram, Jr., to address alleged violations of Virginia State Water Control Law. The location where the alleged violations occurred is Ingram Auto Mall, 2400 East Indian River Road, Norfolk, VA. The consent order describes a settlement to resolve alleged violations of the facility Virginia Pollutant Discharge Elimination System General Permit VAR05.

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.

Contact for public comments, document requests and additional information: Paul R. Smith, Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Blvd., Virginia Beach, VA 23462, telephone (757) 518-2020, FAX (757) 518-2009, or email prsmith@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

STATE CORPORATION COMMISSION

Title of Regulation: 14VAC5-323. **Preneed Life Insurance Minimum Standards for Determining Reserve Liabilities and Nonforfeiture Values (adding 14VAC5-323-10 through 14VAC5-323-70).**

Publication: 25:8 VA.R. 1526-1528 December 22, 2008.

General Notices/Errata

Correction to Final Regulation:

Page 1526, Case No. INS-2008-00194, after the "Summary," correct the date of the order to read, "AT RICHMOND, DECEMBER 1, 2008."

VA.R. Doc. No. R09-1348; Filed March 3, 2009, 10:19 a.m.

DEPARTMENT OF TAXATION

Title of Regulation: **23VAC10-230. Watercraft Sales and Use Tax.**

Publication: 25:8 VA.R. 1631-1640 December 22, 2008.

Correction to Fast-Track Regulation:

Page 1631, Titles of Regulations, 23VAC10-230, line 4, change "23VAC10-230-70" to "23VAC10-230-71."

Page 1637, 23VAC10-230-70, change "23VAC10-230-70" to "23VAC10-230-71."

VA.R. Doc. No. R09-1543; Filed March 8, 2009.