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Virginia Register of Regulations

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THE VIRGINIA REGISTER OF REGULATIONS (USPS-001831) is published biweekly, with quarterly cumulative indices published in January, April, July and October, for $179.00 per year by LexisNexis Matthew Bender, 1275 Broadway, Albany, NY 12204. Periodical postage is paid at Albany, NY and at additional mailing offices. POSTMASTER: Send address changes to LexisNexis Matthew Bender, 1275 Broadway, Albany, NY 12204.

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THE VIRGINIA REGISTER INFORMATION PAGE

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

PUBLICATION SCHEDULE AND DEADLINES

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

June 2009 through March 2010

Volume: Issue	Material Submitted By Noon*	Will Be Published On
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25:20	May 20, 2009	June 8, 2009
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26:6	November 4, 2009	November 23, 2009
26:7	November 17, 2009 **(Tuesday)**	December 7, 2009
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26:10	December 29, 2009 **(Tuesday)**	January 18, 2010
26:11	January 13, 2010	February 1, 2010
26:12	January 27, 2010	February 15, 2010
26:13	February 10, 2010	March 1, 2010
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INDEX 2 Volume 26		**January 2010**
26:15	March 10, 2010	March 29, 2010

*Filing deadlines are Wednesdays unless otherwise specified.

CUMULATIVE TABLE OF VIRGINIA ADMINISTRATIVE CODE SECTIONS ADOPTED, AMENDED, OR REPEALED

The table printed below lists regulation sections, by Virginia Administrative Code (VAC) title, that have been amended, added or repealed in the *Virginia Register* since the regulations were originally published or last supplemented in VAC (the Spring 2009 VAC Supplement includes final regulations published through *Virginia Register* Volume 25, Issue 13, dated March 2, 2009). 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 2. Agriculture			
2 VAC 5-100-10 through 2VAC5-100-40	Repealed	25:16 VA.R. 2831	5/13/09
2 VAC 5-320-10	Erratum	25:13 VA.R. 2565	--
2 VAC 5-325-10	Erratum	25:13 VA.R. 2565	--
2 VAC 5-330-30	Erratum	25:13 VA.R. 2565	--
2 VAC 5-330-30	Amended	25:15 VA.R. 2710	3/9/09
2 VAC 5-340-140	Erratum	25:13 VA.R. 2565	--
2 VAC 5-340-170	Erratum	25:13 VA.R. 2565	--
2 VAC 5-350-20	Erratum	25:13 VA.R. 2565	--
2 VAC 5-370-10	Erratum	25:13 VA.R. 2566	--
2 VAC 5-380-10	Erratum	25:13 VA.R. 2566	--
2 VAC 5-390-20	Erratum	25:13 VA.R. 2566	--
2 VAC 5-390-80	Erratum	25:13 VA.R. 2566	--
2 VAC 5-400-10	Erratum	25:13 VA.R. 2566	--
2 VAC 5-440-20	Erratum	25:13 VA.R. 2566	--
Title 4. Conservation and Natural Resources			
4 VAC 20-270-10 emer	Amended	25:14 VA.R. 2591	2/26/09-3/28/09
4 VAC 20-270-30 emer	Amended	25:14 VA.R. 2591	2/26/09-3/28/09
4 VAC 20-270-30	Amended	25:16 VA.R. 2831	3/26/09
4 VAC 20-270-40 emer	Amended	25:14 VA.R. 2592	2/26/09-3/28/09
4 VAC 20-270-40	Amended	25:16 VA.R. 2832	3/26/09
4 VAC 20-270-55 emer	Amended	25:14 VA.R. 2592	2/26/09-3/28/09
4 VAC 20-270-55	Amended	25:16 VA.R. 2832	3/26/09
4 VAC 20-270-60 emer	Amended	25:14 VA.R. 2592	2/26/09-3/28/09
4 VAC 20-395-10	Amended	25:19 VA.R. 3289	6/30/09
4 VAC 20-395-20	Amended	25:19 VA.R. 3289	6/30/09
4 VAC 20-395-30	Amended	25:19 VA.R. 3290	6/30/09
4 VAC 20-395-40	Amended	25:19 VA.R. 3290	6/30/09
4 VAC 20-490-20	Amended	25:14 VA.R. 2593	3/1/09
4 VAC 20-490-30	Amended	25:14 VA.R. 2595	3/1/09
4 VAC 20-490-40	Amended	25:14 VA.R. 2595	3/1/09
4 VAC 20-490-41	Amended	25:14 VA.R. 2595	3/1/09
4 VAC 20-530-10 emer	Amended	25:14 VA.R. 2596	2/26/09-3/28/09
4 VAC 20-530-20 emer	Amended	25:14 VA.R. 2596	2/26/09-3/28/09
4 VAC 20-530-31 emer	Amended	25:14 VA.R. 2597	2/26/09-3/28/09
4 VAC 20-530-31	Amended	25:16 VA.R. 2833	3/26/09
4 VAC 20-530-40 emer	Amended	25:14 VA.R. 2597	2/26/09-3/28/09
4 VAC 20-560-40 emer	Amended	25:19 VA.R. 3292	5/1/09-5/30/09
4 VAC 20-620-70	Amended	25:14 VA.R. 2597	3/1/09
4 VAC 20-700-20	Amended	25:14 VA.R. 2598	3/1/09

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4 VAC 20-950-30	Amended	25:16 VA.R. 2833	4/1/09
4 VAC 20-1200-10	Added	25:16 VA.R. 2834	4/1/09
4 VAC 20-1200-20	Added	25:16 VA.R. 2834	4/1/09
4 VAC 20-1200-30	Added	25:16 VA.R. 2834	4/1/09
4 VAC 20-1210-10 emer	Added	25:16 VA.R. 2835	3/26/09-4/24/09
4 VAC 20-1210-10	Added	25:19 VA.R. 3293	4/30/09
4 VAC 20-1210-20 emer	Added	25:16 VA.R. 2835	3/26/09-4/24/09
4 VAC 20-1210-20	Added	25:19 VA.R. 3293	4/30/09
4 VAC 20-1210-30 emer	Added	25:16 VA.R. 2835	3/26/09-4/24/09
4 VAC 20-1210-30	Added	25:19 VA.R. 3293	4/30/09
4 VAC 25-31 (Forms)	Amended	25:16 VA.R. 2835	--
4 VAC 25-130 (Forms)	Amended	25:16 VA.R. 2836	--
4 VAC 50-60-10	Amended	25:16 VA.R. 2838	7/1/09
4 VAC 50-60-1100 through 4VAC50-60-1140	Amended	25:16 VA.R. 2849-2851	7/1/09
4 VAC 50-60-1150	Amended	25:16 VA.R. 2851	5/13/09
4 VAC 50-60-1160 through 4 VAC 50-60-1180	Amended	25:16 VA.R. 2853-2868	7/1/09
4 VAC 50-60-1182	Added	25:16 VA.R. 2869	7/1/09
4 VAC 50-60-1184	Added	25:16 VA.R. 2869	7/1/09
4 VAC 50-60-1186	Added	25:16 VA.R. 2870	7/1/09
4 VAC 50-60-1188	Added	25:16 VA.R. 2871	7/1/09
4 VAC 50-60-1190	Amended	25:16 VA.R. 2871	7/1/09
Title 5. Corporations			
5 VAC 5-20-10	Amended	25:14 VA.R. 2601	3/11/09
5 VAC 5-20-20	Amended	25:14 VA.R. 2601	3/11/09
5 VAC 5-20-80	Amended	25:14 VA.R. 2602	3/11/09
5 VAC 5-20-90	Amended	25:14 VA.R. 2602	3/11/09
5 VAC 5-20-100	Amended	25:14 VA.R. 2602	3/11/09
5 VAC 5-20-120 through 5 VAC 5-20-150	Amended	25:14 VA.R. 2603-2604	3/11/09
5 VAC 5-20-170	Amended	25:14 VA.R. 2604	3/11/09
5 VAC 5-20-180	Amended	25:14 VA.R. 2605	3/11/09
5 VAC 5-20-240 through 5 VAC 5-20-280	Amended	25:14 VA.R. 2605-2608	3/11/09
Title 8. Education			
8 VAC 20-80-10 through 8VAC20-80-190	Repealed	25:16 VA.R. 2872	*****
8 VAC 20-81-10 through 8VAC20-81-340	Added	25:16 VA.R. 2872-2967	*****
8 VAC 20-521-60	Amended	25:19 VA.R. 3295	7/15/09
8 VAC 20-650-30	Amended	25:19 VA.R. 3297	7/15/09
Title 9. Environment			
9 VAC 5-20-21	Amended	25:19 VA.R. 3298	6/24/09
9 VAC 5-30-15	Amended	25:19 VA.R. 3302	6/24/09
9 VAC 5-30-80	Amended	25:19 VA.R. 3302	6/24/09
9 VAC 5-80-1170	Amended	25:19 VA.R. 3302	6/24/09
9 VAC 20-80 (Forms)	Amended	25:18 VA.R. 3149	--
9 VAC 25-32-480	Erratum	25:15 VA.R. 2804	--
9 VAC 25-151-10	Amended	25:19 VA.R. 3306	6/24/09
9 VAC 25-151-40 through 9 VAC 25-151-290	Amended	25:19 VA.R. 3308-3379	6/24/09
9 VAC 25-151-310 through 9 VAC 25-151-370	Amended	25:19 VA.R. 3379-3385	6/24/09
9 VAC 25-190-10	Amended	25:19 VA.R. 3385	6/24/09
9 VAC 25-190-20	Amended	25:19 VA.R. 3386	6/24/09
9 VAC 25-190-50	Amended	25:19 VA.R. 3386	6/24/09

***** Regulatory process suspended in 25:16 VA.R. 2968

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9 VAC 25-190-60	Amended	25:19 VA.R. 3387	6/24/09
9 VAC 25-190-65	Added	25:19 VA.R. 3388	6/24/09
9 VAC 25-190-70	Amended	25:19 VA.R. 3389	6/24/09
9 VAC 25-580 (Forms)	Amended	25:18 VA.R. 3154	--
9 VAC 25-720-60	Erratum	25:19 VA.R. 3464	--
Title 10. Finance and Financial Institutions			
10 VAC 5-200-60	Amended	25:14 VA.R. 2609	3/1/09
10 VAC 5-200-110	Amended	25:14 VA.R. 2609	3/1/09
10 VAC 5-200-130	Added	25:14 VA.R. 2613	3/1/09
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11 VAC 10-20-330	Amended	25:18 VA.R. 3162	6/1/09
11 VAC 10-50-30	Amended	25:17 VA.R. 3005	5/27/09
11 VAC 10-70-20	Amended	25:15 VA.R. 2712	4/15/09
11 VAC 10-70-90	Amended	25:15 VA.R. 2712	4/15/09
11 VAC 10-110-90	Amended	25:19 VA.R. 3407	6/1/09
11 VAC 10-120-80	Amended	25:17 VA.R. 3006	5/27/09
11 VAC 10-180-10	Amended	25:17 VA.R. 3007	5/27/09
11 VAC 10-180-35	Amended	25:17 VA.R. 3007	5/27/09
11 VAC 10-180-70	Amended	25:17 VA.R. 3008	5/27/09
11 VAC 10-180-80	Amended	25:17 VA.R. 3009	5/27/09
11 VAC 10-180-110	Amended	25:17 VA.R. 3010	5/27/09
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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 30-10-150	Amended	25:14 VA.R. 2614	4/15/09
12 VAC 30-10-930	Amended	25:14 VA.R. 2615	4/15/09
12 VAC 30-20-90	Amended	25:14 VA.R. 2615	4/15/09
12 VAC 30-20-500	Amended	25:14 VA.R. 2618	4/15/09
12 VAC 30-20-520	Amended	25:14 VA.R. 2618	4/15/09
12 VAC 30-40-10	Erratum	25:19 VA.R. 3464	--
12 VAC 30-50-10	Amended	25:14 VA.R. 2618	4/15/09
12 VAC 30-80-40	Amended	25:19 VA.R. 3408	7/1/09
12 VAC 30-110-40	Amended	25:14 VA.R. 2619	4/15/09
12 VAC 30-110-370	Amended	25:14 VA.R. 2619	4/15/09
12 VAC 30-110-380	Repealed	25:14 VA.R. 2619	4/15/09
12 VAC 30-110-670	Amended	25:14 VA.R. 2620	4/15/09
12 VAC 30-110-680	Amended	25:14 VA.R. 2620	4/15/09
12 VAC 30-110-700	Amended	25:14 VA.R. 2620	4/15/09
12 VAC 30-110-720	Amended	25:14 VA.R. 2620	4/15/09
12 VAC 30-110-741	Amended	25:14 VA.R. 2623	4/15/09
12 VAC 30-110-980	Amended	25:14 VA.R. 2623	4/15/09
12 VAC 30-110-990	Repealed	25:14 VA.R. 2623	4/15/09
12 VAC 30-110-1000	Repealed	25:14 VA.R. 2623	4/15/09
12 VAC 30-110-1040	Amended	25:14 VA.R. 2623	4/15/09
12 VAC 30-120-140	Amended	25:14 VA.R. 2624	4/15/09
12 VAC 30-120-910	Amended	25:19 VA.R. 3410	7/1/09
12 VAC 30-130-260	Amended	25:14 VA.R. 2626	4/15/09
12 VAC 30-130-270	Amended	25:14 VA.R. 2626	4/15/09
12 VAC 30-130-290	Amended	25:14 VA.R. 2627	4/15/09
12 VAC 30-130-370	Repealed	25:14 VA.R. 2628	4/15/09

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12 VAC 30-130-380	Amended	25:14 VA.R. 2628	4/15/09
12 VAC 30-130-410	Repealed	25:14 VA.R. 2628	4/15/09
12 VAC 30-130-540	Amended	25:14 VA.R. 2629	4/15/09
12 VAC 30-130-800	Amended	25:14 VA.R. 2630	4/15/09
12 VAC 30-130-820	Amended	25:14 VA.R. 2632	4/15/09
12 VAC 30-130-890	Amended	25:14 VA.R. 2633	4/15/09
12 VAC 30-130-910	Amended	25:14 VA.R. 2634	4/15/09
12 VAC 30-141-60	Amended	25:14 VA.R. 2635	4/15/09
12 VAC 30-141-120	Amended	25:14 VA.R. 2635	4/15/09
12 VAC 30-141-660	Amended	25:16 VA.R. 2969	5/13/09
12 VAC 30-141-720	Amended	25:14 VA.R. 2635	4/15/09
12 VAC 30-141-740	Amended	25:19 VA.R. 3411	7/1/09
12 VAC 30-141-760	Amended	25:14 VA.R. 2635	4/15/09
12 VAC 30-150-40	Amended	25:14 VA.R. 2636	4/15/09
Title 13. Housing			
13 VAC 5-63-220	Amended	25:17 VA.R. 3013	6/1/09
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
Title 14. Insurance			
14 VAC 5-43-10	Added	25:19 VA.R. 3413	5/15/09
14 VAC 5-43-20	Added	25:19 VA.R. 3413	5/15/09
14 VAC 5-43-30	Added	25:19 VA.R. 3414	5/15/09
14 VAC 5-170-20	Amended	25:18 VA.R. 3186	5/21/09
14 VAC 5-170-30	Amended	25:18 VA.R. 3186	5/21/09
14 VAC 5-170-50	Amended	25:18 VA.R. 3188	5/21/09
14 VAC 5-170-60	Amended	25:18 VA.R. 3188	5/21/09
14 VAC 5-170-70	Amended	25:18 VA.R. 3190	5/21/09
14 VAC 5-170-75	Added	25:18 VA.R. 3194	5/21/09
14 VAC 5-170-80	Amended	25:18 VA.R. 3196	5/21/09
14 VAC 5-170-85	Added	25:18 VA.R. 3197	5/21/09
14 VAC 5-170-150	Amended	25:18 VA.R. 3199	5/21/09
14 VAC 5-170-215	Added	25:18 VA.R. 3237	5/21/09
Title 18. Professional and Occupational Licensing			
18 VAC 10-20-683	Erratum	25:15 VA.R. 2804	--
18 VAC 48-60-13	Added	25:15 VA.R. 2769	5/15/09
18 VAC 48-60-17	Added	25:15 VA.R. 2769	5/15/09
18 VAC 48-60-20	Amended	25:15 VA.R. 2770	5/15/09
18 VAC 48-60-60	Amended	25:15 VA.R. 2770	5/15/09
18 VAC 60-20-16	Amended	25:17 VA.R. 3015	7/1/09
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18 VAC 76-20-60	Amended	25:16 VA.R. 2971	5/13/09
18 VAC 76-20-70	Amended	25:16 VA.R. 2971	5/13/09
18 VAC 76-40-20	Amended	25:18 VA.R. 3239	7/1/09
18 VAC 90-20-35	Amended	25:17 VA.R. 3017	7/1/09
18 VAC 90-25-15	Amended	25:17 VA.R. 3017	7/1/09
18 VAC 90-30-100	Amended	25:17 VA.R. 3017	7/1/09
18 VAC 90-50-20	Amended	25:17 VA.R. 3017	7/1/09
18 VAC 90-60-20	Amended	25:17 VA.R. 3018	7/1/09
18 VAC 90-60-90	Amended	25:16 VA.R. 2972	5/13/09

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18 VAC 90-60-91	Added	25:16 VA.R. 2972	5/13/09
18 VAC 90-60-92	Added	25:16 VA.R. 2973	5/13/09
18 VAC 95-20-10	Amended	25:19 VA.R. 3418	6/24/09
18 VAC 95-20-70	Amended	25:19 VA.R. 3420	7/1/09
18 VAC 95-20-175	Amended	25:19 VA.R. 3419	6/24/09
18 VAC 95-20-390	Amended	25:19 VA.R. 3419	6/24/09
18 VAC 95-30-10	Amended	25:19 VA.R. 3420	6/24/09
18 VAC 95-30-30	Amended	25:19 VA.R. 3420	7/1/09
18 VAC 105-20-60	Amended	25:18 VA.R. 3240	7/1/09
18 VAC 110-20-10 emer	Amended	25:17 VA.R. 3018	4/10/09-4/9/10
18 VAC 110-20-21	Added	25:17 VA.R. 3025	7/1/09
18 VAC 110-20-400 emer	Amended	25:17 VA.R. 3021	4/10/09-4/9/10
18 VAC 110-20-740 emer	Added	25:17 VA.R. 3021	4/10/09-4/9/10
18 VAC 110-20-750 emer	Added	25:17 VA.R. 3021	4/10/09-4/9/10
18 VAC 110-20-760 emer	Added	25:17 VA.R. 3021	4/10/09-4/9/10
18 VAC 110-20-770 emer	Added	25:17 VA.R. 3022	4/10/09-4/9/10
18 VAC 110-20-780 emer	Added	25:17 VA.R. 3022	4/10/09-4/9/10
18 VAC 110-20-790 emer	Added	25:17 VA.R. 3022	4/10/09-4/9/10
18 VAC 110-20-800 emer	Added	25:17 VA.R. 3022	4/10/09-4/9/10
18 VAC 112-20-25	Amended	25:17 VA.R. 3025	7/1/09
18 VAC 112-20-81	Added	25:18 VA.R. 3240	6/10/09
18 VAC 112-20-90	Amended	25:18 VA.R. 3241	6/10/09
18 VAC 112-20-130	Amended	25:18 VA.R. 3241	6/10/09
18 VAC 112-20-131	Amended	25:18 VA.R. 3241	6/10/09
18 VAC 112-20-150	Amended	25:18 VA.R. 3242	6/10/09
18 VAC 120-40-15	Amended	25:15 VA.R. 2774	5/14/09
18 VAC 120-40-85	Added	25:15 VA.R. 2774	5/14/09
18 VAC 120-40-240	Amended	25:15 VA.R. 2774	5/14/09
18 VAC 120-40-411.1	Amended	25:15 VA.R. 2775	5/14/09
18 VAC 125-20-120	Amended	25:17 VA.R. 3026	7/1/09
18 VAC 125-30-80	Amended	25:17 VA.R. 3026	7/1/09
18 VAC 130-20-30	Erratum	25:15 VA.R. 2804	--
18 VAC 140-20-100	Amended	25:18 VA.R. 3247	7/1/09
18 VAC 160-20-10	Amended	25:19 VA.R. 3421	7/1/09
18 VAC 160-20-74	Amended	25:19 VA.R. 3424	7/1/09
18 VAC 160-20-76	Amended	25:19 VA.R. 3424	7/1/09
18 VAC 160-20-80	Amended	25:19 VA.R. 3425	7/1/09
18 VAC 160-20-82	Added	25:19 VA.R. 3425	7/1/09
18 VAC 160-20-84	Added	25:19 VA.R. 3426	7/1/09
18 VAC 160-20-90	Amended	25:19 VA.R. 3427	7/1/09
18 VAC 160-20-94	Added	25:19 VA.R. 3429	7/1/09
18 VAC 160-20-96	Added	25:19 VA.R. 3430	7/1/09
18 VAC 160-20-97	Added	25:19 VA.R. 3431	7/1/09
18 VAC 160-20-98	Added	25:19 VA.R. 3432	7/1/09
18 VAC 160-20-102	Amended	25:19 VA.R. 3433	7/1/09
18 VAC 160-20-104	Amended	25:19 VA.R. 3433	7/1/09
18 VAC 160-20-106	Amended	25:19 VA.R. 3433	7/1/09
18 VAC 160-20-109	Amended	25:19 VA.R. 3434	7/1/09
18 VAC 160-20-140	Amended	25:19 VA.R. 3435	7/1/09
18 VAC 160-20-145	Added	25:19 VA.R. 3435	7/1/09
18 VAC 160-20-150	Amended	25:19 VA.R. 3436	7/1/09

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
Title 22. Social Services			
22 VAC 40-35-5	Repealed	25:19 VA.R. 3438	7/1/09
22 VAC 40-35-10	Amended	25:19 VA.R. 3438	7/1/09
22 VAC 40-35-20	Amended	25:19 VA.R. 3440	7/1/09
22 VAC 40-35-40 through 22 VAC 40-35-120	Amended	25:19 VA.R. 3441-3446	7/1/09
22 VAC 40-35-125	Repealed	25:19 VA.R. 3446	7/1/09
22 VAC 40-35-126	Repealed	25:19 VA.R. 3446	7/1/09
22 VAC 40-35-127	Repealed	25:19 VA.R. 3447	7/1/09
22 VAC 40-35-128	Repealed	25:19 VA.R. 3447	7/1/09
22 VAC 40-35-130	Amended	25:19 VA.R. 3447	7/1/09
22 VAC 40-72-10	Amended	25:19 VA.R. 3448	8/1/09
22 VAC 40-72-160	Amended	25:19 VA.R. 3453	8/1/09
22 VAC 40-72-210	Amended	25:19 VA.R. 3453	8/1/09
22 VAC 40-72-660	Amended	25:19 VA.R. 3454	8/1/09
22 VAC 40-72-670	Amended	25:19 VA.R. 3455	8/1/09
22 VAC 40-170-10 through 22 VAC 40-170-230	Repealed	25:19 VA.R. 3456	7/1/09
Title 24. Transportation and Motor Vehicles			
24 VAC 30-92-10 through 24 VAC 30-92-150	Added	25:15 VA.R. 2777-2801	3/9/09
24 VAC 30-280-20 through 24 VAC 30-280-70	Repealed	25:19 VA.R. 3456	7/1/09
24 VAC 30-281-10	Added	25:19 VA.R. 3457	7/1/09
24 VAC 30-300-10	Repealed	25:19 VA.R. 3457	4/29/09
24 VAC 30-301-10	Added	25:19 VA.R. 3458	4/29/09
24 VAC 30-301-20	Added	25:19 VA.R. 3458	4/29/09

TITLE 2. AGRICULTURE

BOARD OF AGRICULTURE AND CONSUMER SERVICES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Agriculture and Consumer Services intends to consider amending the following regulations: **2VAC5-140, Health Requirements Governing the Admission of Livestock, Poultry, Companion Animals, and Other Animals or Birds into Virginia.** The purpose of the proposed action is to establish the requirements for testing and documentation of livestock and certain other animals to be allowed to come into Virginia. The existing regulation will be reviewed and updated where appropriate to require the use of appropriate testing methods for those animals entering Virginia permanently and for exhibition. The regulation currently requires that animals coming into Virginia shall be accompanied by a certificate of veterinary inspection to create a record to document the origin, destination, test results, and relevant vaccinations of animals coming into Virginia from other states. The information required on the certificates of veterinary inspection will be reviewed for compatibility with current epidemiology practices and record management systems. The regulations will also be reviewed for continuing need and effectiveness.

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

Statutory Authority: §§ 3.2-6001, 3.2-6002, and 3.2-6004 of the Code of Virginia.

Public Comments: Public comments may be submitted until 5 p.m. on July 8, 2009.

Agency Contact: Richard D. Saunders, Program Manager, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 692-0601, FAX (804) 371-2380, or email doug.saunders@vdacs.virginia.gov.

VA.R. Doc. No. R09-1891; Filed May 12, 2009, 12:37 p.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Agriculture and Consumer Services intends to consider amending the following regulations: **2VAC5-320, Regulations for the Enforcement of the Endangered Plant and Insect Species Act.** The purpose of the proposed action is to amend the lists of endangered and threatened plant and insect species by (i) removing from the regulation a plant species that is no longer globally rare, (ii) transferring certain plant species from the endangered list to the threatened list to reflect the improved status of those species, and (iii) adding to the endangered and threatened lists certain plant and insect species that are considered in danger of extinction, or which are likely to become endangered in the foreseeable future throughout all or a significant portion of their native range. This action reflects the imperiled status of the various species and it seeks to protect them from take and destruction. It will also stimulate conservation programs to preserve and protect the affected species.

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

Statutory Authority: §§ 3.2-1002 and 3.2-1005 of the Code of Virginia.

Public Comments: Public comments may be submitted until 5 p.m. on July 8, 2009.

Agency Contact: Frank Fulgham, Program Manager, Department of Agriculture and Consumer Services, P. O. Box 1163, Richmond, VA 23218, telephone (804) 786-0440, FAX (804) 371-7793, TTY (800) 828-1120, or email frank.fulgham@vdacs.virginia.gov.

VA.R. Doc. No. R09-1869; Filed May 12, 2009, 12:31 p.m.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

DEPARTMENT OF FORESTRY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Department of Forestry intends to consider amending the following regulations: **4VAC10-30, Virginia State Forest Regulations.** The purpose of the proposed action is to allow the lawful carrying of concealed handguns with a concealed handgun permit. 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.

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

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

Public Comments: Public comments may be submitted until 5 p.m. on July 8, 2009.

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

VA.R. Doc. No. R09-1822; Filed May 11, 2009, 3:55 p.m.

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

BOARD OF CORRECTIONS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Corrections intends to consider amending the following regulations: **6VAC15-80, Standards for Planning, Design, Construction and Reimbursement of Local Correctional Facilities.** The purpose of the proposed action is to establish requirements for planning, design and construction of local and regional correctional facilities, as well as reimbursement guidelines. Revised regulations will provide for easier comprehension by those localities directly affected. The standards include, but are not limited to design requirements for secure local correctional facilities, community custody facilities and lockups, submission schedules for reviews, reimbursement requests, requirements for submission of Community-Based Corrections Plans and planning study, methods of reimbursement, and project documentation.

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

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

Public Comments: Public comments may be submitted until 5 p.m. on July 8, 2009.

Agency Contact: Brooks Ballard, Architectural & Engineering Services, Department of Corrections, 6900 Atmore Drive, Richmond, VA 23225, telephone (804) 674-3102, FAX (804) 674-3529, or email brooks.ballard@vadoc.virginia.gov.

VA.R. Doc. No. R09-1823; Filed May 18, 2009, 1:31 p.m.

TITLE 9. ENVIRONMENT

VIRGINIA WASTE MANAGEMENT BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Virginia Waste Management Board intends to consider amending the following regulations: **9VAC20-85, Coal Combustion Byproduct Regulations.** The purpose of the proposed action is to provide for the use, reuse and reclamation of coal combustion byproducts (CCB). Administrative procedures are provided for the submission of appropriate documentation for the use of CCB. In addition, the regulation establishes appropriate standards for siting, design, construction, operation, and closure of projects using CCB. During the development of amendment 7 to the Virginia Solid Waste Management Regulations (VSWMR), the Amendment 7 Technical Advisory Committee (TAC) discussed (i) incorporating the Coal Combustion Byproducts Regulation into the VSWMR and (ii) areas of the Coal Combustion Byproducts Regulations that should be reviewed. As a result of those discussions, 7 TAC recommended that the Coal Combustion Byproducts Regulation remain separate from the VSWMR and that any necessary revisions to the program should be undertaken in a separate rulemaking. The CCB regulations will be updated to incorporate changes to statute enacted by the 2009 General Assembly. These statutory changes address the placement of CCB in an area located within a 100-year floodplain. This amendment will also consider including additional restrictions on the use and placement of CCB.

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

Statutory Authority: § 10.1-1402 of the Code of Virginia; 42 USC § 6941; and 40 CFR Part 257.

Public Comments: Public comments may be submitted until 5 p.m. on July 10, 2009.

Agency Contact: Melissa S. Porterfield, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4238, FAX (804) 698-4346, or email msporterfield@deq.virginia.gov.

VA.R. Doc. No. R09-1912; Filed May 12, 2009, 9:33 a.m.

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Medical Assistance Services intends to consider amending the following regulations: **12VAC30-120, Waivered Services.** The purpose of the proposed action is to update the Alzheimer's Assisted Living Waiver program to create greater capacity for provider enrollment.

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

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

Public Comments: Public comments may be submitted until 5 p.m. on July 8, 2009.

Agency Contact: Steve Ankiel, Long Term Care Division, Department of Medical Assistance Services, 600 East Broad

Street, Richmond, VA 23219, telephone (804) 317-8894, FAX (804) 371-4986, or email steve.ankiel@dmas.virginia.gov.

VA.R. Doc. No. R09-1909; Filed May 13, 2009, 1:40 p.m.

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TITLE 13. HOUSING

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Housing and Community Development intends to consider amending the following regulations: **13VAC5-21, Virginia Certification Standards.** The purpose of the proposed action is to update the regulation to coordinate with the building and fire regulations of the department, which are being updated to reference the newest available nationally recognized model codes and standards.

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

Statutory Authority: § 36-137 of the Code of Virginia.

Public Comments: Public comments may be submitted until 5 p.m. on July 8, 2009.

Agency Contact: Steve Calhoun, Regulatory Coordinator, Department of Housing and Community Development, 501 North Second Street, Richmond, VA 23219, telephone (804) 371-7015, FAX (804) 371-7090, or email steve.calhoun@dhcd.virginia.gov.

VA.R. Doc. No. R09-1897; Filed May 12, 2009, 9:43 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Housing and Community Development intends to consider amending the following regulations: **13VAC5-31, Virginia Amusement Device Regulations.** The purpose of the proposed action is to update the regulation to incorporate by reference the newest available nationally recognized codes and standards.

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

Statutory Authority: § 36-98.3 of the Code of Virginia.

Public Comments: Public comments may be submitted until 5 p.m. on July 8, 2009.

Agency Contact: Stephen W. Calhoun, Regulatory Coordinator, Department of Housing and Community Development, The Jackson Center, 501 N. 2nd St., Richmond, VA 23219-1321, telephone (804) 371-7000, FAX (804) 371-7090, TTY (804) 371-7089, or email steve.calhoun@dhcd.virginia.gov.

VA.R. Doc. No. R09-1892; Filed May 12, 2009, 9:44 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Housing and Community Development intends to consider amending the following regulations: **13VAC5-51, Virginia Statewide Fire Prevention Code.** The purpose of the proposed action is to update the regulation to incorporate by reference the newest available nationally recognized codes and standards.

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

Statutory Authority: § 27-97 of the Code of Virginia.

Public Comments: Public comments may be submitted until 5 p.m. on July 8, 2009.

Agency Contact: Stephen W. Calhoun, Regulatory Coordinator, Department of Housing and Community Development, The Jackson Center, 501 North 2nd Street, Richmond, VA 23219-1321, telephone (804) 371-7000, FAX (804) 371-7090, TTY (804) 371-7089, or email steve.calhoun@dhcd.virginia.gov.

VA.R. Doc. No. R09-1893; Filed May 12, 2009, 9:44 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Housing and Community Development intends to consider amending the following regulations: **13VAC5-63, Virginia Uniform Statewide Building Code.** The purpose of the proposed action is to update the regulation to incorporate by reference the newest available nationally recognized model building codes and standards produced by the International Code Council.

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

Statutory Authority: § 36-98 of the Code of Virginia.

Public Comments: Public comments may be submitted until 5 p.m. on July 8, 2009.

Agency Contact: Stephen W. Calhoun, Regulatory Coordinator, Department of Housing and Community Development, The Jackson Center, 501 North 2nd Street, Richmond, VA 23219-1321, telephone (804) 371-7000, FAX (804) 371-7090, TTY (804) 371-7089, or email steve.calhoun@dhcd.virginia.gov.

VA.R. Doc. No. R09-1894; Filed May 12, 2009, 9:45 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Housing and

Community Development intends to consider amending the following regulations: **13VAC5-91, Virginia Industrialized Building Safety Regulations.** The purpose of the proposed action is to update the regulation to incorporate by reference the newest available nationally recognized model building codes and standards produced by ICC.

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

Statutory Authority: § 36-73 of the Code of Virginia.

Public Comments: Public comments may be submitted until 5 p.m. on July 8, 2009.

Agency Contact: Stephen W. Calhoun, Regulatory Coordinator, Department of Housing and Community Development, The Jackson Center, 501 North 2nd Street, Richmond, VA 23219-1321, telephone (804) 371-7000, FAX (804) 371-7090, TTY (804) 371-7089, or email steve.calhoun@dhcd.virginia.gov.

VA.R. Doc. No. R09-1895; Filed May 12, 2009, 9:46 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Housing and Community Development intends to consider amending the following regulations: **13VAC5-95, Virginia Manufactured Home Safety Regulations.** The purpose of the proposed action is to update the Manufactured Housing Safety Regulations to incorporate by reference the recent changes and additions to the federal construction standards of the U.S. Department of Housing and Urban Development.

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

Statutory Authority: § 36-85.7 of the Code of Virginia.

Public Comments: Public comments may be submitted until 5 p.m. on July 8, 2009.

Agency Contact: Stephen W. Calhoun, Regulatory Coordinator, Department of Housing and Community Development, The Jackson Center, 501 North 2nd Street, Richmond, VA 23219-1321, telephone (804) 371-7000, FAX (804) 371-7090, TTY (804) 371-7089, or email steve.calhoun@dhcd.virginia.gov.

VA.R. Doc. No. R09-1896; Filed May 12, 2009, 9:45 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF ACCOUNTANCY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Accountancy intends to consider amending the following regulations: **18VAC5-21, Board of Accountancy Regulations.** The purpose of the proposed action is to reduce the number of educational hours needed before an individual can sit for the the uniform certified public accountant examination.

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

Statutory Authority: §§ 54.1-4402 and 54.1-4403 of the Code of Virginia.

Public Comments: Public comments may be submitted until 5 p.m. on July 8, 2009.

Agency Contact: Mike D. Roger, Acting Executive Director, Board of Accountancy, 9960 Mayland Drive, Perimeter Center, Suite 402, Richmond, VA 23233, telephone (804) 367-0290, FAX (804) 527-4409, or email mike.rogers@boa.virginia.gov.

VA.R. Doc. No. R09-1099; Filed May 14, 2009, 3:37 p.m.

BOARD OF PHYSICAL THERAPY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Physical Therapy intends to consider amending the following regulations: **18VAC112-20, Regulations Governing the Practice of Physical Therapy.** The purpose of the proposed action is to amend the regulation to provide more flexibility and accountability in traineeships and provide more opportunities for obtaining continuing education hours.

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

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

Public Comments: Public comments may be submitted until 5 p.m. on July 8, 2009.

Agency Contact: Lisa R. Hahn, Executive Director, Board of Physical Therapy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4424, FAX (804) 527-4413, or email lisa.hahn@dhp.virginia.gov.

VA.R. Doc. No. R09-1926; Filed May 11, 2009, 2:17 p.m.

TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Social Services intends to consider promulgating the following regulations: **22VAC40-221, Additional Daily Supervision Rate Structure.** The purpose of the proposed action is to establish a requirement for the use of an approved Department of Social Services process to assess a child for the purpose of determining the additional daily supervision component of the foster care maintenance payment. It will also establish standards for local departments of social services to use when providing additional daily supervision. This regulation is needed to ensure that Virginia meets federal requirements for seeking federal reimbursement by having a statewide rate structure for local departments to use in determining the additional daily supervision component of the foster care maintenance payment. Standards for providing additional daily supervision are needed to ensure a comprehensive approach and consistency statewide.

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

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

Public Comments: Public comments may be submitted until 5 p.m. on July 8, 2009.

Agency Contact: Phyl Parrish, Program Manager, Policy and Legislation, Department of Social Services, Division of Family Services, 7 North Eighth Street, Richmond, VA 23219, telephone (804) 726-7926, FAX (804) 726-7985, TTY (800) 828-1849, or email phyl.parrish@dss.virginia.gov.

VA.R. Doc. No. R09-1868; Filed May 20, 2009, 10:34 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Social Services intends to consider amending the following regulations: **22VAC40-601, Food Stamp Program.** The purpose of the proposed action is to change all references to the Food Stamp Program to the Supplemental Nutrition Assistance Program (SNAP) and food stamp benefits to SNAP benefits. The U.S. Congress enacted legislation to rename the program and adoption of the name lessens potential confusion. 22VAC40-601-50 amends the regulation to address handling pending applications for the Food Stamp Program. Federal regulations allow states an option to either deny applications after 30 days if the local department of social services is unable to process the application, or to hold the application, as pending for an additional 30-day period. The State Board of Social Services would like to adopt the provision to deny an application after 30 days instead of holding it as pending for an additional 30-day period before disposing of it. This process would require reopening denied applications if an applicant subsequently supplied needed information to determine eligibility and benefit level after the 30th day but before the 60th day following the application date. 22VAC40-601-60 amends the regulation to allow an extension of food stamp transitional benefits to state-funded public assistance programs. Transitional benefits are currently limited to Temporary Assistance for Needy Families (TANF) cases. This amendment would allow transitional food stamp benefits when state-funded programs close.

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

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

Public Comments: Public comments may be submitted until 5 p.m. on July 8, 2009.

Agency Contact: Celestine Jackson, Program Consultant, Department of Social Services, Division of Benefit Programs, 7 North 8th Street, Richmond, VA 23219, telephone (804) 726-7376, FAX (804) 726-7356, TTY (800) 828-1120, or email celestine.jackson@dss.virginia.gov.

VA.R. Doc. No. R09-1977; Filed May 13, 2009, 3:32 p.m.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

DEPARTMENT OF MINES, MINERALS AND ENERGY

Final Regulation

Title of Regulation: **4VAC25-40. Safety and Health Regulations for Mineral Mining (amending 4VAC25-40-25, 4VAC25-40-90, 4VAC25-40-120, 4VAC25-40-130, 4VAC25-40-190, 4VAC25-40-260, 4VAC25-40-350, 4VAC25-40-410, 4VAC25-40-720, 4VAC25-40-780, 4VAC25-40-800, 4VAC25-40-810, 4VAC25-40-880, 4VAC25-40-890, 4VAC25-40-1600, 4VAC25-40-2790, 4VAC25-40-2800, 4VAC25-40-2980, 4VAC25-40-3800, 4VAC25-40-3830, 4VAC25-40-3840, 4VAC25-40-3990, 4VAC25-40-4060, 4VAC25-40-4240, 4VAC25-40-4260, 4VAC25-40-4400; adding 4VAC25-40-365, 4VAC25-40-893, 4VAC25-40-925, 4VAC25-40-1095, 4VAC25-40-4061, 4VAC25-40-4062, 4VAC25-40-4063, 4VAC25-40-4064, 4VAC25-40-4065, 4VAC25-40-4066; repealing 4VAC25-40-3050, 4VAC25-40-3060, 4VAC25-40-3070, 4VAC25-40-3080, 4VAC25-40-3090, 4VAC25-40-3110, 4VAC25-40-3120).**

Statutory Authority: §§ 45.1-161.3, 45.1-161.294, and 45.1-161.305 of the Code of Virginia.

Effective Date: July 8, 2009.

Agency Contact: David Spears, Regulatory Coordinator, Department of Mines, Minerals and Energy, Washington Building, 1100 Bank Street, Richmond, VA 23219, telephone (804) 692-3212, FAX (804) 692-3237, TTY (800) 828-1120, or email david.spears@dmme.virginia.gov.

Summary:

As a result of a periodic review, the Department of Mines, Minerals and Energy (DMME) has amended 4VAC25-40, Safety and Health Regulations for Mineral Mining. The amendments improve this chapter by making technical corrections, clarifying unclear language, updating references, making the regulation internally consistent and consistent with the Code of Virginia, and strengthening certain provisions relating to mine safety. Sections strengthened relate to blasting, mine rescue, and construction and maintenance of mine structures.

EDITOR'S NOTICE: Also as a result of the periodic review, DMME moved the designations for Articles 6 and 10 of Part XV such that they precede 4VAC25-40-3560 and 4VAC25-40-4070, respectively.

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

4VAC25-40-25. Purpose and authority.

The purpose of this chapter is to provide for the protection of persons and property on and around mineral mines. The chapter works with the Virginia Mineral Mine Safety Act (§ 45.1-161.292:1 et seq.) of the Code of Virginia (as shown in Mineral Mine Safety Laws of Virginia, ~~1997~~ 2005 edition). Refer to the Act for other definitions and requirements related to this chapter.

4VAC25-40-90. Documents incorporated by reference.

A. 1996 Threshold Limit Values and Biological Exposure Indices published by the American Conference of Governmental Industrial Hygienists.

B. American Table of Distances, 1991 edition, published by the Institute of Makers of Explosives.

C. National Electrical Code, ~~1996~~ 2008 edition, published by the National Fire Protection Association.

D. Virginia Department of Labor and Industry, Boiler and Pressure Vessel Safety Division, Boiler and Pressure Vessel Regulations, amended ~~1995~~ 2007 by the Virginia Department of Labor and Industry.

E. Bureau of Mines Instruction Guide 19, Mine Emergency Training, U.S. Department of Labor, 1972 edition.

F. Blasting Guidance Manual, U.S. Department of Interior, Office of Surface Mining Reclamation and Enforcement, 1987 edition.

G. The American National Standard for Wire Rope for Miners, M11.1-1980, published by the American National Standards Institute.

H. Addresses for references may be obtained from the division.

4VAC25-40-120. When foreman required.

When three or more persons are working in a mine, a certified mine foreman shall be employed who shall ensure

that all activities under the foreman's supervision are conducted in a safe manner in compliance with applicable laws and regulations adopted by the department. The director may designate an approved competent person to perform the duties of a certified ~~surface~~ mine foreman except for the ~~preshift~~ examination made at the beginning of each shift.

4VAC25-40-130. Examination by foreman.

The certified mine foreman shall examine active workings at the beginning of each shift. Any hazardous or unsafe condition shall be corrected prior to personnel starting work in the affected area. If the hazardous or unsafe condition cannot be corrected immediately, the affected area shall be barricaded and posted with warning signs. A documented record of the examination shall be made and shall include the date, areas examined, time work began in the area, and time of examination. A documented record of hazards found and corrective actions taken shall also be made. The records shall be signed or certified by the certified mine foreman making the examination. ~~A record~~ Records of the ~~daily inspection~~ examinations made at the beginning of each shift shall be kept for one year.

4VAC25-40-190. Compliance with regulations.

~~Mine employees~~ Miners shall comply with all state safety and health regulations applicable to their task or duties.

4VAC25-40-260. Posting hazards.

Areas containing safety or health hazards that are not ~~immediate~~ immediately obvious to personnel shall be barricaded or posted with warning signs specifying the hazard and proper safety procedures.

4VAC25-40-350. Repairing machinery.

Repairs or maintenance shall not be performed on machinery until the power is off and the machinery is blocked against motion, except where machinery motion is necessary to make adjustments. Energy sources, other than those related to electricity (which are covered under 4VAC25-40-2140 and 4VAC25-40-2150) or internal combustion (which are covered under 4VAC25-40-1685), which pose a hazard to miners, shall be tagged out and ~~signed by~~ marked by a means that identifies the individuals doing the work, and locked out if practical, by each authorized person exposed to the hazard. Tags or locks shall be removed only by the persons who installed them or by an authorized person, after ensuring that affected persons are in the clear.

4VAC25-40-365. Construction and maintenance of structures.

Structures shall be of substantial construction and maintained in safe condition.

4VAC25-40-410. Benches.

Benches shall be wide enough to allow safe operation and passage of equipment.

Part V
Air Quality and Physical Agents—Surface and Underground

4VAC25-40-720. Employee exposure limits to airborne contaminants.

With respect to airborne contaminants, the following shall apply:

1. Employees shall be withdrawn from areas where airborne contaminants given a "C" designation in Threshold Limit Values and Biological Exposure Indices are present in concentrations that exceed specified TLVs.

2. Control of employee exposure to harmful airborne contaminants shall be by feasible engineering control methods. If such control measures are not available, an approved program of controlling employee exposure to airborne contaminants shall be implemented by the operator. Miners exposed for short periods to gas, dust, fumes and mist-inhalation hazards shall wear ~~permissible~~ acceptable respiratory equipment appropriate for the hazard. When the exposure is for prolonged periods, other measures to protect workers or to reduce the hazard shall be taken.

Part VI
Explosives—Surface and Underground

4VAC25-40-780. Storage of explosive materials.

A. Detonators and explosives, other than blasting agents, shall be stored in magazines accepted by the Institute of Makers of Explosives or other approved agency.

B. Detonators shall not be stored in the same magazine with explosives.

C. Explosives magazines shall be:

1. Located in accordance with the American Table of Distances;

2. Detached structures located away from power lines, fuel storage areas, and other possible sources of fire;

3. ~~Constructed substantially~~ Of substantial construction and constructed of noncombustible material or covered with fire-resistant material;

4. Reasonably bullet resistant;

5. Electrically bonded and grounded if constructed of metal;

6. Made of nonsparking material on the inside, including floors;

7. Provided with adequate and effectively screened ventilation openings near the floor and ceiling;

8. Kept locked securely when unattended;

9. Posted with suitable danger signs so located that a bullet passing through the sign will not strike the magazine;

10. Used exclusively for storage of explosives or detonators and blasting-related materials;

11. Kept clean and dry in the interior and in good repair;

12. Unheated, unless heated in a manner that does not create a fire or explosion hazard. Electrical heating devices shall not be used inside a magazine; and

13. Located at least 300 feet away from any underground mine opening, occupied building, public road, or private road not used in connection with the mine.

D. An accurate inventory log of explosives stored in the magazine shall be maintained on site.

E. Any theft or unaccounted loss of explosives shall be reported immediately by telephone to local police, state police, the U.S. Department of ~~Treasury~~ Justice, [The] Bureau of Alcohol, Tobacco ~~and~~, Firearms~~,~~ and Explosives and the Division of Mineral Mining.

F. Smoking or open flames shall be prohibited within 50 feet of explosives magazines or blasting agents storage facilities.

G. Areas surrounding magazines and facilities for the storage of blasting agents shall be kept clear of combustible materials, except live trees over 10 feet tall, for a distance of 50 feet in all directions.

H. Prior to repairs of a magazine which may cause a fire or explosion, the contents shall be removed to a safe location and guarded.

I. Explosives stored in magazines shall be:

1. Arranged so that the oldest stock is used first;

2. Separated by brand and type;

3. Stored with their top sides up; and

4. Stacked in a stable manner not over eight feet high.

J. When stored with other explosives, ammonium nitrate fuel oil blasting agents shall be physically separated to prevent contamination.

K. Damaged or deteriorated explosives and blasting agents shall be destroyed in a safe manner by a certified blaster.

4VAC25-40-800. Use of explosives.

A. A certified blaster shall be in direct charge of blasting activities.

B. Persons who assist in blasting activities shall be under the direct supervision of the certified blaster in charge and shall be alerted to the hazards involved.

C. Black powder or safety fuse shall not be used without approval from the director. Special approvals shall specify use restrictions and procedures necessary for safe storage, transportation, and use.

D. The design and loading of a blast shall provide sufficient burden, spacing, and stemming to prevent flyrock or other dangerous effects. Flyrock incidents shall be reported to the division immediately and details noted in the blast record.

E. Boreholes shall not be drilled where there is a danger of intersecting a loaded or misfired hole.

F. No person shall smoke or use an open flame within 50 feet of explosives or detonators.

G. Prior to bringing explosives and detonators to the blast site, the certified blaster in charge shall:

1. ~~Weather~~ Monitor weather conditions ~~shall be monitored~~ to ensure safe loading and firing;

2. ~~The~~ Inspect the blast site ~~shall be inspected~~ for hazards;

3. ~~The~~ Inspect and clear the boreholes ~~shall be inspected and cleared~~ of obstructions; and

4. ~~Personnel~~ Remove personnel and equipment, except those used in loading the shot, ~~shall be removed~~ from the blast site.

H. The certified blaster in charge shall review the drill logs to determine specific downhole conditions prior to loading the shot.

~~H.~~ I. Boreholes to be blasted shall be loaded as near to the blasting time as practical. Loaded shots shall be blasted as soon as possible upon completion of loading and connection to the initiation device. Surface blasting shall be conducted during daylight hours only.

~~I.~~ J. Explosives shall be kept a safe distance from detonators until they are made into a primer.

~~J.~~ K. Primers shall not be made up or assembled in advance of the borehole being loaded.

~~K.~~ L. Only wooden or other nonsparking implements shall be used to punch holes in an explosive cartridge.

~~L.~~ M. Detonators shall be inserted completely and securely into explosive cartridges used as primers. Priming shall be sufficient to detonate the explosive column in the borehole.

~~M.~~ N. Primers shall be inserted into the borehole slowly to prevent accidental detonation from impact, and tamping shall not be done directly on the primer.

~~N.~~ O. Tamping poles shall be constructed of wood and/or nonsparking materials.

~~O.~~ P. Unused explosives, detonators, and blasting agents shall be returned to the magazine or storage facility upon completion of loading activities and prior to firing the blast.

~~P.~~ Q. Equipment and machinery used to load or stem boreholes shall not be operated over loaded boreholes for any reason. Areas containing loaded boreholes shall be guarded or barricaded and posted to prevent unauthorized entry.

~~Q.~~ R. Blast warning signals shall be established and posted at the mine. Audible warning signals shall be given prior to firing a blast.

~~R.~~ S. All personnel shall be removed from the blast area prior to connection to the initiation device and the firing of a blast.

~~S.~~ T. Blasting personnel shall fire shots from a safe location.

~~T.~~ U. A post-blast examination of the blast area shall be made by the certified blaster in charge. Other personnel shall not return to the blasting area until an all clear signal is received from the certified blaster in charge.

4VAC25-40-810. Recordkeeping.

A detailed record of each surface blast shall be prepared immediately by the certified blaster. Records shall be maintained for three years and subject to inspection by the division mine inspectors. Records shall contain the following information:

1. Name of company or contractor;

2. Location, date, and time of blast;

3. Name, signature, and certification number of the certified blaster in charge;

4. Type of material blasted;

5. Number of holes, and burden and spacing for each hole;

6. ~~Diameter, depth and condition~~ Drill logs of boreholes as required by 4VAC25-40-1095;

7. Types of explosives used;

8. Total amount of explosives used;

9. Maximum amount of explosives per delay period of eight milliseconds or greater;

10. Method of firing and type of circuit;

11. Direction and distance in feet to nearest dwelling house, public building, school, church, commercial or institutional building neither owned nor leased by the person conducting the blasting;

12. Weather conditions (including such factors as wind directions, etc.);

13. Height or length of stemming;

14. Whether mats or other protections were used;

15. Type of detonators used and ~~delay periods used~~ timing of detonation for each detonator used;

16. The person taking the seismograph reading shall accurately indicate exact location of seismograph, if used, and shall also show the distance of seismograph from blast;

17. Seismograph records, including seismograph readings, where required:

a. Name and signature of person operating seismograph;

b. Name of person analyzing the seismograph record; and

c. Seismograph reading; ~~and~~

18. Maximum number of holes per delay period of eight milliseconds or greater; and

19. All anomalies or abnormalities occurring during the execution of the blast and actions taken to correct or address them.

4VAC25-40-880. Ground vibration from blasting.

A. Ground vibration, measured as peak particle velocity resulting from blasting, shall not exceed the limits set forth below at any inhabited building not owned or leased by the operator, without approval of the director. A seismographic record shall be provided for each blast.

Distance (D) to nearest inhabited building, feet	Peak Particle Velocity, inches per second	~~Ds (when not using a seismograph)~~
0 - 300	1.25	~~50~~
301 - 5,000	1.00	~~55~~
5,001 and beyond	0.75	~~65~~

B. ~~If seismic~~ Seismic monitoring of each blast ~~is not~~ shall be conducted, ~~blasting shall be in accordance~~ unless the scaled distance, Ds, as calculated with the following scaled distance formulas, is 90 or greater:

$$W = \left(\frac{D}{Ds}\right)^2 \qquad Ds = \frac{D}{\sqrt{W}}$$

W = Maximum charge weight of explosives per delay period of 8.0 milliseconds or more.

D = Distance in feet from the blast site to the nearest inhabited building not owned or leased by the mine operator.

~~Ds = Scaled distance factor shown in table in subsection A of this section.~~

C. The operator may use the alternative ground vibration limits shown below to determine the maximum allowable ground vibration. If these limits are used, a seismographic

record including both particle velocity and vibration frequency levels shall be kept for each blast. Ground vibration levels and airblast levels are taken from the Blasting Guidance Manual.

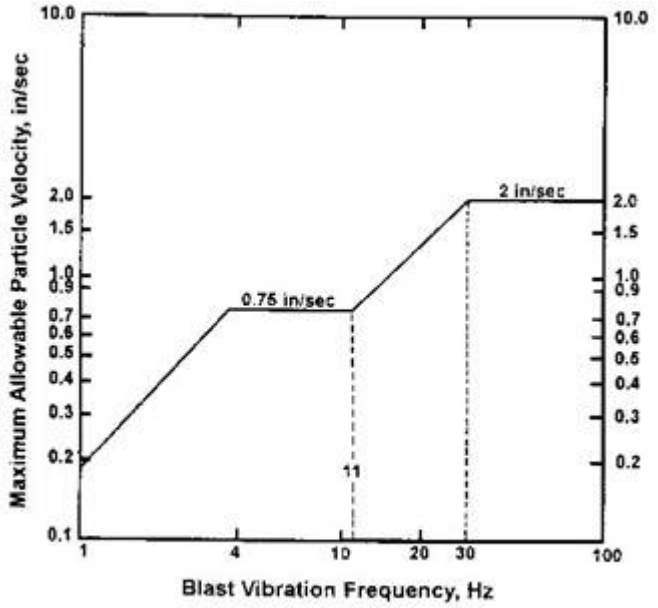

Figure 1. Alternative blasting level criteria.
(Source modified from figure B-1. Bureau of Mines R18507)

4VAC25-40-890. ~~Airblast~~ Air overpressure limits.

~~Airblast~~ Air overpressure resulting from surface blasting shall not exceed ~~129~~ 133 decibels, as measured with a 2Hz or lower flat response microphone, at any ~~private~~ inhabited building not owned or leased by the operator ~~unless an alternate level based on the sensitivity of the seismograph microphone as specified below is being used~~.

~~Lower Frequency Limit of Measuring System, in Hz~~	~~Max. Level in dB (3dB)~~
~~1 Hz or lower flat response*~~	~~134 peak~~
~~2 Hz or lower flat response~~	~~133 peak~~
~~6 Hz or lower flat response~~	~~129 peak~~
~~C-weighted slow response~~	~~105 peak dBC~~

~~*Only when approved by the director.~~

4VAC25-40-893. Action plans.

Each operator shall maintain a plan to control the effects of blasting on areas adjacent to the operation. This plan will be documented and made available for review by the Division of Mineral Mining upon request.

4VAC25-40-925. Electronic detonators.

Electronic detonation systems shall be approved by the director as providing performance equivalent to that required in 4VAC25-40-920, and shall be used in accordance with the manufacturer's instructions.

4VAC25-40-1095. Drill logs required for boreholes intended for blasting.

For each borehole intended for blasting, the driller shall produce a drill log as each hole is being drilled. The drill log shall include, at minimum, the name of the driller, borehole diameter, borehole depth, depth of broken material at the collar, and other geological conditions (for example, cracks, seams, voids, mud, or any other anomalies that could affect the blast) encountered during drilling. A signed copy of the drill log shall be provided to the mine operator and a copy shall be included in the record of the blast.

4VAC25-40-1600. Avoiding ~~loaders~~ mobile equipment in operation.

Persons shall remain clear of mobile equipment in operation and shall not work or pass under the buckets or booms of ~~loaders~~ equipment in operation.

4VAC25-40-2790. Inspection of work area.

Miners shall examine and test, where possible, the back, face, and ribs of their working areas, visually and by sounding, at the beginning of each shift and frequently thereafter. Competent persons shall examine the ground conditions during daily visits to ensure that proper testing and ground control practices are being followed. Loose ground shall be taken down or adequately supported before any other work is done. Ground conditions along haulageways and travelways shall be examined periodically and scaled or supported as necessary.

4VAC25-40-2800. Scaling bar to be provided.

A scaling bar of proper length and ~~blunt on one end~~ design shall be provided where manual scaling may be required. Picks or other short tools shall not be used for scaling when this use places the user in danger ~~of~~ from falling material.

4VAC25-40-2980. Open flame restrictions.

Fires shall not be built underground; open flame torches ~~and candles shall not be left underground~~ shall be attended at all times while lit.

4VAC25-40-3050. ~~Mine rescue stations.~~ (Repealed.)

~~A mine rescue station equipped with at least 10 sets of approved and properly maintained two hour, self-contained, breathing apparatus, adequate supplies, and spare parts shall be maintained at mines employing 75 or more persons underground or, in lieu thereof, the mine shall be affiliated with a central mine rescue station.~~

4VAC25-40-3060. ~~Central or cooperative stations.~~ (Repealed.)

~~Mines at which individual mine rescue stations are not maintained shall affiliate with central or cooperative mine rescue stations.~~

4VAC25-40-3070. ~~Rescue apparatus.~~ (Repealed.)

~~Mine rescue apparatus acceptable to the MSHA or other approved agency shall be properly maintained for immediate use. The equipment shall be tested at least once a month and records kept of the test.~~

4VAC25-40-3080. ~~Rescue crews to be provided.~~ (Repealed.)

~~At any mine employing 75 or more persons underground, at least two rescue crews (10 persons) shall be trained at least annually in the use, care, and limitations of self-contained breathing and firefighting apparatus and in mine rescue procedures. Smaller mines shall have at least one person so trained for each 10 persons employed underground. These persons shall complete, at minimum, an approved course of instruction as prescribed by MSHA's Office of Educational Policy and Development in the use, care, and maintenance of the type of breathing apparatus which will be used by the mine rescue team. The instruction shall be given by division personnel or by persons approved to give such instruction.~~

4VAC25-40-3090. ~~Rescue crew personnel.~~ (Repealed.)

~~Rescue crews shall include supervisory and key personnel familiar with all mine installations that could prove vital to firefighting and rescue operations.~~

4VAC25-40-3110. ~~Mine evacuation drills.~~ (Repealed.)

~~Mine evacuation drills shall be held for each shift once every six months. These evacuation drills shall involve all employees each shift and shall include:~~

~~1. Activation of the fire alarm system; and~~

~~2. Evacuation of all persons from their work areas to the surface or to designated central evacuation points at some time other than a shift change.~~

~~Records of such drills, showing the time and date, shall be kept for at least two years after each drill.~~

4VAC25-40-3120. ~~Instruction in escape plans.~~ (Repealed.)

~~All employees involved in the escape and evacuation plan for an underground operation shall be instructed at least once each calendar year on current escape and evacuation plans, fire alarm signals, and applicable procedures to be followed in case of fire or other emergency. New employees shall receive such instructions before going underground. Whenever an employee is assigned to work in another area of the mine, he shall be instructed on the escapeway for that area at the time of such assignment. However, employees who normally work in more than one area of the mine shall be instructed at least once each calendar year in the location of escapeways for all areas of the mine in which they normally work or travel. Whenever a change is made in escape and evacuation plans and procedures for any area of the mine, all affected employees shall be instructed of such change. Records of instruction shall be kept for two years.~~

4VAC25-40-3800. ~~Steep~~ Fixed ladders.

~~Ladders with an inclination of more than 70° off the horizontal shall be offset and have landing gates, backguards or substantial landings at least every 30 feet.~~ Fixed ladders shall ~~be equipped with backguards starting at a point not more than seven feet from the bottom of the ladder~~ meet the requirements of 4VAC25-40-1990 and 4VAC25-40-2000.

4VAC25-40-3830. Refuge areas.

Refuge areas shall be:

1. Of fire-resistant construction, preferably in untimbered areas of the mine;

2. Large enough to accommodate readily the normal number of persons in the particular area of the mine;

3. Constructed so they can be made gas-tight; and

4. Provided with ~~compressed air lines, waterlines~~ telephones, adequate air and water supplies, suitable hand tools, and stopping materials.

4VAC25-40-3840. Development of escape and evacuation plan.

A specific escape and evacuation plan, and revisions thereof, suitable to the conditions and mining system of the mine and showing assigned responsibilities of all key personnel in the event of an emergency shall be developed by the operator and set out in written form. A copy of the plan and revisions thereof shall be available to the director or an authorized representative, and any affiliated mine rescue teams. Also copies of the plans and revisions thereof shall be posted at locations convenient to all persons on the surface and underground. Such a plan shall be updated as necessary and shall be reviewed jointly by the operator and the director or his authorized representative at least once every six months from the date of the last review. The plan shall include:

1. Mine maps or diagrams showing all underground workings, locations of surface and underground ventilation fans and ventilation controls, directions of principal air flow, locations of refuge chambers, locations of first aid supplies and firefighting equipment, locations of main electrical installations and disconnects, locations of surface and underground fuel storage, locations of surface and underground facilities to store explosives and detonators, location of escape routes and locations of existing telephones or other voice communication devices (see 4VAC25-40-3120 and 4VAC25-40-3850);

2. A plan for fire prevention, warning, emergency evacuation, firefighting ~~plan~~ and emergency medical assistance;

3. Surface procedure to follow in an emergency, including the notification of proper authorities ~~and preparing rescue equipment and other equipment which may be used in rescue and recovery operations~~; ~~and~~

4. A statement of the location and availability of mine rescue personnel and equipment;

5. A plan for instruction of mine workers and rescue personnel; and

~~4.~~ 6. A statement of the availability of emergency ~~communication and~~ communications, transportation ~~facilities~~, ~~emergency~~ power and ventilation ~~and location of rescue personnel and~~ equipment.

4VAC25-40-3990. Self-rescue ~~devices to be made available~~ requirements.

~~A~~ Each mine having underground workings shall submit to the [~~Division~~ division] a plan for the number, type, and location(s) of self-rescue devices sufficient for the number of persons working underground and the hazards particular to the underground workings of the mine. At a minimum, a one hour filter self-rescue device approved by the MSHA shall be made available by the operator to all personnel underground. The filter self-rescue devices shall be maintained in ~~a~~ good condition by a daily visual check and weighing of the devices every six months, with maintenance records kept.

Article 9
Safety Program

4VAC25-40-4060. Mine emergency and self-rescue training.

A. On an annual basis all persons who are required to go underground shall be instructed in ~~an approved course contained in~~ applicable sections of the Bureau of Mines Instruction Guide 19, Mine Emergency Training.

B. On an annual basis all persons who are required to go underground shall be instructed in the use of the individual ~~self-rescuer~~ self-rescue device provided to them. The instruction shall be given by ~~division personnel or by persons who are approved by the MSHA to give such instructions; provided, however, that if a division instructor or an approved instructor is not immediately available, such instruction of new employees in self-rescuers may be conducted by competent persons~~ a competent person using a training model of the same type as the self-rescue device provided to the employee.

4VAC25-40-4061. Mine rescue stations.

Mines employing 75 or more persons underground shall either:

1. Maintain a mine rescue station equipped with at least 10 self-contained oxygen breathing apparatus, each with a minimum of two hours capacity, along with adequate supplies and spare parts; or

2. Affiliate with central or cooperative mine rescue stations that can provide two fully equipped mine rescue teams in the event of an emergency. Such affiliations shall be in writing and must be approved annually by the director.

4VAC25-40-4062. Rescue apparatus.

Mine rescue apparatus shall be acceptable to the MSHA or other approved agency and shall be properly maintained for immediate use. The equipment shall be tested at least once a month and records kept of the tests for at least one year.

4VAC25-40-4063. Rescue crews to be provided.

At any mine employing 75 or more persons underground, at least two rescue crews of five persons each shall be trained at least annually in the use, care, and limitations of self-contained oxygen breathing and firefighting apparatus and in mine rescue procedures. The training shall be given by division personnel or by persons approved to give such instruction. Rescue crews shall include supervisory and key personnel familiar with all mine installations that could prove vital to firefighting and rescue operations.

4VAC25-40-4064. Alternative mine rescue capability.

Mines employing fewer than 75 persons underground shall maintain mine rescue capabilities as described in 4VAC25-40-4061 through 4VAC25-40-4063, or the operator may request in writing and obtain approval from the director for an alternative mine rescue capability. Such alternative mine rescue plans shall be subject to annual review and approval.

4VAC25-40-4065. Mine evacuation drills.

Mine evacuation drills shall be held for each shift once every six months. These evacuation drills shall involve all employees each shift and shall include:

1. Activation of the fire alarm system; and

2. Evacuation of all persons from their work areas to the surface or to designated central evacuation points at some time other than a shift change.

Records of such drills, showing the time and date, shall be kept for at least two years after each drill.

4VAC25-40-4066. Instruction in escape plans.

All persons who work underground shall be instructed at least once each calendar year on current escape and evacuation plans, fire alarm signals, and applicable procedures to be followed in case of fire or other emergency. New employees shall receive such instructions before going underground. Whenever an employee is assigned to work in another area of the mine, he shall be instructed on the

escapeway for that area at the time of such assignment. However, employees who normally work in more than one area of the mine shall be instructed at least once each calendar year in the location of escapeways for all areas of the mine in which they normally work or travel. Whenever a change is made in escape and evacuation plans and procedures for any area of the mine, all affected employees shall be instructed of such change. Records of instruction shall be kept for two years.

4VAC25-40-4240. Installation of wire ropes.

At installation, the nominal strength (manufacturer's published catalog strength) of wire ropes used for hoisting shall meet the minimum rope strength values obtained by the following formulas in which "L" equals the maximum suspended rope length in feet:

1. Winding drum ropes (all constructions, including rotation resistant):

For rope lengths less than 3,000 feet:

Minimum Value = Static Load X (7.0 - 0.001L)

For rope lengths 3,000 feet or greater:

Minimum Value = Static Load X 4.0

2. Friction drum ropes:

For rope lengths less than 4,000 feet:

Minimum Value = Static Load X ~~(7.0 - 0.005L)~~ (7.0 - 0.0005L)

For rope lengths 4,000 feet or greater:

Minimum Value = Static Load X 5.0

3. ~~Tail~~ Tail ropes (balance ropes):

Minimum Value = Weight of Rope X 7.0

4VAC25-40-4260. Wire rope examination.

A. Wire rope attachments shall be replaced when cracked, deformed, or excessively worn.

B. At least once every 14 calendar days, each wire rope in service shall be visually examined along its entire active length for visible structural damage, corrosion, and improper lubrication or dressing. In addition, visual examination for wear and broken wires shall be made at stress points, including the area near attachments, where the rope rests on sheaves, where the rope leaves the drum, at drum crossovers, and at change of layer regions. When any visible condition that results in a reduction of rope strength is present, the affected portion of the rope shall be examined on a daily basis.

C. Before any person is hoisted with a newly installed wire rope or any wire rope that has not been examined in the previous 14 calendar days, the wire rope shall be examined in accordance with subsection B of this section.

D. At least once every six months, nondestructive tests shall be conducted of the active length of the rope, or rope diameter measurements shall be made:

1. Wherever wear is evident;

2. Where the hoist rope rests on sheaves at regular stopping points; and

3. Where the hoist rope leaves the drum at regular stopping points and at drum crossover and change of layer regions.

E. At the completion of each examination required by subsections B, C and D of this section, the person making the examination shall certify by signature and date that the examination has been made. If any condition listed in subsection ~~D~~ B of this section is present, the person conducting the examination shall make a record of the condition and the date. Certifications and records of examinations shall be retained for one year.

F. The person making the measurements or nondestructive tests as required by subsection D of this section shall record the measurements or test results and the date. This record shall be retained until the rope is retired from service.

4VAC25-40-4400. Specifications for buckets used to hoist persons.

Buckets used to hoist persons during shaft sinking operations shall be provided with adequate guide ropes and shall have crossheads equipped with safety catches and protective bonnets when the shaft depth exceeds 50 feet.

VA.R. Doc. No. R08-944; Filed May 19, 2009, 11:49 a.m.

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Proposed Regulation

REGISTRAR'S NOTICE: Due to the length, the following regulations filed by the State Air Pollution Control Board are not being published. However, in accordance with § 2.2-4031 of the Code of Virginia, the summary is being published in lieu of the full text. The full text of the regulations are available for public inspection at the office of the Registrar of Regulations and at the State Air Pollution Control Board (see contact information below) and are accessible on the Virginia Register of Regulations website at http://register.dls.virginia.gov/vol25/Welcome.htm.

Titles of Regulations: **9VAC5-20. General Provisions (amending 9VAC5-20-21).**

9VAC5-45. Consumer and Commercial Products (adding 9VAC5-45-10 through 9VAC5-45-850).

Statutory Authority: § 10.1-1308 of the Code of Virginia.

Public Hearing Information:

July 22, 2009 - 10 a.m. - Department of Environmental Quality, Northern Regional Office, Conference Room 1, 13901 Crown Court, Woodbridge, VA

Public Comments: Public comments may be submitted until 5 p.m. on August 10, 2009.

Agency Contact: Gary E. Graham, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4103, FAX (804) 698-4510, or email gegraham@deq.virginia.gov.

Basis: Section 10.1-1308 of the Code of Virginia authorizes the State Air Pollution Control Board to promulgate regulations abating, controlling, and prohibiting air pollution in order to protect public health and welfare.

Purpose: The purpose of these regulations is to require owners to limit emissions of air pollution from portable fuel containers, certain consumer products, architectural and industrial maintenance coatings, and paving operations to the level necessary for (i) the protection of public health and welfare, and (ii) the attainment and maintenance of the air quality standards. The proposed amendments are being made to adopt new and revised standards for the control of VOC emissions from adhesive and sealants, portable fuel containers, and certain consumer products within the Northern Virginia and Fredericksburg VOC Emissions Control Areas. This action is being taken to allow Virginia to meet its obligation to implement control measures in areas designated as nonattainment under the eight-hour ozone standard and to implement contingency measures within former nonattainment areas that have been redesignated as ozone maintenance areas.

Substance: The proposed regulatory action adds a new chapter (9VAC5-45) specifically for regulations pertaining to consumer and commercial products and is applicable to specific product types and the owners that are involved in the manufacture, distribution, retail sales, and in some cases, the marketing and use of those products. In Part I of the new chapter, special provisions specify the general testing, monitoring, compliance, notification, recordkeeping, and reporting requirements that are applicable to all articles in the new chapter and specify certain other sections of the regulations that are not generally applicable. Exceptions to the special provisions are addressed in each individual article of the new chapter.

In Part II of Chapter 45:

1. The proposed regulatory action establishes standards for portable fuel containers for products manufactured before and after January 1, 2009, as new Articles 1 and 2 in Chapter 45, respectively, and applies to all of the products subject to the current provisions of Chapter 40, Article 42, Portable Fuel Container Spillage. Article 1 clarifies some Article 42 exemptions and definitions, adds another exemption category, removes obsolete standards and their associated administrative requirements, and provides criteria for sell-through of products. Because Article 1 applies to all products manufactured before January 1, 2009, and is designed to replace Chapter 40, Article 42, the compliance schedule proposed for Article 1 is the same as that in Chapter 40, Article 42. Article 2 applies to all portable fuel container products manufactured on or after January 1, 2009, and requires board precertification of new portable fuel container products as compliant with new labeling requirements and with new and more stringent design and performance standards. Article 2 also includes applicability to a new category of owner, and adds (i) new and revised exemptions, (ii) new certification procedures, (iii) new testing standards, and (iv) alternative compliance provisions for innovative products over those provisions now applicable under Chapter 40, Article 42. The new Article 2 specifies a compliance deadline no later than January 1, 2009. Chapter 40, Article 42 will be repealed at an appropriate time after the standards in the new Articles 1 and 2 are effective.

2. The proposed regulatory action establishes standards Consumer Products for products manufactured before and after January 1, 2009, as a new Articles 3 and 4 in Chapter 45, respectively and applies to all of the products subject to the current provisions of Chapter 40, Article 50 Consumer Products. Article 3 pertains to consumer products manufactured before January 1, 2009, clarifies some definitions and standards, makes the Alternative Control Plan procedures more flexible, revises labeling, reporting and other administrative requirements, and clarifies sell-through criteria. Because Article 3 applies to all products manufactured before January 1, 2009, and is designed to replace Chapter 40, Article 50, the compliance schedule proposed for Article 3 is the same as Chapter 40, Article 50. Article 4 applies to all consumer products manufactured after January 1, 2009, and includes all of the changes made in Article 3, adds more definitions and standards for some new product categories and establishes new labeling and other administrative requirements. Article 4 specifies a compliance deadline no later than January 1, 2009. Chapter 40, Article 50 will be repealed at an appropriate time after the standards in the new Articles 3 and 4 are effective.

3. The proposed regulatory action establishes standards for Architectural and Industrial Maintenance Coatings and incorporates all of the provisions of Chapter 40, Article 49 Emission Standards for Architectural and Industrial Maintenance Coatings into a new Article 5 in Chapter 45, except that the new Article 5 removes some obsolete reporting requirements and changes the remaining one to a

recordkeeping requirement. Because the standards and other provisions of the new Article 5 are not substantively changed from what is in Chapter 40, Article 49, no new compliance dates are proposed. Chapter 40, Article 49 will be repealed at an appropriate time after the new Article 5 standards are effective.

4. The proposed regulatory action will add a new regulation, Article 6 in the new chapter 45 that establishes new emission standards for Adhesives and Sealants. The provisions of this article apply to owners who sell, supply, offer for sale or manufacture for sale commercial adhesives, sealants, adhesive primers, or sealant primers that contain volatile organic compounds within the Northern Virginia and Fredericksburg VOC Emissions Control Areas. The provisions will also apply to owners that use, apply for compensation, or solicit the use or application of such products in those areas. Exempted from the regulation is any such product manufactured in the Northern Virginia or Fredericksburg VOC Emissions Control Areas for shipment and use outside of these areas. The provisions of this regulation will not apply to a manufacturer or distributor who sells, supplies, or offers for sale such products that do not comply with the VOC standards as long as the manufacturer or distributor can demonstrate both that the product is intended for shipment and use outside of those areas and that the manufacturer or distributor has taken reasonable prudent precautions to assure that the product is not distributed in those areas. A number of product-specific exemptions are also allowed. VOC content limits are specified for different product categories. Control technology guidelines are offered as an alternate means of achieving compliance with the standards. Test methods, registration requirements, and recordkeeping procedures are provided. This article specifies a compliance deadline of January 1, 2009.

5. The proposed regulatory action establishes standards for asphalt paving operations and incorporates all of the provisions of Chapter 40, Article 39 Emission Standards for Asphalt Paving Operations as a new Article 7 in Chapter 45. Applicability provisions in Article 7 apply to owners instead of sources and a new definition of paving operations is added that clarifies the types of operations to which the provisions of the regulation apply. Since the standards and other provisions in this article are not substantively changed, no new compliance date is proposed. Chapter 40, Article 39 will be repealed at an appropriate time after the new Article 7 standards are effective.

Issues: 1. Public: The primary advantage to the public is that the adoption of these regulations will significantly decrease emissions of VOCs in the Northern Virginia and Fredericksburg areas, thus benefiting public health and welfare. There are no disadvantages to the public.

2. Regulated Community: The primary advantage to the regulated community is that the new regulations are clearer and have fewer reporting requirements than some of the regulations they replace. The primary disadvantages are that there may be fewer days that certain products may be applied, and there may be a need for worker training for some users to learn how to apply some of the compliant products correctly.

3. Department: The primary advantages to the department are that the adoption of these regulations will allow Virginia (i) to attain and maintain air quality standards and improve public health of Virginians, and (ii) to uphold its promise to its jurisdictional neighbors (Maryland and Washington, D.C.) to all take similar regulatory action in order to minimize regulatory differences across the affected borders. The primary disadvantage to the department is increased compliance cost to administer the new regulations.

Localities Particularly Affected: The localities particularly affected by the proposed regulations are the counties of Arlington, Fairfax, Loudoun, Prince William, Stafford, and Spotsylvania; and the cities of Alexandria, Fairfax, Falls Church, Manassas, Manassas Park, and Fredericksburg.

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

Summary of the Proposed Amendments to Regulation. In order to comply with Environmental Protection Agency (EPA) and statutory mandates, the Virginia Air Pollution Control Board (board) proposes several regulatory changes including: 1) amending the portable fuel container spillage and consumer products provisions to conform to the strategies recommended by the OTC, 2) prohibiting owners from manufacturing, distributing, selling, and using noncompliant consumer and commercial adhesive and sealant products and architectural and industrial maintenance coating products, and 3) prohibiting the mixing, storage, and application of noncompliant emulsified asphalt coating products, with an exception for coating residential driveways.

Result of Analysis. The benefits likely exceed the costs for one or more proposed changes. There is insufficient data to accurately compare the magnitude of the benefits versus the costs for other changes.

Estimated Economic Impact. In 2004, the Environmental Protection Agency (EPA) promulgated the Phase 1 Ozone Implementation Regulation to provide a process for classifying volatile organic compound (VOC) Emissions Control Areas, based on the severity of their ozone problems, and establishing deadlines for state and local governments to reduce ozone levels. The phase 1 regulation established a process for transitioning from implementation of the 1-hour ozone air quality standard to the more protective 8-hour ozone air quality standard.

The Phase 2 Ozone Implementation Regulation was promulgated by the EPA in 2005 to provide the remaining elements of the process to implement the 8-hour ozone air quality standard. The phase 2 EPA regulation outlines

emissions control and planning requirements for states to address as they develop their state implementation plans (SIPs) demonstrating how they will reduce ozone pollution to meet the 8-hour ozone standard. Additionally, the regulation requires states to demonstrate that non-attainment areas will attain the 8-hour ozone standard as expeditiously as practicable.

Four areas of Virginia are designated as non-attainment areas under the 8-hr ozone standard: Northern Virginia, Hampton Roads, Richmond, and Western Virginia. These areas have been classified as VOC emissions control areas and must implement the control and contingency measures necessary to attain the 8-hour ozone standard. Fredericksburg has been designated as an attainment area. Accordingly, it is considered to be a "maintenance area" and thus, must maintain original controls as well as implement additional ones as needed to maintain the 8-hour ozone standard.

The federal Ozone Transport Commission (OTC) has identified what are considered the least cost methods of ozone control that will enable states to attain the 8-hour ozone standard within Ozone Transport Regions (OTR). The board proposed consumer and commercial product requirements for these regulations are consistent with these least cost methods recommended by the OTC in order for the Commonwealth to meet the EPA mandated 8-hour ozone standard.

As mentioned above, the board proposed requirements include: 1) amending the portable fuel container spillage and consumer products provisions to conform to the strategies recommended by the OTC, 2) prohibiting owners from manufacturing, distributing, selling, and using noncompliant consumer and commercial adhesive and sealant products and architectural and industrial maintenance coating products, and 3) prohibiting the mixing, storage, and application of noncompliant emulsified asphalt coating products, with an exception for coating residential driveways.

Altogether, the proposed amendments would enable the Department of Environmental Quality (DEQ) to implement control and contingency measures in the Northern Virginia VOC Emissions Control Area to demonstrate that the Northern Virginia non-attainment area will meet its goal of attainment by June 15, 2010. The new and revised regulations would also be implemented in the Fredericksburg Maintenance Area in order to provide the most cost-effective additional VOC contingency measures for the Fredericksburg Maintenance Area.

The following costs and savings are projected for all regulated entities in the Northern Virginia and Fredericksburg VOC Emissions Control Areas for implementation and compliance and include projected reporting, recordkeeping and other administrative costs: 1) Portable Fuel Containers: insignificant cost to Virginia small businesses or individuals, 2) Consumer Products: up to, but likely somewhat less than $6,500,000 cost per year for manufacturers, distributors and retailers of consumer products in the region combined, 3) Architectural and Industrial Coatings: $3,200 savings annually per reporting facility, 4) Adhesives and Sealants: $1,200,000 per year cost shared between manufacturers, distributors, and contractors, 5) Asphalt Paving: no significant net cost or savings.

The adoption of this regulation will decrease emissions of VOC in the Northern Virginia and Fredericksburg areas by an estimated total of 8.3 tons per day or more.[1] This significant emissions reduction will benefit public health and welfare by reducing ozone. Ozone injures vegetation, has adverse effects on materials (rubber and fabrics), and is a pulmonary irritant that affects respiratory mucous membranes, lung tissues, and respiratory functions. Reducing ozone will thus likely result in healthier citizens and reduce property damage. It will also allow Virginia to avoid federal sanctions that would be imposed for violating the SIP provisions of the Clean Air Act and to uphold its promise to its jurisdictional neighbors (Maryland and Washington, D.C.) to take this action.

Businesses and Entities Affected. The proposed amendments potentially affect 476 manufacturers, distributors and retailers of consumer products, one manufacturer of architectural and industrial coatings, approximately 2500 firms who either produce or use or apply adhesives and sealants, and 78 asphalt paving contractors, most of whom qualify as small businesses.[2]

Localities Particularly Affected. The proposed regulations particularly affect the counties of Arlington, Fairfax, Loudoun, Prince William, Stafford and Spotsylvania and the cities of Alexandria, Fairfax, Falls Church, Manassas, Manassas Park and Fredericksburg.

Projected Impact on Employment. The increased costs for manufacturers, distributors and retailers of consumer products and manufacturers of adhesives and sealants and contractors who use adhesives and sealants will likely reduce profitability for some products. This will consequently have a likely moderate negative impact on employment.

Effects on the Use and Value of Private Property. Manufacturing that produces VOC will be altered in ways that will reduce VOC emission. This will increase costs and consequently moderately reduce the value of some firms.

Small Businesses: Costs and Other Effects. The proposed amendments will increase costs for some small businesses such as manufacturers, distributors and retailers of consumer products and manufacturers of adhesives and sealants and contractors who use adhesives and sealants.

Small Businesses: Alternative Method that Minimizes Adverse Impact. Though the board's proposals add costs for some small businesses, there is not a clear alternative that reduces the adverse impact and still enables the Commonwealth to meet EPA requirements.

Real Estate Development Costs. The proposed amendments may moderately, but probably not significantly, add to real estate development costs via increased costs associated with adhesives, sealants, and consumer products.

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

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[1] Data source: Department of Environmental Quality

[2] Data source: via Department of Environmental Quality, the Virginia Employment Commission database on April 21, 2008.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The department has reviewed the economic impact analysis prepared by the Department of Planning and Budget and has no comment.

Summary:

A new chapter (9VAC5-45) is established for the control of volatile organic compound (VOC) emissions from various consumer and commercial products in the Northern Virginia and Fredericksburg VOC Emissions Control Areas. The new chapter consists of two parts. The first part of the new chapter contains general requirements pertaining to all of the types of consumer and commercial products regulated. The second part is composed of articles that contain VOC content and emission standards for individual types of consumer products and contain the control technology, testing, monitoring, administrative, recordkeeping, and reporting requirements necessary to determine compliance with each of the applicable standards.

The new chapter includes two articles that control VOC emissions from portable fuel containers and spouts. These articles implement design, performance, and labeling standards for portable fuel container products before and after January 1, 2009, and prohibit owners from manufacturing, distributing, and selling noncompliant products.

The new chapter includes two articles that control VOC emissions from certain types of consumer products. These articles implement VOC content standards for some individual product categories before and after January 1, 2009, and prohibit owners from manufacturing, distributing, advertising, or selling noncompliant products.

The new chapter includes an article for the control of VOC emissions from architectural and industrial maintenance coatings that implements VOC content standards for all such coating products and prohibits owners from manufacturing, distributing, selling, and using noncompliant products.

The new chapter includes an article that controls VOC emissions from adhesives, adhesive primers, sealants, and sealant primers that implements VOC content limits for those products and prohibits owners from manufacturing, distributing, selling, or applying noncompliant products.

Finally, the new chapter includes an article that controls VOC emissions from asphalt paving operations, which prescribes the use of emulsified asphalt coatings except for the purpose of coating residential driveways and prohibits the mixing, storage, and application of noncompliant products.

VA.R. Doc. No. R07-264; Filed May 18, 2009, 11:59 a.m.

Fast-Track Regulation

Title of Regulation: **9VAC5-80. Permits for Stationary Sources (amending 9VAC5-80-1615, 9VAC5-80-1625, 9VAC5-80-1695, 9VAC5-80-1925, 9VAC5-80-1935, 9VAC5-80-1945, 9VAC5-80-1955, 9VAC5-80-1965, 9VAC5-80-2010, 9VAC5-80-2020, 9VAC5-80-2140, 9VAC5-80-2200, 9VAC5-80-2210, 9VAC5-80-2220, 9VAC5-80-2230, 9VAC5-80-2240; adding 9VAC5-80-1915, 9VAC5-80-2195).**

Statutory Authority: § 10.1-1308 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comments: Public comments may be submitted until 5 p.m. on July 8, 2009.

Effective Date: July 23, 2009.

Agency Contact: Gary E. Graham, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105,

Richmond, VA 23218, telephone (804) 698-4103, or email gegraham@deq.virginia.gov.

Basis: Section 10.1-1308 of the Code of Virginia authorizes the State Air Pollution Control Board to promulgate regulations abating, controlling, and prohibiting air pollution in order to protect public health and welfare.

Purpose: The purpose of the regulations is to (i) require the owner of a proposed new or modified facility to provide such information as may be needed to enable the board to conduct a preconstruction review in order to determine compliance with applicable control technology and other standards and to assess the impact of the emissions from the facility on air quality and (ii) provide the basis for the board's final action (approval or disapproval) on the permit depending upon the results of the preconstruction review.

The proposed amendments are being made to allow the terms and conditions of the various elements of the new source review (NSR) program to be combined into a single permit. These amendments will protect the health and welfare of citizens because they will (i) make issuance of NSR permits more effective and efficient, (ii) clarify understanding of the permitting process, (iii) make the permitting process more transparent, and (iv) redirect limited department resources to issues of greater concern to the public.

Rationale for Using Fast-Track Process: Virginia's NSR program consists of several regulations: two for major NSR (PSD or nonattainment), one for minor NSR, and one for major sources of hazardous air pollutants (HAPs). It is possible that an individual source could simultaneously need permits for the purposes of major NSR, minor NSR, and HAPs. In the interest of efficiency, provisions allowing permits to be combined were created to allow owners to have a single application for these permits, and to allow the agency to issue a single permit.

The ability to combine multiple permit elements into a single NSR permit was accepted by EPA when initially established as an element of the NSR program. Recently, during the public comment period on a state regulatory action developed in response to an EPA major NSR reform initiative, EPA objected to these provisions and indicated that the regulations would not be approved into the SIP if combining permits was allowed. Although the department did not concur with the basis for EPA's objections, these provisions were removed from the major NSR rules in order to ensure approvability of the SIP.

The inability to combine permits creates significant negative effects:

1. If major and minor NSR permits cannot be combined, virtually every major NSR change will result in two permits. Generating two different sets of permit terms and conditions results in a significant workload increase.

2. Keeping major NSR and minor NSR terms and conditions separated into two different permits does not preserve any terms and conditions as purely major NSR or minor NSR terms or conditions.

3. The opportunity for public review and comment is reduced.

4. Compliance issues result from confusion about where the applicable terms and conditions for a pollutant reside when there is more than one effective permit.

In developing this proposal, EPA was consulted to determine how combining permits could be restored while addressing their concerns. Language acceptable to EPA was developed, and combining permits is now considered to be SIP-approvable by EPA.

The ability to combine permits will be a great benefit to the department, the regulated community, and the public, with EPA's concurrence. Therefore, no objections to the restoration of the program are anticipated, and the fast-track process is appropriate.

Substance:

1. Provisions have been added to allow the terms and conditions of the various elements of the NSR program to be combined into a single permit.

2. Provisions that specify the NSR programs to be used for the issuance of PAL permits have been revised in order to limit the issuance of these permits via a state operating permit.

3. Provisions that provide certain exemptions related to the use of alternative fuels or raw materials have been updated to comply with recent amendments to § 10.1-1322.4 of the Code of Virginia and restructured to ensure no conflict with federal law or regulation.

Issues:

1. Public: Advantages to the general public include more effective and efficient issuance of NSR permits, which will contribute to the protection of health and welfare. The general public will also benefit from a clearer understanding of the permitting process, as well as a more transparent process. The regulated community will enjoy the same benefits in addition to the benefits of avoiding unnecessary permitting.

2. Department: The department will benefit by avoiding unnecessary and duplicative permitting efforts, and will be better able to direct limited resources in a more effective and efficient manner. Compliance and enforcement activities will also benefit from focus on a single, comprehensive permit rather than many competing permits.

3. There are no disadvantages associated with this action.

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

Summary of the Proposed Amendments to Regulation. The State Air Pollution Control Board (Board) proposes to revise the current new source review (NSR) permit requirements to combine the terms and conditions of the various elements of the NSR program into a single permit. The proposed changes would add a new section to set out the procedure for combining permits. The proposed changes would also exempt alternative fuels or raw materials from the permit requirements to conform with new provisions in the Code and to ensure that there are no conflicts with federal law or regulation. The Department of Environmental Quality (DEQ) worked with the U.S. Environmental Protection Agency (EPA) to develop these provisions.

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

Estimated Economic Impact. Virginia's NSR program consists of several regulations: two for major NSR (prevention of significant deterioration or nonattainment), one for minor NSR, and one for major sources of hazardous air pollutants (HAPs). It is possible that an individual source could simultaneously need permits for the purposes of major NSR, minor NSR, and HAPs. In the interest of efficiency, provisions allowing permits to be combined were created to allow owners to have a single application for these permits, and to allow the agency to issue a single permit.

According to DEQ the ability to combine multiple permit elements into a single NSR permit was accepted by EPA when initially established as an element of the NSR program. Recently, during the public comment period on a state regulatory action developed in response to an EPA major NSR reform initiative, EPA objected to these provisions and indicated that the regulations would not be approved into the State Implementation Plan (SIP) if combining permits was allowed. Although DEQ did not concur with the basis for EPA's objections, these provisions were removed from the major NSR rules in order to ensure approvability of the SIP.

The inability to combine permits creates significant negative effects. First, if major and minor NSR permits cannot be combined, virtually every major NSR change will result in two permits. Generating two different sets of permit terms and conditions results in a significant workload increase. DEQ estimates that it takes 1000 hours of staff time to review, negotiate, write and issue a prevention of significant deterioration major NSR permit, 667 hours of staff time to review, negotiate, write and issue a nonattainment major NSR permit, and 175 hours of staff time to review, negotiate, write and issue a minor NSR permit. On the other hand combining a prevention of significant deterioration major NSR permit with a minor NSR permit, for example, would only require approximately 1000 hours, saving 175 hours of staff time. Regulated entities also must use significantly more staff time with separate permits.

Second, keeping major NSR and minor NSR terms and conditions separated into two different permits does not preserve any terms and conditions as purely major NSR or minor NSR terms or conditions, prompting confusion. Third, the opportunity for public review and comment is reduced. Fourth, compliance issues result from confusion about where the applicable terms and conditions for a pollutant reside when there is more than one effective permit.

In developing this proposal, DEQ consulted EPA to determine how combining permits could be restored while addressing their concerns. The Board with DEQ assistance developed language acceptable to EPA. Combining permits as proposed by the Board is now considered to be SIP-approvable by EPA.

The proposal to allow the combination of multiple permit elements into a single NSR permit will be beneficial to the public in that there will be more effective and efficient issuance of NSR permits, which will contribute to the protection of health and welfare. The general public will also benefit from a clearer understanding of the permitting process, as well as a more transparent process. The regulated community will enjoy the same benefits in addition to the benefits of avoiding the time, dollars and confusion associated with unnecessary permitting. DEQ will benefit by avoiding unnecessary and duplicative permitting efforts that consume significant amounts of staff time, and will be better able to direct limited resources in a more effective and efficient manner. Compliance and enforcement activities will also benefit from focus on a single, comprehensive permit rather than many competing permits. There are no known cost increases due to the proposal. Therefore the proposal will produce net benefits.

Businesses and Entities Affected. The proposed amendments affect any owner who constructs a new major stationary source of air pollutants or makes a major modification to any major stationary source, as well as DEQ.

Localities Particularly Affected. The proposed amendments do not disproportionately affect particular localities.

Projected Impact on Employment. Significantly reducing the amount of staff time required to handle permitting will reduce costs for firms, allowing them to be moderately more profitable. This may result in a small gain in employment in the long run.

Effects on the Use and Value of Private Property. The proposal to allow the combination of multiple permit elements into a single NSR permit will reduce costs for firms that must obtain such permits. This will commensurately increase the value of such firms.

Small Businesses: Costs and Other Effects. The proposal to allow the combination of multiple permit elements into a single NSR permit will reduce costs for small businesses that must obtain such permits. This will commensurately increase the value of such small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed amendments do not produce adverse impact for small businesses.

Real Estate Development Costs. The proposed amendments can potentially moderately reduce real estate development costs in some cases.

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

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The department has reviewed the economic impact analysis prepared by the Department of Planning and Budget and has no comment.

Summary:

The existing regulations establish a new source review (NSR) permit program whereby owners of sources locating in prevention of significant deterioration (PSD) and nonattainment areas are required to obtain a permit prior to construction of a new major source or a major modification (physical or operational change) to an existing one. The regulations are being amended to:

1. Add provisions to allow the terms and conditions of the various elements of the NSR program to be combined into a single permit.

2. Revise the provisions that specify the NSR programs to be used for the issuance of PAL permits in order to limit the issuance of these permits via a state operating permit.

3. Update and restructure the provisions that provide certain exemptions related to the use of alternative fuels or raw materials to comply with recent amendments to § 10.1-1322.4 of the Code of Virginia and to ensure no conflict with federal law or regulation.

9VAC5-80-1615. Definitions.

A. As used in this article, all words or terms not defined herein shall have the meaning given them in 9VAC5-10 (General Definitions), unless otherwise required by context.

B. For the purpose of this article, 9VAC5-80-280 and applying this article in the context of the Regulations for the Control and Abatement of Air Pollution and related uses, the words or terms shall have the meaning given them in subsection C of this section:

C. Terms defined.

"Actual emissions" means the actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with subdivisions a through c of this definition, except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL under 9VAC5-80-1865. Instead, the definitions of "projected actual emissions" and "baseline actual emissions" shall apply for those purposes.

a. In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24-month period that precedes the particular date and that is representative of normal source operation. The board will allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

b. The board may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

c. For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

"Actuals PAL for a major stationary source" means a PAL based on the baseline actual emissions of all emissions units at the source that emit or have the potential to emit the PAL pollutant.

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

"Adverse impact on visibility" means visibility impairment that interferes with the management, protection, preservation or enjoyment of the visitor's visual experience of the federal class I area. This determination shall be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency and time of visibility impairment, and how these factors correlate with (i) times of visitor use of the federal class I areas, and (ii) the frequency and timing of natural conditions that reduce visibility.

"Allowable emissions" means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally and state enforceable limits that restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

a. The applicable standards as set forth in 40 CFR Parts 60, 61, and 63;

b. The applicable implementation plan emissions limitation including those with a future compliance date; or

c. The emissions limit specified as a federally and state enforceable permit condition, including those with a future compliance date.

For the purposes of actuals PALs, "allowable emissions" shall also be calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit.

"Applicable federal requirement" means all of, but not limited to, the following as they apply to emissions units in a source subject to this article (including requirements that have been promulgated or approved by the administrator through rulemaking at the time of permit issuance but have future-effective compliance dates):

a. Any standard or other requirement provided for in an implementation plan established pursuant to § 110 or § 111(d) of the federal Clean Air Act, including any source-specific provisions such as consent agreements or orders.

b. Any limit or condition in any construction permit issued under the new source review program or in any operating permit issued pursuant to the state operating permit program.

c. Any emission standard, alternative emission standard, alternative emission limitation, equivalent emission limitation or other requirement established pursuant to § 112 or § 129 of the federal Clean Air Act as amended in 1990.

d. Any new source performance standard or other requirement established pursuant to § 111 of the federal Clean Air Act, and any emission standard or other requirement established pursuant to § 112 of the federal Clean Air Act before it was amended in 1990.

e. Any limitations and conditions or other requirement in a Virginia regulation or program that has been approved by EPA under subpart E of 40 CFR Part 63 for the purposes of implementing and enforcing § 112 of the federal Clean Air Act.

f. Any requirement concerning accident prevention under § 112(r)(7) of the federal Clean Air Act.

g. Any compliance monitoring requirements established pursuant to either § 504(b) or § 114(a)(3) of the federal Clean Air Act.

h. Any standard or other requirement for consumer and commercial products under § 183(e) of the federal Clean Air Act.

i. Any standard or other requirement for tank vessels under § 183(f) of the federal Clean Air Act.

j. Any standard or other requirement in 40 CFR Part 55 to control air pollution from outer continental shelf sources.

k. Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the federal Clean Air Act unless the administrator has determined that such requirements need not be contained in a permit issued under this article.

l. With regard to temporary sources subject to 9VAC5-80-130, (i) any ambient air quality standard, except applicable state requirements, and (ii) requirements regarding increments or visibility as provided in this article.

"Baseline actual emissions" means the rate of emissions, in tons per year, of a regulated NSR pollutant, as determined in accordance with the following:

a. For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner within the five-year period immediately preceding when the owner begins actual construction of the project. The board will allow the use of a different time period upon a determination that it is more representative of normal source operation.

(1) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(2) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period.

(3) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period shall be used to determine the baseline actual emissions for the emissions units being changed. The same consecutive 24-month period shall be used for each different regulated NSR pollutant unless the owner can demonstrate to the satisfaction of the board that a different consecutive 24-month period for a different pollutant or pollutants is more appropriate due to extenuating circumstances.

(4) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by subdivision a (2) of this definition.

b. For an existing emissions unit (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner within the five-year period immediately preceding either the date the owner begins actual construction of the project, or the date a complete permit application is received by the board for a permit required under this article, whichever is earlier, except that the five-year period shall not include any period earlier than November 15, 1990. The board will allow the use of a different time period upon a determination that it is more representative of normal source operation.

(1) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(2) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period.

(3) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the administrator proposed or promulgated under 40 CFR Part 63, the baseline actual emissions need only be adjusted if the board has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of 9VAC5-80-2120 K.

(4) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period shall be used to determine the baseline actual emissions for all the emissions units being changed. The same consecutive 24-month period shall be used for each different regulated NSR pollutant unless the owner can demonstrate to the satisfaction of the board that a different consecutive 24-month period for a different pollutant or pollutants is more appropriate due to extenuating circumstances.

(5) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by subdivisions b (2) and (3) of this definition.

c. For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.

d. For a PAL for a stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in subdivision a of this definition, for other existing emissions units in accordance with the procedures contained in subdivision b of this definition, and for a new emissions unit in accordance with the procedures contained in subdivision c of this subsection.

"Baseline area":

a. Means any intrastate area (and every part thereof) designated as attainment or unclassifiable under § 107(d)(1)(C) of the federal Clean Air Act in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact equal to or greater than 1 μg/m³ (annual average) of the pollutant for which the minor source baseline date is established.

b. Area redesignations under § 107(d)(3) of the federal Clean Air Act cannot intersect or be smaller than the area of impact of any major stationary source or major modification that:

(1) Establishes a minor source baseline date; or

(2) Is subject to this article or 40 CFR 52.21 and would be constructed in the same state as the state proposing the redesignation.

c. Any baseline area established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM_{10} increments, except that such baseline area shall not remain in effect if the board rescinds the corresponding minor source baseline date in accordance with subdivision d of the definition of "baseline date."

"Baseline concentration"

a. Means that ambient concentration level that exists in the baseline area at the time of the applicable minor source baseline date. A baseline concentration is determined for each pollutant for which a minor source baseline date is established and shall include:

(1) The actual emissions representative of sources in existence on the applicable minor source baseline date, except as provided in subdivision b of this definition; and

(2) The allowable emissions of major stationary sources that commenced construction before the major source baseline date, but were not in operation by the applicable minor source baseline date.

b. The following will not be included in the baseline concentration and will affect the applicable maximum allowable increase(s):

(1) Actual emissions from any major stationary source on which construction commenced after the major source baseline date; and

(2) Actual emissions increases and decreases at any stationary source occurring after the minor source baseline date.

"Baseline date"

a. "Major source baseline date" means:

(1) In the case of particulate matter and sulfur dioxide, January 6, 1975; and

(2) In the case of nitrogen dioxide, February 8, 1988.

b. "Minor source baseline date" means the earliest date after the trigger date on which a major stationary source or a major modification subject to this article submits a complete application under this article. The trigger date is:

(1) In the case of particulate matter and sulfur dioxide, August 7, 1977; and

(2) In the case of nitrogen dioxide, February 8, 1988.

c. The baseline date is established for each pollutant for which increments or other equivalent measures have been established if:

(1) The area in which the proposed source or modification would construct is designated as attainment or unclassifiable under § 107(d)(1)(C) of the federal Clean Air Act for the pollutant on the date of its complete application under this article or 40 CFR 52.21; and

(2) In the case of a major stationary source, the pollutant would be emitted in significant amounts, or, in the case of a major modification, there would be a significant net emissions increase of the pollutant.

d. Any minor source baseline date established originally for the TSP increments shall remain in effect and shall apply for purposes of determining the amount of available PM_{10} increments, except that the board may rescind any such minor source baseline date where it can be shown, to the satisfaction of the board, that the emissions increase from the major stationary source, or the net emissions increase from the major modification, responsible for triggering that date did not result in a significant amount of PM_{10} emissions.

"Begin actual construction" means, in general, initiation of physical on-site construction activities on an emissions unit that are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities other than preparatory activities that mark the initiation of the change.

"Best available control technology" means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each regulated NSR pollutant that would be emitted from any proposed major stationary source or major modification that the board, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant that would exceed the emissions allowed by any applicable standard under 40 CFR Parts 60, 61, and 63. If the board determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means that achieve equivalent results.

"Building, structure, facility or installation" means all of the pollutant-emitting activities that belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., that have the same first two-digit code)

as described in the Standard Industrial Classification Manual (see 9VAC5-20-21).

"Clean coal technology" means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility that will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam that was not in widespread use as of November 15, 1990.

"Clean coal technology demonstration project" means a project using funds appropriated under the heading "Department of Energy-Clean Coal Technology," up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for EPA. The federal contribution for a qualifying project shall be at least 20% of the total cost of the demonstration project.

"Commence" as applied to construction of a major stationary source or major modification, means that the owner has all necessary preconstruction approvals or permits and either has:

a. Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

b. Entered into binding agreements or contractual obligations, that cannot be canceled or modified without substantial loss to the owner, to undertake a program of actual construction of the source, to be completed within a reasonable time.

"Complete" means, in reference to an application for a permit, that the application contains all of the information necessary for processing the application and the provisions of § 10.1-1321.1 of the Virginia Air Pollution Control Law have been met. Designating an application complete for the purposes of permit processing does not preclude the board from requesting or accepting any additional information.

"Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in emissions.

"Continuous emissions monitoring system" or "CEMS" means all of the equipment that may be required to meet the data acquisition and availability requirements of this article, to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.

"Continuous emissions rate monitoring system" or "CERMS" means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).

"Continuous parameter monitoring system" or "CPMS" means all of the equipment necessary to meet the data acquisition and availability requirements of this article, to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O_2 or CO_2 concentrations), and to record average operational parameter value(s) on a continuous basis.

"Electric utility steam generating unit" means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

"Emissions unit" means any part of a stationary source that emits or would have the potential to emit any regulated NSR pollutant and includes an electric utility steam generating unit. For purposes of this definition, there are two types of emissions units: (i) a new emissions unit is any emissions unit that is (or will be) newly constructed and that has existed for less than two years from the date such emissions unit first operated; and (ii) an existing emissions unit is any emissions unit that is not a new emissions unit.

"Enforceable as a practical matter" means that the permit contains emission limitations that are enforceable by the board or the department and meet the following criteria:

a. Are permanent;

b. Contain a legal obligation for the owner to adhere to the terms and conditions;

c. Do not allow a relaxation of a requirement of the implementation plan;

d. Are technically accurate and quantifiable;

e. Include averaging times or other provisions that allow at least monthly (or a shorter period if necessary to be consistent with the implementation plan) checks on compliance. This may include, but not be limited to, the following: compliance with annual limits on a rolling basis, monthly or shorter limits, and other provisions consistent with this article and other regulations of the board; and

f. Require a level of recordkeeping, reporting and monitoring sufficient to demonstrate compliance.

"Federal land manager" means, with respect to any lands in the United States, the secretary of the department with authority over such lands.

"Federally enforceable" means all limitations and conditions that are enforceable by the administrator and citizens under

the federal Clean Air Act or that are enforceable under other statutes administered by the administrator. Federally enforceable limitations and conditions include, but are not limited to, the following:

a. Emission standards, alternative emission standards, alternative emission limitations, and equivalent emission limitations established pursuant to § 112 of the federal Clean Air Act as amended in 1990.

b. New source performance standards established pursuant to § 111 of the federal Clean Air Act, and emission standards established pursuant to § 112 of the federal Clean Air Act before it was amended in 1990.

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

d. Limitations and conditions that are part of an implementation plan established pursuant to § 110, § 111(d) or § 129 of the federal Clean Air Act.

e. Limitations and conditions (unless expressly designated as not federally enforceable) that are part of a federal construction permit issued under 40 CFR 52.21 or a new source review permit issued under regulations approved by the EPA into the implementation plan.

f. Limitations and conditions (unless expressly designated as not federally enforceable) that are part of a state operating permit where the permit and the permit program pursuant to which it was issued meet all of the following criteria:

(1) The operating permit program has been approved by the EPA into the implementation plan under § 110 of the federal Clean Air Act;

(2) The operating permit program imposes a legal obligation that operating permit holders adhere to the terms and limitations of such permits and provides that permits that do not conform to the operating permit program requirements and the requirements of EPA's underlying regulations may be deemed not "federally enforceable" by EPA;

(3) The operating permit program requires that all emission limitations, controls, and other requirements imposed by such permits will be at least as stringent as any other applicable limitations and requirements contained in the implementation plan or enforceable under the implementation plan, and that the program may not issue permits that waive, or make less stringent, any limitations or requirements contained in or issued pursuant to the implementation plan, or that are otherwise "federally enforceable";

(4) The limitations, controls, and requirements in the permit in question are permanent, quantifiable, and otherwise enforceable as a practical matter; and

(5) The permit in question was issued only after adequate and timely notice and opportunity for comment by the EPA and the public.

g. Limitations and conditions in a regulation of the board or program that has been approved by the EPA under subpart E of 40 CFR Part 63 for the purposes of implementing and enforcing § 112 of the federal Clean Air Act.

h. Individual consent agreements that the EPA has legal authority to create.

"Federal operating permit" means a permit issued under the federal operating permit program.

"Federal operating permit program" means an operating permit system (i) for issuing terms and conditions for major stationary sources, (ii) established to implement the requirements of Title V of the federal Clean Air Act and associated regulations, and (iii) codified in Article 1 (9VAC5-80-50 et seq.), Article 2 (9VAC5-80-310 et seq.), Article 3 (9VAC5-80-360 et seq.), and Article 4 (9VAC5-80-710 et seq.) of this part.

"Fugitive emissions" means those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"High terrain" means any area having an elevation 900 feet or more above the base of the stack of a source.

"Indian governing body" means the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government.

"Indian reservation" means any federally recognized reservation established by treaty, agreement, executive order, or act of Congress.

"Innovative control technology" means any system of air pollution control that has not been adequately demonstrated in practice, but would have substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice or of achieving at least comparable reductions at lower cost in terms of energy, economics, or nonair quality environmental impacts.

"Lowest achievable emission rate" or "LAER" is as defined in 9VAC5-80-2010 C.

"Locality particularly affected" means any locality that bears any identified disproportionate material air quality impact that would not be experienced by other localities.

"Low terrain" means any area other than high terrain.

"Major emissions unit" means (i) any emissions unit that emits or has the potential to emit 100 tons per year or more of the PAL pollutant in an attainment area; or (ii) any emissions unit that emits or has the potential to emit the PAL pollutant for nonattainment areas in an amount that is equal to or greater than the major source threshold for the PAL pollutant in subdivision a (1) of the definition of "major stationary source " in 9VAC5-80-2010 C.

"Major modification"

a. Means any physical change in or change in the method of operation of a major stationary source that would result in a significant emissions increase of a regulated NSR pollutant, and a significant net emissions increase of that pollutant from the major stationary source.

b. Any significant emissions increase from any emissions units or net emissions increase at a major stationary source that is significant for volatile organic compounds or NO_X shall be considered significant for ozone.

c. A physical change or change in the method of operation shall not include the following:

(1) Routine maintenance, repair and replacement.

(2) Use of an alternative fuel or raw material by reason of an order under § 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plant pursuant to the federal Power Act.

(3) Use of an alternative fuel by reason of any order or rule under § 125 of the federal Clean Air Act.

(4) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste.

(5) Use of an alternative fuel or raw material by a stationary source that:

(a) The source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally and state enforceable permit condition that was established after January 6, 1975, pursuant to 40 CFR 52.21 or this chapter; or

(b) The source is approved to use under any permit issued under 40 CFR 52.21 or this chapter~~; and~~.

~~(c) The owner demonstrates to the board that as a result of trial burns at the source or other sources or other sufficient data that the emissions resulting from the use of the alternative fuel or raw material supply are decreased.~~

(6) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally and state enforceable permit condition that was established after January 6, 1975, pursuant to 40 CFR 52.21 or this chapter.

(7) Any change in ownership at a stationary source.

(8) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(a) The applicable implementation plan, and

(b) Other requirements necessary to attain and maintain the ambient air quality standards during the project and after it is terminated.

(9) The installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, provided that the project does not result in an increase in the potential to emit of any regulated pollutant emitted by the unit. This exemption shall apply on a pollutant-by-pollutant basis.

(10) The reactivation of a very clean coal-fired electric utility steam generating unit.

d. This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under 9VAC5-80-1865 for a PAL for that pollutant. Instead, the definition of "PAL major modification" shall apply.

"Major new source review (NSR) permit" means a permit issued under the major new source review program.

"Major new source review (major NSR) program" means a preconstruction review and permit program (i) for new major stationary sources or major modifications (physical changes or changes in the method of operation), (ii) established to implement the requirements of §§ 112, 165 and 173 of the federal Clean Air Act and associated regulations, and (iii) codified in Article 7 (9VAC5-80-1400 et seq.), Article 8 (9VAC5-80-1605 et seq.) and Article 9 (9VAC5-80-2000 et seq.) of this part.

"Major stationary source"

a. Means:

(1) Any of the following stationary sources of air pollutants that emits, or has the potential to emit, 100 tons per year or more of any regulated NSR pollutant:

(a) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input.

(b) Coal cleaning plants (with thermal dryers).

(c) Kraft pulp mills.

(d) Portland cement plants.

(e) Primary zinc smelters.

(f) Iron and steel mill plants.

(g) Primary aluminum ore reduction plants.

(h) Primary copper smelters.

(i) Municipal incinerators capable of charging more than 250 tons of refuse per day.

(j) Hydrofluoric acid plants.

(k) Sulfuric acid plants.

(l) Nitric acid plants.

(m) Petroleum refineries.

(n) Lime plants.

(o) Phosphate rock processing plants.

(p) Coke oven batteries.

(q) Sulfur recovery plants.

(r) Carbon black plants (furnace process).

(s) Primary lead smelters.

(t) Fuel conversion plants.

(u) Sintering plants.

(v) Secondary metal production plants.

(w) Chemical process plants.

(x) Fossil fuel boilers (or combination of them) totaling more than 250 million British thermal units per hour heat input.

(y) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.

(z) Taconite ore processing plants.

(aa) Glass fiber processing plants.

(bb) Charcoal production plants.

(2) Notwithstanding the stationary source size specified in subdivision a (1) of this definition, any stationary source that emits, or has the potential to emit, 250 tons per year or more of a regulated NSR pollutant; or

(3) Any physical change that would occur at a stationary source not otherwise qualifying under subdivision a (1) or a (2) of this definition as a major stationary source, if the change would constitute a major stationary source by itself.

b. A major stationary source that is major for volatile organic compounds or NO_X shall be considered major for ozone.

c. The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this article whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

(1) Coal cleaning plants (with thermal dryers).

(2) Kraft pulp mills.

(3) Portland cement plants.

(4) Primary zinc smelters.

(5) Iron and steel mills.

(6) Primary aluminum ore reduction plants.

(7) Primary copper smelters.

(8) Municipal incinerators capable of charging more than 250 tons of refuse per day.

(9) Hydrofluoric, sulfuric, or nitric acid plants.

(10) Petroleum refineries.

(11) Lime plants.

(12) Phosphate rock processing plants.

(13) Coke oven batteries.

(14) Sulfur recovery plants.

(15) Carbon black plants (furnace process).

(16) Primary lead smelters.

(17) Fuel conversion plants.

(18) Sintering plants.

(19) Secondary metal production plants.

(20) Chemical process plants.

(21) Fossil-fuel boilers (or combination of them) totaling more than 250 million British thermal units per hour heat input.

(22) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.

(23) Taconite ore processing plants.

(24) Glass fiber processing plants.

(25) Charcoal production plants.

(26) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input.

(27) Any other stationary source category that, as of August 7, 1980, is being regulated under 40 CFR Parts 60 and 61.

"Minor new source review (NSR) permit" means a permit issued under the minor new source review program.

"Minor new source review (minor NSR) program" means a preconstruction review and permit program (i) for new

stationary sources or modifications (physical changes or changes in the method of operation) ~~which do not qualify for~~ that are not subject to review under the major new source review program, (ii) established to implement the requirements of §§ 110(a)(2)(C) and 112 of the federal Clean Air Act and associated regulations, and (iii) codified in Article 6 (9VAC5-80-1100 et seq.) of this part.

"Necessary preconstruction approvals or permits" means those permits required under NSR programs that are part of the applicable implementation plan.

"Net emissions increase"

a. Means, with respect to any regulated NSR pollutant emitted by a major stationary source, the amount by which the sum of the following exceeds zero:

(1) The increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to 9VAC5-80-1605 G; and

(2) Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under this subdivision shall be determined as provided in the definition of "baseline actual emissions," except that subdivisions a (3) and b (4) of that definition shall not apply.

b. An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between:

(1) The date five years before construction on the particular change commences; and

(2) The date that the increase from the particular change occurs.

c. An increase or decrease in actual emissions is creditable only if (i) it occurs between the date five years before construction on the particular change commences and the date that the increase from the particular change occurs; and (ii) the board has not relied on it in issuing a permit for the source under this article (or the administrator under 40 CFR 52.21), which permit is in effect when the increase in actual emissions from the particular change occurs.

d. An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides that occurs before the applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available.

e. An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

f. A decrease in actual emissions is creditable only to the extent that:

(1) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(2) It is enforceable as a practical matter at and after the time that actual construction on the particular change begins;

(3) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

g. An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

h. Subdivision a of the definition of "actual emissions" shall not apply for determining creditable increases and decreases.

"New source review (NSR) permit" means a permit issued under the new source review program.

"New source review (NSR) program" means a preconstruction review and permit program (i) for new stationary sources or modifications (physical changes or changes in the method of operation); (ii) established to implement the requirements of §§ 110(a)(2)(C), 112 (relating to permits for hazardous air pollutants), 165 (relating to permits in prevention of significant deterioration areas), and 173 (relating to permits in nonattainment areas) of the federal Clean Air Act and associated regulations; and (iii) codified in Article 6 (9VAC5-80-1100 et seq.), Article 7 (9VAC5-80-1400 et seq.), Article 8 (9VAC5-80-1605 et seq.) and Article 9 (9VAC5-80-2000 et seq.) of this part.

"Plantwide applicability limitation (PAL)" means an emission limitation expressed in tons per year, for a pollutant at a major stationary source, that is enforceable as a practical matter and established sourcewide in accordance with 9VAC5-80-1865.

"PAL effective date" generally means the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL is the date any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

"PAL effective period" means the period beginning with the PAL effective date and ending five years later.

"PAL major modification" means, notwithstanding the definitions for major modification and net emissions increase, any physical change in or change in the method of operation

of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

"PAL permit" means the ~~major NSR permit, the minor NSR permit, the~~ state operating permit~~, or the federal operating permit~~ issued by the board that establishes a PAL for a major stationary source.

"PAL pollutant" means the pollutant for which a PAL is established at a major stationary source.

"Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment, and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally and state enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source. For the purposes of actuals PALs, any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment, and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable or enforceable as a practical matter by the state.

"Predictive emissions monitoring system" or "PEMS" means all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O_2 or CO_2 concentrations), and calculate and record the mass emissions rate (for example, pounds per hour) on a continuous basis.

"Project" means a physical change in, or change in the method of operation of, an existing major stationary source.

"Projected actual emissions" means the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the five years (12-month period) following the date the unit resumes regular operation after the project, or in any one of the 10 years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit that regulated NSR pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source. In determining the projected actual emissions (before beginning actual construction), the owner of the major stationary source:

a. Shall consider all relevant information, including but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the state or federal regulatory authorities, and compliance plans under the approved implementation plan;

b. Shall include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions; and

c. Shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have emitted during the consecutive 24-month period used to establish the baseline actual emissions and that are also unrelated to the particular project, including any increased utilization due to product demand growth, provided such exclusion shall not reduce any calculated increases in emissions that are caused by, result from, or are related to the particular project; or

d. In lieu of using the method set out in subdivisions a through c of this definition, may elect to use the emissions unit's potential to emit, in tons per year.

"Reactivation of a very clean coal-fired electric utility steam generating unit" means any physical change or change in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation where the unit:

a. Has not been in operation for the two-year period prior to the enactment of the federal Clean Air Act Amendments of 1990, and the emissions from such unit continue to be carried in the department's emissions inventory at the time of enactment;

b. Was equipped prior to shut-down with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85% and a removal efficiency for particulates of no less than 98%;

c. Is equipped with low-NOX burners prior to the time of commencement of operations following reactivation; and

d. Is otherwise in compliance with the requirements of the federal Clean Air Act.

"Reasonably available control technology" or "RACT" means the lowest emission limit that a particular source is capable of meeting by the application of control technology that is reasonably available, considering technological and economic feasibility.

"Regulated NSR pollutant" means:

a. Any pollutant for which an ambient air quality standard has been promulgated and any constituents or precursors for such pollutants identified by the administrator (e.g., volatile organic compounds and NO_X are precursors for ozone);

b. Any pollutant that is subject to any standard promulgated under § 111 of the federal Clean Air Act;

c. Any class I or II substance subject to a standard promulgated under or established by Title VI of the federal Clean Air Act; or

d. Any pollutant that otherwise is subject to regulation under the federal Clean Air Act; except that any or all hazardous air pollutants either listed in § 112 of the federal Clean Air Act or added to the list pursuant to § 112(b)(2), which have not been delisted pursuant to § 112(b)(3), are not regulated NSR pollutants unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under § 108 of the federal Clean Air Act.

"Repowering" means:

a. Replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

b. Repowering shall also include any oil and/or gas-fired unit which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

c. The board may give expedited consideration to permit applications for any source that satisfies the requirements of this definition and is granted an extension under § 409 of the federal Clean Air Act.

"Secondary emissions" means emissions that would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this article, secondary emissions shall be specific, well defined, quantifiable, and affect the same general area as the stationary source or modification that causes the secondary emissions. Secondary emissions include emissions from any offsite support facility that would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions that come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

"Significant" means:

a. In reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant	Emissions Rate
Carbon Monoxide	100 tons per year (tpy)
Nitrogen Oxides	40 tpy
Sulfur Dioxide	40 tpy
Particulate Matter (TSP)	25 tpy
PM_{10}	15 tpy
$PM_{2.5}$	10 tpy
Ozone	40 tpy of volatile organic compounds or NO_X
Lead	0.6 tpy
Fluorides	3 tpy
Sulfuric Acid Mist	7 tpy
Hydrogen Sulfide (H_2S)	10 tpy
Total Reduced Sulfur (including H_2S)	10 tpy
Reduced Sulfur Compounds (including H_2S)	10 tpy
Municipal waste combustor organics (measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans)	3.5×10^{-6} tpy
Municipal waste combustor metals (measured as particulate matter)	15 tpy
Municipal waste combustor acid gases (measured as the sum of SO_2 and HCl)	40 tpy
Municipal solid waste landfills emissions (measured as nonmethane organic compounds)	50 tpy

b. In reference to a net emissions increase or the potential of a source to emit a regulated NSR pollutant that

subdivision a of this definition does not list, any emissions rate.

c. Notwithstanding subdivision a of this definition, any emissions rate or any net emissions increase associated with a major stationary source or major modification that would construct within 10 kilometers of a class I area, and have an impact on such area equal to or greater than 1 μg/m³ (24-hour average).

"Significant emissions increase" means, for a regulated NSR pollutant, an increase in emissions that is significant for that pollutant.

"Significant emissions unit" means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is significant for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit.

"Small emissions unit" means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant.

"State enforceable" means all limitations and conditions that are enforceable as a practical matter, including any regulation of the board, those requirements developed pursuant to 9VAC5-170-160, requirements within any applicable order or variance, and any permit requirements established pursuant to this chapter.

"State operating permit" means a permit issued under the state operating permit program.

"State operating permit program" means an operating permit program (i) for issuing limitations and conditions for stationary sources; (ii) promulgated to meet the EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for the EPA and public comment prior to issuance of the final permit, and practicable enforceability; and (iii) codified in Article 5 (9VAC5-80-800 et seq.) of this part.

"Stationary source" means any building, structure, facility, or installation that emits or may emit a regulated NSR pollutant.

"Temporary clean coal technology demonstration project" means a clean coal technology demonstration project that is operated for a period of five years or less, and that complies with the applicable implementation plan and other requirements necessary to attain and maintain the ambient air quality standards during the project and after it is terminated.

9VAC5-80-1625. General.

A. No owner or other person shall begin actual construction of any new major stationary source or major modification without first obtaining from the board a permit to construct and operate such source. The permit will state that the major stationary source or major modification shall meet all the applicable requirements of this article.

B. The requirements of this article apply to the construction of any new major stationary source or the major modification of any existing major stationary source, except as this article otherwise provides.

C. No owner or other person shall relocate any emissions unit from one stationary source to another without first obtaining a permit from the board to relocate the unit.

D. Prior to the decision of the board, all permit applications will be subject to a public comment period, a public hearing will be held as provided in 9VAC5-80-1775.

E. ~~If the board and the owner make a mutual determination that it facilitates the efficient processing and issuing of permits for projects that are to be constructed concurrently, the board may combine the requirements of and the permits for emissions units within a stationary source subject to the major new source review program into one permit. Likewise the board may require that applications for permits for emissions units within a stationary source required by any provision of the major new source review program be combined into one application~~ The board will take actions to combine permit terms and conditions as provided in 9VAC5-80-1915. Actions to combine permit terms and conditions involve relocating the terms and conditions contained in two or more permits issued to single stationary source to a single permit document. Actions to combine permit terms and conditions in and of themselves are not a mechanism for making changes to permits; such actions shall be taken under 9VAC5-80-1925 as explained in subsection F of this section.

F. ~~The board may not incorporate the terms and conditions of a state operating permit, a minor new source review permit, or a PAL permit into a permit issued pursuant to this article~~ The board will take actions to make changes to permit terms and conditions as provided in 9VAC5-80-1925. Nothing in this subsection is intended to imply that once an action has been taken to make a change to a permit, the resulting permit change may not be combined with other terms and conditions in a single permit document as provided in subsection E of this section.

G. All terms and conditions of any permit issued under this article shall be federally enforceable except those that are designated state-only enforceable under subdivision 1 of this subsection. Any term or condition that is not federally enforceable shall be designated as state-only enforceable as provided in subdivision 2 of this subsection.

1. A term or condition of any permit issued under this article shall not be federally enforceable if it is derived from or is designed to implement Article 2 (9VAC5-40-130 et seq.) of ~~9VAC5 Chapter 40~~ 9VAC5-40 (Existing Stationary Sources), Article 2 (9VAC5-50-130 et seq.) of ~~9VAC5 Chapter 50~~ 9VAC5-50 (New and Modified

Stationary Sources), Article 4 (9VAC5-60-200 et seq.) of ~~9VAC5 Chapter 60~~ 9VAC5-60 (Hazardous Air Pollutant Sources), or Article 5 (9VAC5-60-300) of ~~9VAC5 Chapter 60~~ 9VAC5-60 (Hazardous Air Pollutant Sources).

2. Any term or condition of any permit issued under this article that is not federally enforceable shall be marked in the permit as state-only enforceable and shall only be enforceable by the board. Incorrectly designating a term or condition as state-only enforceable shall not provide a shield from federal enforcement of a term or condition that is legally federally enforceable.

H. Nothing in the regulations of the board shall be construed to prevent the board from granting permits for programs of construction or modification in planned incremental phases. In such cases, all net emissions increases from all emissions units covered by the program shall be added together for determining the applicability of this article.

9VAC5-80-1695. Exemptions.

A. The requirements of this article shall not apply to a particular major stationary source or major modification; if:

1. The source or modification would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:

a. Coal cleaning plants (with thermal dryers).

b. Kraft pulp mills.

c. Portland cement plants.

d. Primary zinc smelters.

e. Iron and steel mills.

f. Primary aluminum ore reduction plants.

g. Primary copper smelters.

h. Municipal incinerators capable of charging more than 250 tons of refuse per day.

i. Hydrofluoric acid plants.

j. Sulfuric acid plants.

k. Nitric acid plants.

l. Petroleum refineries.

m. Lime plants.

n. Phosphate rock processing plants.

o. Coke oven batteries.

p. Sulfur recovery plants.

q. Carbon black plants (furnace process).

r. Primary lead smelters.

s. Fuel conversion plants.

t. Sintering plants.

u. Secondary metal production plants.

v. Chemical process plants.

w. Fossil-fuel boilers (or combination of them) totaling more than 250 million British thermal units per hour heat input.

x. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.

y. Taconite ore processing plants.

z. Glass fiber processing plants.

aa. Charcoal production plants.

bb. Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input.

cc. Any other stationary source category which, as of August 7, 1980, is being regulated under 40 CFR Part 60 or 61; or

2. The source or modification is a portable stationary source that has previously received a permit under this article, and

a. The owner proposes to relocate the source and emissions of the source at the new location would be temporary;

b. The emissions from the source would not exceed its allowable emissions;

c. The emissions from the source would affect no class I area and no area where an applicable increment is known to be violated; and

d. Reasonable notice is given to the board prior to the relocation identifying the proposed new location and the probable duration of operation at the new location. Such notice shall be given to the board not less than 10 days in advance of the proposed relocation unless a different time duration is previously approved by the board.

B. The requirements of this article shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner demonstrates that, as to that pollutant, the source or modification is located in an area designated as nonattainment in 9VAC5-20-204.

C. The requirements of 9VAC5-80-1715, 9VAC5-80-1735, and 9VAC5-80-1755 shall not apply to a major stationary source or major modification with respect to a particular pollutant, if the allowable emissions of that pollutant from the source, or the net emissions increase of that pollutant from the modification:

1. Would affect no class I area and no area where an applicable increment is known to be violated, and

2. Would be temporary.

D. The requirements of 9VAC5-80-1715, 9VAC5-80-1735, and 9VAC5-80-1755 as they relate to any maximum allowable increase for a class II area shall not apply to a major modification at a stationary source that was in existence on March 1, 1978, if the net increase in allowable emissions of each regulated NSR pollutant from the modification after the application of best available control technology would be less than 50 tons per year.

E. The board may exempt a proposed major stationary source or major modification from the requirements of 9VAC5-80-1735 with respect to monitoring for a particular pollutant if:

1. The emissions increase of the pollutant from the new source or the net emissions increase of the pollutant from the modification would cause, in any area, air quality impacts less than the following amounts:

Carbon monoxide -- 575 μg/m^3, 8-hour average

Nitrogen dioxide -- 14 μg/m^3, annual average

Particulate matter -- 10 μg/m^3 of PM_{10}, 24-hour average

Sulfur dioxide -- 13 μg/m^3, 24-hour average

Ozone*

Lead -- 0.1 μg/m^3, 3-month average

Fluorides -- 0.25 μg/m^3, 24-hour average

Total reduced sulfur -- 10 μg/m^3, 1-hour average

Hydrogen sulfide -- 0.2 μg/m^3, 1-hour average

Reduced sulfur compounds -- 10 μg/m^3, 1-hour average; or

*No de minimis air quality level is provided for ozone. However, any net increase of 100 tons per year or more of volatile organic compounds or NO_X subject to this article would be required to perform an ambient impact analysis including the gathering of ambient air quality data.

2. The concentrations of the pollutant in the area that the source or modification would affect are less than the concentrations listed in subdivision 1 of this subsection, or the pollutant is not listed in subdivision 1 of this subsection.

F. The requirements of this article shall not apply to a particular major stationary source with respect to the use of an alternative fuel or raw material if the following conditions are met:

1. The owner demonstrates to the board that, as a result of trial burns at the owner's facility or other facilities or other sufficient data, the emissions resulting from the use of the alternative fuel or raw material supply are decreased. No demonstration will be required for the use of processed animal fat, processed fish oil, processed vegetable oil, distillate oil, or any mixture thereof in place of the same quantity of residual oil to fire industrial boilers.

2. The use of an alternative fuel or raw material would not be subject to review under this article as a major modification.

9VAC5-80-1915. Actions to combine permit terms and conditions.

A. General requirements for actions to combine permit terms and conditions are as follows:

1. Except as provided in subdivision 3 of this subsection, the board may take actions to combine permit terms and conditions as provided under subsections B through E of this section.

2. Requests to combine permit terms and conditions may be initiated by the permittee or by the board.

3. Under no circumstances may an action to combine permit terms and conditions be used for any of the following:

a. To combine the terms and conditions of (i) a federal operating permit, (ii) a PAL permit, or (iii) any permit that is or will be part of the implementation plan.

b. To take an action to issue a permit or change a permit for the fabrication, erection, installation, demolition, relocation, addition, replacement, or modification of an emissions unit that would result in a change in emissions that would otherwise (i) be subject to review under this article or (ii) require a permit or permit amendment under the new source review program.

c. To allow any stationary source or emissions unit to violate any federal requirement.

d. To take an action to issue a permit or change a permit for any physical change in or change in the method of operation of a major stationary source that is subject to the provisions in 9VAC5-80-1605 C (restrictions on relaxing enforceable emission limitations that the major stationary source used to avoid applicability of the major NSR program).

B. The board may take actions to combine the terms and conditions of state operating permits and new source review permits along with any changes to state operating permits and new source review permits.

C. If the board and the owner make a mutual determination that it facilitates improved compliance or the efficient

processing and issuing of permits, the board may take an action to combine the terms and conditions of permits for emissions units within a stationary source into one or more permits. Likewise the board may require that applications for permits for emissions units within a stationary source required by any permit program be combined into one application.

D. Actions to combine the terms and conditions of permits are subject to the following conditions:

1. Each term or condition in the combined permit shall be accompanied by a statement that specifies and references the origin (enabling permit program) of, along with the regulatory or any other authority for, the term or condition.

2. Each term or condition in the combined permit shall be accompanied by a statement that specifies the effective date of the term or condition.

3. Each term or condition in the combined permit shall be identified by its original designation (i.e., state-only enforceable or federally and state enforceable) consistent with the applicable enforceability designation of the term or condition in the contributing permit.

4. Except as provided in subsection E of this section, all terms and conditions in the contributing permits shall be included in the combined permit without change. The combined permit will supersede the contributing permits, which will no longer be effective.

E. Actions to make changes to permit terms and conditions as may be necessary to facilitate actions to combine permit terms and conditions may be accomplished in accordance with the minor amendment procedures (unless specified otherwise in this section) of the enabling permit program (i.e., the permit program that is the origin of the term or condition), subject to the following conditions:

1. Updates to regulatory or other authorities may be accomplished in accordance with the administrative amendment procedures of the enabling permit program.

2. If two or more terms or conditions apply to the same emissions unit or emissions units and are substantively equivalent, the more restrictive of the duplicate terms or conditions may be retained and the less restrictive one removed, subject to the provisions of subdivision 4 of this subsection.

3. If two or more similar terms or conditions apply to the same emissions unit or emissions units and one is substantively more restrictive than the others, the more restrictive of the terms or conditions shall be retained, regardless of whether the less restrictive terms or conditions are removed. If the less restrictive of the similar terms or conditions is removed, the provisions of subdivision 4 of this subsection apply.

4. The removal of similar terms or conditions from contributing permits is subject to the following conditions:

a. If any one of the terms or conditions removed is federally and state enforceable, the more restrictive term or condition that is retained in the combined permit shall be federally and state enforceable.

b. If any one of the terms or conditions originates in a permit subject to a major NSR program, that major NSR program shall become the effective enabling permit program for the more restrictive term or condition that is retained in the combined permit. If more than one major NSR program is the basis for a term or condition, all of the applicable major NSR programs shall be the enabling permit program for that term or condition.

c. The regulatory basis for all of the similar terms or conditions that are removed shall be included in the reference for the term or condition that is retained.

9VAC5-80-1925. ~~Changes to~~ Actions to change permits.

A. The general requirements for ~~making~~ actions to make changes to permits issued under this article are as follows:

1. Except as provided in subdivision 3 of this subsection changes to a permit issued under this article shall be made as specified under subsections B and C of this section and 9VAC5-80-1935 through 9VAC5-80-1965.

2. Changes to a permit issued under this article may be initiated by the permittee as specified in subsection B of this section or by the board as specified in subsection C of this section.

3. Changes to a permit issued under this article and incorporated into a permit issued under Article 1 (9VAC5-80-50 et seq.) or Article 3 (9VAC5-80-360 et seq.) of this part shall be made as specified in Article 1 (9VAC5-80-50 et seq.) or Article 3 (9VAC5-80-360 et seq.) of this part.

~~4. Under no circumstances may a permit issued under this article be changed in order to (i) incorporate the terms and conditions necessary to implement any provision of the new source review program for a project that qualifies as a modification under the new source review program or (ii) incorporate the terms and conditions necessary to implement any provision of the new source review program for a PAL permit.~~

B. The requirements for changes initiated by the permittee are as follows:

1. The permittee may initiate a change to a permit by submitting a written request to the board for an administrative permit amendment, a minor permit amendment or a significant permit amendment. The requirements for these permit changes can be found in 9VAC5-80-1935 through 9VAC5-80-1955.

2. A request for a change by a permittee shall include a statement of the reason for the proposed change.

C. The board may initiate a change to a permit through the use of permit reopenings as specified in 9VAC5-80-1965.

9VAC5-80-1935. Administrative permit amendments.

A. Administrative permit amendments shall be ~~required~~ used for and limited to the following:

1. Correction of typographical or any other error, defect or irregularity which does not substantially affect the permit.

2. Identification of a change in the name, address, or phone number of any person identified in the permit, or of a similar minor administrative change at the source.

3. Change in ownership or operational control of a source where the board determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the board and the requirements of 9VAC5-80-2170 have been fulfilled.

B. The administrative permit amendment procedures are as follows:

1. The board will normally take final action on a request for an administrative permit amendment no more than 60 days from receipt of the request.

2. The board will incorporate the changes without providing notice to the public under 9VAC5-80-1775. However, any such permit revisions shall be designated in the permit amendment as having been made pursuant to this section.

3. The owner may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

9VAC5-80-1945. Minor permit amendments.

A. Minor permit amendment procedures shall be used only for those permit amendments that meet all of the following criteria:

1. Do not violate any applicable federal requirement.

2. Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements that would make the permit requirements less stringent, such as a change to the method of monitoring to be used, a change to the method of demonstrating compliance or a relaxation of reporting or recordkeeping requirements.

3. Do not require or change a case-by-case determination of an ~~emission~~ emissions limitation or other ~~standard~~ requirement.

4. Do not seek to establish or change a permit term or condition (i) for which there is no corresponding underlying applicable regulatory requirement and (ii) that the source has assumed to avoid an applicable regulatory requirement to which the source would otherwise be subject. Such terms and conditions include, but are not limited to, an emissions cap assumed to avoid classification as a modification under the new source review program.

5. Are not required to be processed as a significant amendment under 9VAC5-80-1955; or as an administrative permit amendment under 9VAC5-80-1935.

B. Notwithstanding subsection A of this section, minor permit amendment procedures may be used for permit amendments that meet any of the following criteria:

1. Involve the use of economic incentives, emissions trading, and other similar approaches, to the extent that such minor permit amendment procedures are explicitly provided for in a regulation of the board or a federally-approved program.

2. Require new or more frequent monitoring or reporting by the permittee.

3. Designate any term or permit condition that meets the criteria in 9VAC5-80-1625 G 1 as state-only enforceable as provided in 9VAC5-80-1625 G 2 for any permit issued under this article or any regulation from which this article is derived.

C. Minor permit amendment procedures may be used for permit amendments involving the rescission of a provision of a permit if the board and the owner make a mutual determination that the provision is rescinded because all of the underlying statutory or regulatory requirements (i) upon which the provision is based or (ii) that necessitated inclusion of the provision are no longer applicable. In order for the underlying statutory or regulatory requirements to be considered no longer applicable, the provision of the permit that is being rescinded must not cover a regulated NSR pollutant.

D. A request for the use of minor permit amendment procedures shall include ~~all of the following: 1. A~~ a description of the change, the emissions resulting from the change, and any new applicable regulatory requirements that will apply if the change occurs~~. 2. A~~, along with a request that such procedures be used. The applicant may, at the applicant's discretion, include a suggested proposed permit amendment.

E. The public participation requirements of 9VAC5-80-1775 shall not extend to minor permit amendments.

F. Normally within 90 days of receipt by the board of a complete request under minor permit amendment procedures, the board will do one of the following:

1. Issue the permit amendment as proposed.

2. Deny the permit amendment request.

3. Determine that the requested amendment does not meet the minor permit amendment criteria and should be reviewed under the significant amendment procedures.

G. The requirements for making changes are as follows:

1. The owner may make the change proposed in the minor permit amendment request immediately after the request is filed.

2. After the change under subdivision 1 of this subsection is made, and until the board takes any of the actions specified in subsection F of this section, the source shall comply with both the applicable regulatory requirements governing the change and the proposed permit ~~terms and conditions~~ amendment.

3. During the time period specified in subdivision 2 of this subsection, the owner need not comply with the existing permit terms and conditions the owner seeks to modify if the applicant has submitted a proposed permit amendment. However, if the owner fails to comply with the proposed permit terms and conditions during this time period, the existing permit terms and conditions the owner seeks to modify may be enforced against the owner.

9VAC5-80-1955. Significant amendment procedures.

A. The criteria for use of significant amendment procedures are as follows:

1. Significant amendment procedures shall be used for requesting permit amendments that do not qualify as minor permit amendments under 9VAC5-80-1945 or as administrative amendments under 9VAC5-80-1935.

2. Significant amendment procedures shall be used for those permit amendments that meet any of the following criteria:

a. Involve significant changes to existing monitoring, reporting, or recordkeeping requirements that would make the permit requirements less stringent, such as a change to the method of monitoring to be used, a change to the method of demonstrating compliance or a relaxation of reporting or recordkeeping requirements.

b. Require or change a case-by-case determination of an ~~emission~~ emissions limitation or other ~~standard~~ requirement.

c. Seek to establish or change a permit term or condition (i) for which there is no corresponding underlying applicable regulatory requirement and (ii) that the source has assumed to avoid an applicable regulatory requirement to which the source would otherwise be subject. Such terms and conditions include, but are not limited to, an emissions cap assumed to avoid classification as a modification under the new source review program.

B. A request for a significant permit amendment shall include a description of the change, the emissions resulting from the change, and any new applicable regulatory requirements that will apply if the change occurs. The applicant may, at the applicant's discretion, include a suggested draft permit amendment.

C. The provisions of 9VAC5-80-1775 shall apply to requests made under this section.

D. The board will normally take final action on significant permit amendments within 180 days after receipt of a complete request, except in cases where direct consideration of the request by the board is granted pursuant to 9VAC5-80-25. The board may extend this time period if additional information is needed.

E. The owner shall not make the change applied for in the significant amendment request until the amendment is approved by the board under subsection D of this section.

9VAC5-80-1965. Reopening for cause.

A. A permit may be reopened and amended under any of the following situations:

1. Additional regulatory requirements become applicable to the emissions units covered by the permit after a permit is issued but prior to commencement of construction.

2. The board determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.

3. The board determines that the permit must be amended to assure compliance with the applicable regulatory requirements or that the terms and conditions of the permit are not sufficient to meet all of the ~~standards and~~ requirements contained in this article.

B. Proceedings to reopen and reissue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Such reopening shall be made as expeditiously as practicable.

C. Reopenings shall not be initiated before a notice of such intent is provided to the source by the board at least 30 days in advance of the date that the permit is to be reopened, except that the board may provide a shorter time period in the case of an emergency.

9VAC5-80-2010. Definitions.

A. As used in this article, all words or terms not defined here shall have the meanings given them in ~~9VAC5 Chapter 10 (9VAC5-10)~~ 9VAC5-10 (General Definitions), unless otherwise required by context.

B. For the purpose of this article, 9VAC5-50-270 and any related use, the words or terms shall have the meanings given them in subsection C of this section.

C. Terms defined.

"Actual emissions" means the actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with subdivisions a through c of this definition, except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL under 9VAC5-80-2144. Instead, the definitions of "projected actual emissions" and "baseline actual emissions" shall apply for those purposes.

a. In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24-month period which precedes the particular date and which is representative of normal source operation. The board will allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

b. The board may presume that the source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

c. For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

"Actuals PAL for a major stationary source" means a PAL based on the baseline actual emissions of all emissions units at the source, that emit or have the potential to emit the PAL pollutant.

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

"Allowable emissions" means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally and state enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

a. The applicable standards set forth in 40 CFR Parts 60, 61 and 63;

b. Any applicable implementation plan emissions limitation including those with a future compliance date; or

c. The emissions limit specified as a federally and state enforceable permit condition, including those with a future compliance date.

For the purposes of actuals PALs, "allowable emissions" shall also be calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit.

"Applicable federal requirement" means all of, but not limited to, the following as they apply to emissions units in a source subject to this article (including requirements that have been promulgated or approved by the administrator through rulemaking at the time of permit issuance but have future-effective compliance dates):

a. Any standard or other requirement provided for in an implementation plan established pursuant to § 110 or § 111(d) of the federal Clean Air Act, including any source-specific provisions such as consent agreements or orders.

b. Any limit or condition in any construction permit issued under the new source review program or in any operating permit issued pursuant to the state operating permit program.

c. Any emission standard, alternative emission standard, alternative emission limitation, equivalent emission limitation or other requirement established pursuant to § 112 or § 129 of the federal Clean Air Act as amended in 1990.

d. Any new source performance standard or other requirement established pursuant to § 111 of the federal Clean Air Act, and any emission standard or other requirement established pursuant to § 112 of the federal Clean Air Act before it was amended in 1990.

e. Any limitations and conditions or other requirement in a Virginia regulation or program that has been approved by EPA under subpart E of 40 CFR Part 63 for the purposes of implementing and enforcing § 112 of the federal Clean Air Act.

f. Any requirement concerning accident prevention under § 112(r)(7) of the federal Clean Air Act.

g. Any compliance monitoring requirements established pursuant to either § 504(b) or § 114(a)(3) of the federal Clean Air Act.

h. Any standard or other requirement for consumer and commercial products under § 183(e) of the federal Clean Air Act.

i. Any standard or other requirement for tank vessels under § 183(f) of the federal Clean Air Act.

j. Any standard or other requirement in 40 CFR Part 55 to control air pollution from outer continental shelf sources.

k. Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the federal Clean Air Act, unless the administrator has

determined that such requirements need not be contained in a permit issued under this article.

l. With regard to temporary sources subject to 9VAC5-80-130, (i) any ambient air quality standard, except applicable state requirements, and (ii) requirements regarding increments or visibility as provided in Article 8 (9VAC5-80-1605 et seq.) of this part.

"Baseline actual emissions" means the rate of emissions, in tons per year, of a regulated NSR pollutant, as determined in accordance with the following:

a. For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner within the five-year period immediately preceding when the owner begins actual construction of the project. The board may allow the use of a different time period upon a determination that it is more representative of normal source operation.

(1) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(2) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period.

(3) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period shall be used to determine the baseline actual emissions for the emissions units being changed. The same consecutive 24-month period shall be used for each different regulated NSR pollutant unless the owner can demonstrate to the satisfaction of the board that a different consecutive 24-month period for a different pollutant or pollutants is more appropriate due to extenuating circumstances.

(4) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by subdivision a (2) of this definition.

b. For an existing emissions unit other than an electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner within the five-year period immediately preceding either the date the owner begins actual construction of the project, or the date a complete permit application is received by the board for a permit required either under this section or under a plan approved by the administrator, whichever is earlier, except that the five-year period shall not include any period earlier than November 15, 1990. The board will allow the use of a different time period upon a determination that it is more representative of normal source operation.

(1) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(2) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period.

(3) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the source shall currently comply, had such source been required to comply with such limitations during the consecutive 24-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the administrator proposed or promulgated under 40 CFR Part 63, the baseline actual emissions need only be adjusted if the state has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of 9VAC5-80-2120 K.

(4) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period shall be used to determine the baseline actual emissions for the emissions units being changed. The same consecutive 24-month period shall be used for each different regulated NSR pollutant unless the owner can demonstrate to the satisfaction of the board that a different consecutive 24-month period for a different pollutant or pollutants is more appropriate due to extenuating circumstances.

(5) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by subdivisions b (2) and b (3) of this definition.

c. For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.

d. For a PAL for a major stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in subdivision a of this definition, for

other existing emissions units in accordance with the procedures contained in subdivision b of this definition, and for a new emissions unit in accordance with the procedures contained in subdivision c of this definition.

"Begin actual construction" means, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

"Best available control technology" means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each regulated NSR pollutant that would be emitted from any proposed major stationary source or major modification that the board, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant that would exceed the emissions allowed by any applicable standard under 40 CFR Parts 60, 61, and 63. If the board determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means that achieve equivalent results.

"Building, structure, facility, or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "major group" (i.e., which have the same two-digit code) as described in the "Standard Industrial Classification Manual," as amended by the supplement (see 9VAC5-20-21).

"Clean coal technology" means any technology, including technologies applied at the precombustion, combustion, or post-combustion stage, at a new or existing facility that will achieve significant reductions in air emissions of sulfur dioxide or nitrogen oxides associated with the utilization of coal in the generation of electricity, or process steam that was not in widespread use as of November 15, 1990.

"Clean coal technology demonstration project" means a project using funds appropriated under the heading "Department of Energy-Clean Coal Technology," up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the U.S. EPA. The federal contribution for a qualifying project shall be at least 20% of the total cost of the demonstration project.

"Commence," as applied to construction of a major stationary source or major modification, means that the owner has all necessary preconstruction approvals or permits and either has:

a. Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

b. Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner, to undertake a program of actual construction of the source, to be completed within a reasonable time.

"Complete application" means that the application contains all the information necessary for processing the application and the provisions of § 10.1-1321.1 of the Virginia Air Pollution Control Law have been met. Designating an application complete for purposes of permit processing does not preclude the board from requesting or accepting additional information.

"Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in actual emissions.

"Continuous emissions monitoring system (CEMS)" means all of the equipment that may be required to meet the data acquisition and availability requirements of this section, to sample, condition (if applicable), analyze, and provide a record of emissions on a continuous basis.

"Continuous emissions rate monitoring system (CERMS)" means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).

"Continuous parameter monitoring system (CPMS)" means all of the equipment necessary to meet the data acquisition and availability requirements of this section, to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate,

O_2 or CO_2 concentrations), and to record average operational parameter values on a continuous basis.

"Electric utility steam generating unit" means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 megawatt electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

"Emissions cap" means any limitation on the rate of emissions of any air pollutant from one or more emissions units established and identified as an emissions cap in any permit issued pursuant to the new source review program or operating permit program.

"Emissions unit" means any part of a stationary source which emits or would have the potential to emit any regulated NSR pollutant and includes an electric steam generating unit. For purposes of this article, there are two types of emissions units: (i) a new emissions unit is any emissions unit that is (or will be) newly constructed and that has existed for less than two years from the date such emissions unit first operated; and (ii) an existing emissions unit is any emissions unit that is not a new emissions unit.

"Enforceable as a practical matter" means that the permit contains emission limitations that are enforceable by the board or the department and meet the following criteria:

a. Are permanent;

b. Contain a legal obligation for the owner to adhere to the terms and conditions;

c. Do not allow a relaxation of a requirement of the implementation plan;

d. Are technically accurate and quantifiable;

e. Include averaging times or other provisions that allow at least monthly (or a shorter period if necessary to be consistent with the implementation plan) checks on compliance. This may include, but not be limited to, the following: compliance with annual limits in a rolling basis, monthly or shorter limits, and other provisions consistent with this article and other regulations of the board; and

f. Require a level of recordkeeping, reporting and monitoring sufficient to demonstrate compliance.

"Federal land manager" means, with respect to any lands in the United States, the secretary of the department with authority over such lands.

"Federally enforceable" means all limitations and conditions which are enforceable by the administrator and citizens under the federal Clean Air Act or that are enforceable under other statutes administered by the administrator. Federally enforceable limitations and conditions include, but are not limited to the following:

a. Emission standards, alternative emission standards, alternative emission limitations, and equivalent emission limitations established pursuant to § 112 of the federal Clean Air Act as amended in 1990.

b. New source performance standards established pursuant to § 111 of the federal Clean Air Act, and emission standards established pursuant to § 112 of the federal Clean Air Act before it was amended in 1990.

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

d. Limitations and conditions that are part of an implementation plan established pursuant to § 110, § 111(d), or § 129 of the federal Clean Air Act.

e. Limitations and conditions (unless expressly designated as not federally enforceable) that are part of a federal construction permit issued under 40 CFR 52.21 or any construction permit issued under regulations approved by EPA into the implementation plan.

f. Limitations and conditions (unless expressly designated as not federally enforceable) that are part of a state operating permit where the permit and the permit program pursuant to which it was issued meet all of the following criteria:

(1) The operating permit program has been approved by the EPA into the implementation plan under § 110 of the federal Clean Air Act.

(2) The operating permit program imposes a legal obligation that operating permit holders adhere to the terms and limitations of such permits and provides that permits that do not conform to the operating permit program requirements and the requirements of EPA's underlying regulations may be deemed not "federally enforceable" by EPA.

(3) The operating permit program requires that all emission limitations, controls, and other requirements imposed by such permits will be at least as stringent as any other applicable limitations and requirements contained in the implementation plan or enforceable under the implementation plan, and that the program may not issue permits that waive, or make less stringent, any limitations or requirements contained in or issued pursuant to the implementation plan, or that are otherwise "federally enforceable."

(4) The limitations, controls, and requirements in the permit in question are permanent, quantifiable, and otherwise enforceable as a practical matter.

(5) The permit in question was issued only after adequate and timely notice and opportunity for comment by the EPA and the public.

g. Limitations and conditions in a regulation of the board or program that has been approved by EPA under subpart E of 40 CFR Part 63 for the purposes of implementing and enforcing § 112 of the federal Clean Air Act.

h. Individual consent agreements that EPA has legal authority to create.

"Federal operating permit" means a permit issued under the federal operating permit program.

"Federal operating permit program" means an operating permit system (i) for issuing terms and conditions for major stationary sources, (ii) established to implement the requirements of Title V of the federal Clean Air Act and associated regulations, and (iii) codified in Article 1 (9VAC5-80-50 et seq.), Article 2 (9VAC5-80-310 et seq.), Article 3 (9VAC5-80-360 et seq.), and Article 4 (9VAC5-80-710 et seq.) of this part.

"Fugitive emissions" means those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"Lowest achievable emissions rate (LAER)" means for any source, the more stringent rate of emissions based on the following:

a. The most stringent emissions limitation which is contained in the implementation plan of any state for such class or category of stationary source, unless the owner of the proposed stationary source demonstrates that such limitations are not achievable; or

b. The most stringent emissions limitation which is achieved in practice by such class or category of stationary sources. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within the stationary source. In no event shall the application of this term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance.

"Major emissions unit" means (i) any emissions unit that emits or has the potential to emit 100 tons per year or more of the PAL pollutant in an attainment area; or (ii) any emissions unit that emits or has the potential to emit the PAL pollutant in an amount that is equal to or greater than the major source threshold for the PAL pollutant for nonattainment areas in subdivision a (1) of the definition of "major stationary source."

"Major modification"

a. Means any physical change in or change in the method of operation of a major stationary source that would result in (i) a significant emissions increase of a regulated NSR pollutant; and (ii) a significant net emissions increase of that pollutant from the source.

b. Any significant emissions increase from any emissions units or net emissions increase at a source that is considered significant for volatile organic compounds shall be considered significant for ozone.

c. A physical change or change in the method of operation shall not include the following:

(1) Routine maintenance, repair and replacement.

(2) Use of an alternative fuel or raw material by reason of an order under § 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act.

(3) Use of an alternative fuel by reason of an order or rule § 125 of the federal Clean Air Act.

(4) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste.

(5) Use of an alternative fuel or raw material by a stationary source ~~which~~ that:

(a) The source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally and state enforceable permit condition which was established after December 21, 1976, pursuant to 40 CFR 52.21 or this chapter; or

(b) The source is approved to use under any permit issued under 40 CFR 52.21 or this chapter~~; and~~.

~~(c) The owner demonstrates to the board that as a result of trial burns at the source or other sources or other sufficient data that the emissions resulting from the use of the alternative fuel or raw material supply are decreased.~~

(6) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally and state enforceable permit condition which was established after December 21, 1976, pursuant to 40 CFR 52.21 or this chapter.

(7) Any change in ownership at a stationary source.

(8) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(a) The applicable implementation plan, and

(b) Other requirements necessary to attain and maintain the national ambient air quality standard during the project and after it is terminated.

d. This definition shall not apply with respect to a particular regulated NSR pollutant when the source is complying with the requirements under 9VAC5-80-2144 for a PAL for that pollutant. Instead, the definition for "PAL major modification" shall apply.

"Major new source review (NSR) permit" means a permit issued under the major new source review program.

"Major new source review (major NSR) program" means a preconstruction review and permit program (i) for new major stationary sources or major modifications (physical changes or changes in the method of operation), (ii) established to implement the requirements of §§ 112, 165 and 173 of the federal Clean Air Act and associated regulations, and (iii) codified in Article 7 (9VAC5-80-1400 et seq.), Article 8 (9VAC5-80-1605 et seq.) and Article 9 (9VAC5-80-2000 et seq.) of this part.

"Major stationary source"

a. Means:

(1) Any stationary source of air pollutants which emits, or has the potential to emit, (i) 100 tons per year or more of a regulated NSR pollutant, (ii) 50 tons per year or more of volatile organic compounds or nitrogen oxides in ozone nonattainment areas classified as serious in 9VAC5-20-204, (iii) 25 tons per year or more of volatile organic compounds or nitrogen oxides in ozone nonattainment areas classified as severe in 9VAC5-20-204, or (iv) 100 tons per year or more of nitrogen oxides or 50 tons per year of volatile organic compounds in the Ozone Transport Region; or

(2) Any physical change that would occur at a stationary source not qualifying under subdivision a (1) of this definition as a major stationary source, if the change would constitute a major stationary source by itself.

b. A major stationary source that is major for volatile organic compounds shall be considered major for ozone.

c. The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this article whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

(1) Coal cleaning plants (with thermal dryers).

(2) Kraft pulp mills.

(3) Portland cement plants.

(4) Primary zinc smelters.

(5) Iron and steel mills.

(6) Primary aluminum ore reduction plants.

(7) Primary copper smelters.

(8) Municipal incinerators (or combinations of them) capable of charging more than 250 tons of refuse per day.

(9) Hydrofluoric acid plants.

(10) Sulfuric acid plants.

(11) Nitric acid plants.

(12) Petroleum refineries.

(13) Lime plants.

(14) Phosphate rock processing plants.

(15) Coke oven batteries.

(16) Sulfur recovery plants.

(17) Carbon black plants (furnace process).

(18) Primary lead smelters.

(19) Fuel conversion plants.

(20) Sintering plants.

(21) Secondary metal production plants.

(22) Chemical process plants.

(23) Fossil-fuel boilers (or combination of them) totaling more than 250 million British thermal units per hour heat input.

(24) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels.

(25) Taconite ore processing plants.

(26) Glass fiber manufacturing plants.

(27) Charcoal production plants.

(28) Fossil fuel steam electric plants of more than 250 million British thermal units per hour heat input.

(29) Any other stationary source category which, as of August 7, 1980, is being regulated under 40 CFR Part 60, 61 or 63.

"Minor new source review (NSR) permit" means a permit issued under the minor new source review program.

"Minor new source review (minor NSR) program" means a preconstruction review and permit program (i) for new stationary sources or modifications (physical changes or changes in the method of operation) that ~~do not qualify for~~ are not subject to review under the major new source review program, (ii) established to implement the requirements of §§ 110(a)(2)(C) and 112 of the federal Clean Air Act and associated regulations, and (iii) codified in Article 6 (9VAC5-80-1100 et seq.) of this part.

"Necessary preconstruction approvals or permits" means those permits required under the NSR program that are part of the applicable implementation plan.

"Net emissions increase"

a. Means, with respect to any regulated NSR pollutant emitted by a major stationary source, the amount by which the sum of the following exceeds zero:

(1) The increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to 9VAC5-80-2000 H; and

(2) Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under this subdivision shall be determined as provided in the definition of "baseline actual emissions," except that subdivisions a (3) and b (4) of that definition shall not apply.

b. An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs before the date that the increase from the particular change occurs. For sources located in ozone nonattainment areas classified as serious or severe in 9VAC5-20-204, an increase or decrease in actual emissions of volatile organic compounds or nitrogen oxides is contemporaneous with the increase from the particular change only if it occurs during a period of five consecutive calendar years which includes the calendar year in which the increase from the particular change occurs.

c. An increase or decrease in actual emissions is creditable only if:

(1) It occurs between the date five years before construction on the particular change commences and the date that the increase from the particular change occurs; and

(2) The board has not relied on it in issuing a permit for the source pursuant to this article which permit is in effect when the increase in actual emissions from the particular change occurs.

d. An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

e. A decrease in actual emissions is creditable only to the extent that:

(1) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(2) It is enforceable as a practical matter at and after the time that actual construction on the particular change begins;

(3) The board has not relied on it in issuing any permit pursuant to this chapter or the board has not relied on it in demonstrating attainment or reasonable further progress in the implementation plan; and

(4) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

f. An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

g. Subdivision a of the definition of "actual emissions" shall not apply for determining creditable increases and decreases or after a change.

"New source review (NSR) permit" means a permit issued under the new source review program.

"New source review (NSR) program" means a preconstruction review and permit program (i) for new stationary sources or modifications (physical changes or changes in the method of operation); (ii) established to implement the requirements of §§ 110(a)(2)(C), 112 (relating to permits for hazardous air pollutants), 165 (relating to permits in prevention of significant deterioration areas), and 173 (relating to permits in nonattainment areas) of the federal Clean Air Act and associated regulations; and (iii) codified in Article 6 (9VAC5-80-1100 et seq.), Article 7 (9VAC5-80-1400 et seq.), Article 8 (9VAC5-80-1605 et seq.) and Article 9 (9VAC5-80-2000 et seq.) of this part.

"Nonattainment major new source review (NSR) program" means a preconstruction review and permit program (i) for new major stationary sources or major modifications (physical changes or changes in the method of operation), (ii) established to implement the requirements of § 173 of the federal Clean Air Act and associated regulations, and (iii) codified in Article 9 (9VAC5-80-2000 et seq.) of this part. Any permit issued under such a program is a major NSR permit.

"Nonattainment pollutant" means, within a nonattainment area, the pollutant for which such area is designated nonattainment. For ozone nonattainment areas, the nonattainment pollutants shall be volatile organic compounds (including hydrocarbons) and nitrogen oxides.

"Ozone transport region" means the area established by § 184(a) of the federal Clean Air Act or any other area established by the administrator pursuant to § 176A of the federal Clean Air Act for purposes of ozone. For the purposes

of this article, the Ozone Transport Region consists of the following localities: Arlington County, Fairfax County, Loudoun County, Prince William County, Stafford County, Alexandria City, Fairfax City, Falls Church City, Manassas City, and Manassas Park City.

"Plantwide applicability limitation (PAL)" means an emission limitation expressed in tons per year, for a pollutant at a major stationary source, that is enforceable as a practical matter and established sourcewide in accordance with 9VAC5-80-2144.

"PAL effective date" generally means the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL is the date any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

"PAL effective period" means the period beginning with the PAL effective date and ending five years later.

"PAL major modification" means, notwithstanding the definitions for "major modification" and "net emissions increase," any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.

"PAL permit" means the ~~major NSR permit, the minor NSR permit, the~~ state operating permit~~, or the federal operating permit~~ issued by the board that establishes a PAL for a major stationary source.

"PAL pollutant" means the pollutant for which a PAL is established at a major stationary source.

"Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment, and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally and state enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source. For the purposes of actuals PALs, any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment, and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable or enforceable as a practical matter by the state.

"Predictive emissions monitoring system (PEMS)" means all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O_2 or CO_2 concentrations), and calculate and record the mass emissions rate (for example, pounds per hour) on a continuous basis.

"Prevention of significant deterioration (PSD) program" means a preconstruction review and permit program (i) for new major stationary sources or major modifications (physical changes or changes in the method of operation), (ii) established to implement the requirements of § 165 of the federal Clean Air Act and associated regulations, and (iii) codified in Article 8 (9VAC5-80-1605 et seq.) of this part.

"Project" means a physical change in, or change in the method of operation of, an existing major stationary source.

"Projected actual emissions" means the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the five years (12-month period) following the date the unit resumes regular operation after the project, or in any one of the 10 years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit of that regulated NSR pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the source. In determining the projected actual emissions before beginning actual construction, the owner shall:

a. Consider all relevant information, including but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the state or federal regulatory authorities, and compliance plans under the approved plan;

b. Include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions; and

c. Exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have emitted during the consecutive 24-month period used to establish the baseline actual emissions and that are also unrelated to the particular project, including any increased utilization due to product demand growth, provided such exclusion shall not reduce any calculated increases in emissions that are caused by, result from, or are related to the particular project; or

d. In lieu of using the method set out in subdivisions a through c of this definition, may elect to use the emissions unit's potential to emit, in tons per year, as defined under the definition of potential to emit.

"Public comment period" means a time during which the public shall have the opportunity to comment on the new or modified source permit application information (exclusive of confidential information), the preliminary review and analysis of the effect of the source upon the ambient air quality, and

the preliminary decision of the board regarding the permit application.

"Reasonable further progress" means the annual incremental reductions in emissions of a given air pollutant (including substantial reductions in the early years following approval or promulgation of an implementation plan and regular reductions thereafter) which are sufficient in the judgment of the board to provide for attainment of the applicable ambient air quality standard within a specified nonattainment area by the attainment date prescribed in the implementation plan for such area.

"Regulated NSR pollutant" means any of the following:

a. Nitrogen oxides or any volatile organic compound;

b. Any pollutant for which an ambient air quality standard has been promulgated; or

c. Any pollutant that is a constituent or precursor of a general pollutant listed under subdivisions a and b of this definition, provided that a constituent or precursor pollutant may only be regulated under NSR as part of regulation of the general pollutant.

"Secondary emissions" means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this article, secondary emissions shall be specific, well defined, quantifiable, and affect the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from any off-site support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

"Significant" means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

a. Ozone nonattainment areas classified as serious or severe in 9VAC5-20-204.

POLLUTANT	EMISSIONS RATE
Carbon Monoxide	100 tons per year (tpy)
Nitrogen Oxides	25 tpy
Sulfur Dioxide	40 tpy
Particulate Matter	25 tpy
Ozone	25 tpy of volatile organic compounds
Lead	0.6 py

b. Other nonattainment areas.

POLLUTANT	EMISSIONS RATE
Carbon Monoxide	100 tons per year (tpy)
Nitrogen Oxides	40 tpy
Sulfur Dioxide	40 tpy
Particulate Matter	25 tpy
PM_{10}	15 tpy
$PM_{2.5}$	10 tpy
Ozone	40 tpy of volatile organic compounds
Lead	0.6 tpy

"Significant emissions increase" means, for a regulated NSR pollutant, an increase in emissions that is significant for that pollutant.

"Significant emissions unit" means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the significant level for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit.

"Small emissions unit" means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant.

"State enforceable" means all limitations and conditions that are enforceable as a practical matter, including any regulation of the board, those requirements developed pursuant to 9VAC5-170-160, requirements within any applicable order or variance, and any permit requirements established pursuant to this chapter.

"State operating permit" means a permit issued under the state operating permit program.

"State operating permit program" means an operating permit program (i) for issuing limitations and conditions for stationary sources, (ii) promulgated to meet the EPA's minimum criteria for federal enforceability, including adequate notice and opportunity for the EPA and public comment prior to issuance of the final permit, and practicable enforceability, and (iii) codified in Article 5 (9VAC5-80-800 et seq.) of this part.

"Stationary source" means any building, structure, facility, or installation which emits or may emit a regulated NSR pollutant.

"Synthetic minor" means a stationary source whose potential to emit is constrained by state-enforceable and federally enforceable limits, so as to place that stationary source below

the threshold at which it would be subject to permit or other requirements governing major stationary sources in regulations of the board or in the federal Clean Air Act.

"Temporary clean coal technology demonstration project" means a clean coal technology demonstration project that is operated for a period of five years or less, and that complies with the applicable implementation plan and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

9VAC5-80-2020. General.

A. No owner or other person shall begin actual construction or modification of any new major stationary source or major modification without first obtaining from the board a permit to construct and operate such source. The permit will state that the major stationary source or major modification shall meet all the applicable requirements of this article.

B. No owner or other person shall relocate any emissions unit from one stationary source to another without first obtaining from the board a permit to relocate the unit.

C. ~~If the board and the owner make a mutual determination that it facilitates the efficient processing and issuing of permits for projects that are to be constructed concurrently, the board may combine the requirements of and the permits for emissions units within a stationary source subject to the major new source review program into one permit. Likewise the board may require that applications for permits for emissions units within a stationary source required by any provision of the major new source review program be combined into one application~~ The board will take actions to combine permit terms and conditions as provided in 9VAC5-80-2195. Actions to combine permit terms and conditions involve relocating the terms and conditions contained in two or more permits issued to single stationary source to a single permit document. Actions to combine permit terms and conditions in and of themselves are not a mechanism for making changes to permits; such actions shall be taken under 9VAC5-80-2200 as explained in subsection D of this section.

D. ~~The board may not incorporate the terms and conditions of a state operating permit, a minor new source review permit, or a PAL permit into a permit issued pursuant to this article~~ The board will take actions to make changes to permit terms and conditions as provided in 9VAC5-80-2200. Nothing in this subsection is intended to imply that once an action has been taken to make a change to a permit, the resulting permit change may not be combined with other terms and conditions in a single permit document as provided in subsection C of this section.

E. All terms and conditions of any permit issued under this article shall be federally enforceable except those that are designated state-only enforceable under subdivision 1 of this subsection. Any term or condition that is not federally enforceable shall be designated as state-only enforceable as provided in subdivision 2 of this subsection.

1. A term or condition of any permit issued under this article shall not be federally enforceable if it is derived from or is designed to implement Article 2 (9VAC5-40-130 et seq.) of ~~9VAC5 Chapter 40~~ 9VAC5-40 (Existing Stationary Sources, Article 2 (9VAC5-50-130 et seq.) of ~~9VAC5 Chapter 50~~ 9VAC5-50 (New and Modified Stationary Sources), Article 4 (9VAC5-60-200 et seq.) of ~~9VAC5 Chapter 60~~ 9VAC5-60 (Hazardous Air Pollutant Sources), or Article 5 (9VAC5-60-300) of ~~9VAC5 Chapter 60~~ 9VAC5-60 (Hazardous Air Pollutant Sources).

2. Any term or condition of any permit issued under this article that is not federally enforceable shall be marked in the permit as state-only enforceable and shall only be enforceable by the board. Incorrectly designating a term or condition as state-only enforceable shall not provide a shield from federal enforcement of a term or condition that is legally federally enforceable.

F. Nothing in the regulations of the board shall be construed to prevent the board from granting permits for programs of construction or modification in planned incremental phases. In such cases, all net emissions increases from all emissions units covered by the program shall be added together for determining the applicability of this article.

9VAC5-80-2140. ~~Exception~~ Exemptions.

A. The provisions of this article do not apply to a source or modification that would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the source or modification and the source does not belong to any of the following categories:

1. Coal cleaning plants (with thermal dryers);

2. Kraft pulp mills;

3. Portland cement plants;

4. Primary zinc smelters;

5. Iron and steel mills;

6. Primary aluminum ore reduction plants;

7. Primary copper smelters;

8. Municipal incinerators capable of charging more than 250 tons of refuse per day;

9. Hydrofluoric acid plants;

10. Sulfuric acid plants;

11. Nitric acid plants;

12. Petroleum refineries;

13. Lime plants;

14. Phosphate rock processing plants;

15. Coke oven batteries;

16. Sulfur recovery plants;

17. Carbon black plants (furnace process);

18. Primary lead smelters;

19. Fuel conversion plants;

20. Sintering plants;

21. Secondary metal production plants;

22. Chemical process plants;

23. Fossil-fuel boilers (or combination of them) totaling more than 250 million British thermal units per hour heat input;

24. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

25. Taconite ore processing plants;

26. Glass fiber processing plants;

27. Charcoal production plants;

28. Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; and

29. Any other stationary source category which, as of August 7, 1980, is being regulated under 40 CFR Parts 60, 61 or 63.

B. The requirements of this article shall not apply to a particular major stationary source with respect to the use of an alternative fuel or raw material if the following conditions are met:

1. The owner demonstrates to the board that, as a result of trial burns at the owner's facility or other facilities or other sufficient data, the emissions resulting from the use of the alternative fuel or raw material supply are decreased. No demonstration will be required for the use of processed animal fat, processed fish oil, processed vegetable oil, distillate oil, or any mixture thereof in place of the same quantity of residual oil to fire industrial boilers.

2. The use of an alternative fuel or raw material would not be subject to review under this article as a major modification.

9VAC5-80-2195. Actions to combine permit terms and conditions.

A. General requirements for actions to combine permit terms and conditions are as follows:

1. Except as provided in subdivision 3 of this subsection, the board may take actions to combine permit terms and conditions as provided under subsections B through E of this section.

2. Requests to combine permit terms and conditions may be initiated by the permittee or by the board.

3. Under no circumstances may an action to combine permit terms and conditions be used for any of the following:

a. To combine the terms and conditions of (i) a federal operating permit, (ii) a PAL permit, or (iii) any permit that is or will be part of the implementation plan.

b. To take an action to issue a permit or change a permit for the fabrication, erection, installation, demolition, relocation, addition, replacement, or modification of an emissions unit that would result in a change in emissions that would otherwise (i) be subject to review under this article or (ii) require a permit or permit amendment under the new source review program.

c. To allow any stationary source or emissions unit to violate any federal requirement.

d. To take an action to issue a permit or change a permit for any physical change in or change in the method of operation of a major stationary source that is subject to the provisions in 9VAC5-80-2000 D (restrictions on relaxing enforceable emission limitations that the major stationary source used to avoid applicability of the major NSR program).

B. The board may take actions to combine the terms and conditions of state operating permits and new source review permits, along with any changes to state operating permits and new source review permits.

C. If the board and the owner make a mutual determination that it facilitates improved compliance or the efficient processing and issuing of permits, the board may take an action to combine the terms and conditions of permits for emissions units within a stationary source into one or more permits. Likewise the board may require that applications for permits for emissions units within a stationary source required by any permit program be combined into one application.

D. Actions to combine the terms and conditions of permits are subject to the following conditions:

1. Each term or condition in the combined permit shall be accompanied by a statement that specifies and references the origin (enabling permit program) of, along with the regulatory or any other authority for, the term or condition.

2. Each term or condition in the combined permit shall be accompanied by a statement that specifies the effective date of the term or condition.

3. Each term or condition in the combined permit shall be identified by its original designation (i.e., state-only enforceable or federally and state enforceable) consistent

with the applicable enforceability designation of the term or condition in the contributing permit.

4. Except as provided in subsection E of this section, all terms and conditions in the contributing permits shall be included in the combined permit without change. The combined permit will supersede the contributing permits, which will no longer be effective.

E. Actions to make changes to permit terms and conditions as may be necessary to facilitate actions to combine permit terms and conditions may be accomplished in accordance with the minor amendment procedures (unless specified otherwise in this section) of the enabling permit program (i.e., the permit program that is the origin of the term or condition), subject to the following conditions:

1. Updates to regulatory or other authorities may be accomplished in accordance with the administrative amendment procedures of the enabling permit program.

2. If two or more terms or conditions apply to the same emissions unit or emissions units and are substantively equivalent, the more restrictive of the duplicate terms or conditions may be retained and the less restrictive one removed, subject to the provisions of subdivision 4 of this subsection.

3. If two or more similar terms or conditions apply to the same emissions unit or emissions units and one is substantively more restrictive than the others, the more restrictive of the terms or conditions shall be retained, regardless of whether the less restrictive terms or conditions are removed. If the less restrictive of the similar terms or conditions is removed, the provisions of subdivision 4 of this subsection apply.

4. The removal of similar terms or conditions from contributing permits is subject to the following conditions:

a. If any one of the terms or conditions removed is federally and state enforceable, the more restrictive term or condition that is retained in the combined permit shall be federally and state enforceable.

b. If any one of the terms or conditions originates in a permit subject to a major NSR program, that major NSR program shall become the effective enabling permit program for the more restrictive term or condition that is retained in the combined permit. If more than one major NSR program is the basis for a term or condition, all of the applicable major NSR programs shall be the enabling permit program for that term or condition.

c. The regulatory basis for all of the similar terms or conditions that are removed shall be included in the reference for the term or condition that is retained.

9VAC5-80-2200. ~~Changes to~~ Actions to change permits.

A. The general requirements for ~~making~~ actions to make changes to permits issued under this article are as follows:

1. Except as provided in subdivision 3 of this subsection, changes to a permit issued under this article shall be made as specified under subsections B and C of this section and 9VAC5-80-2210 through 9VAC5-80-2240.

2. Changes to a permit issued under this article may be initiated by the permittee as specified in subsection B of this section or by the board as specified in subsection C of this section.

3. Changes to a permit issued under this article and incorporated into a permit issued under Article 1 (9VAC5-80-50 et seq.) or Article 3 (9VAC5-80-360 et seq.) of this part shall be made as specified in Article 1 (9VAC5-80-50 et seq.) or Article 3 (9VAC5-80-360 et seq.) of this part.

~~4. Under no circumstances may a permit issued under this article be changed in order to (i) incorporate the terms and conditions necessary to implement any provision of the new source review program for a project that qualifies as a modification under the new source review program or (ii) incorporate the terms and conditions necessary to implement any provision of the new source review program for a PAL permit.~~

B. The requirements for changes initiated by the permittee are as follows:

1. The permittee may initiate a change to a permit by submitting a written request to the board for an administrative permit amendment, a minor permit amendment or a significant permit amendment. The requirements for these permit changes can be found in 9VAC5-80-2210 through 9VAC5-80-2230.

2. A request for a change by a permittee shall include a statement of the reason for the proposed change.

C. The board may initiate a change to a permit through the use of permit reopenings as specified in 9VAC5-80-2240.

9VAC5-80-2210. Administrative permit amendments.

A. Administrative permit amendments shall be ~~required~~ used for and limited to the following:

1. Correction of typographical or any other error, defect or irregularity that does not substantially affect the permit.

2. Identification of a change in the name, address, or phone number of any person identified in the permit, or of a similar minor administrative change at the source.

3. Change in ownership or operational control of a source where the board determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit

responsibility, coverage, and liability between the current and new permittee has been submitted to the board and the requirements of 9VAC5-80-2170 have been fulfilled.

B. The administrative permit amendment procedures are as follows:

1. The board will normally take final action on a request for an administrative permit amendment no more than 60 days from receipt of the request.

2. The board will incorporate the changes without providing notice to the public under 9VAC5-80-2070. However, any such permit revisions shall be designated in the permit amendment as having been made pursuant to this section.

3. The owner may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

9VAC5-80-2220. Minor permit amendments.

A. Minor permit amendment procedures shall be used only for those permit amendments that meet all of the following criteria:

1. Do not violate any applicable federal requirement.

2. Do not involve significant changes to existing monitoring, reporting, or record keeping requirements that would make the permit requirements less stringent, such as a change to the method of monitoring to be used, a change to the method of demonstrating compliance or a relaxation of reporting or record keeping requirements.

3. Do not require or change a case-by-case determination of an ~~emission~~ emissions limitation or other ~~standard~~ requirement.

4. Do not seek to establish or change a permit term or condition (i) for which there is no corresponding underlying applicable regulatory requirement and (ii) that the source has assumed to avoid an applicable regulatory requirement to which the source would otherwise be subject. Such terms and conditions include, but are not limited to, an emissions cap assumed to avoid classification as a modification under the new source review program.

5. Are not required to be processed as a significant amendment under 9VAC5-80-2230 or as an administrative permit amendment under 9VAC5-80-2210.

B. Notwithstanding subsection A of this section, minor permit amendment procedures may be used for permit amendments that meet any of the following criteria:

1. Involve the use of economic incentives, emissions trading, and other similar approaches, to the extent that such minor permit amendment procedures are explicitly provided for in a regulation of the board or a federally-approved program.

2. Require new or more frequent monitoring or reporting by the permittee.

3. Designate any term or permit condition that meets the criteria in 9VAC5-80-2020 E 1 as state-only enforceable as provided in 9VAC5-80-2020 E 2 for any permit issued under this article or any regulation from which this article is derived.

C. Minor permit amendment procedures may be used for permit amendments involving the rescission of a provision of a permit if the board and the owner make a mutual determination that the provision is rescinded because all of the underlying statutory or regulatory requirements (i) upon which the provision is based or (ii) that necessitated inclusion of the provision are no longer applicable. In order for the underlying statutory and regulatory requirements to be considered no longer applicable, the provision of the permit that is being rescinded must not cover a regulated NSR pollutant.

D. A request for the use of minor permit amendment procedures shall include ~~all of the following: 1. A~~ a description of the change, the emissions resulting from the change, and any new applicable regulatory requirements that will apply if the change occurs~~. 2. A~~, along with a request that such procedures be used. The applicant may, at the applicant's discretion, include a suggested proposed permit amendment.

E. The public participation requirements of 9VAC5-80-2070 shall not extend to minor permit amendments.

F. Normally within 90 days of receipt by the board of a complete request under minor permit amendment procedures, the board will do one of the following:

1. Issue the permit amendment as proposed.

2. Deny the permit amendment request.

3. Determine that the requested amendment does not meet the minor permit amendment criteria and should be reviewed under the significant amendment procedures.

G. The requirements for making changes are as follows:

1. The owner may make the change proposed in the minor permit amendment request immediately after the request is filed.

2. After the change under subdivision 1 of this subsection is made, and until the board takes any of the actions specified in subsection F of this section, the source shall comply with both the applicable regulatory requirements governing the change and the proposed permit ~~terms and conditions~~ amendment.

3. During the time period specified in subdivision 2 of this subsection, the owner need not comply with the existing permit terms and conditions the owner seeks to modify if the applicant has submitted a proposed permit amendment. However, if the owner fails to comply with the proposed permit terms and conditions during this time period, the existing permit terms and conditions the owner seeks to modify may be enforced against the owner.

9VAC5-80-2230. Significant amendment procedures.

A. The criteria for use of significant amendment procedures are as follows:

1. Significant amendment procedures shall be used for requesting permit amendments that do not qualify as minor permit amendments under 9VAC5-80-2220 or as administrative amendments under 9VAC5-80-2210.

2. Significant amendment procedures shall be used for those permit amendments that meet any of the following criteria:

a. Involve significant changes to existing monitoring, reporting, or record keeping requirements that would make the permit requirements less stringent, such as a change to the method of monitoring to be used, a change to the method of demonstrating compliance or a relaxation of reporting or recordkeeping requirements.

b. Require or change a case-by-case determination of an ~~emission~~ emissions limitation or other ~~standard~~ requirement.

c. Seek to establish or change a permit term or condition (i) for which there is no corresponding underlying applicable regulatory requirement and (ii) that the source has assumed to avoid an applicable regulatory requirement to which the source would otherwise be subject. Such terms and conditions include, but are not limited to, an emissions cap assumed to avoid classification as a modification under the new source review program.

B. A request for a significant permit amendment shall include a description of the change, the emissions resulting from the change, and any new applicable regulatory requirements that will apply if the change occurs. The applicant may, at the applicant's discretion, include a suggested draft permit amendment.

C. The provisions of 9VAC5-80-2070 shall apply to requests made under this section.

D. The board will normally take final action on significant permit amendments within 180 days after receipt of a complete request except in cases where direct consideration of the request by the board is granted pursuant to 9VAC5-80-25. The board may extend this time period if additional information is needed.

E. The owner shall not make the change applied for in the significant amendment request until the amendment is approved by the board under subsection D of this section.

9VAC5-80-2240. Reopening for cause.

A. A permit may be reopened and amended under any of the following situations:

1. Additional regulatory requirements become applicable to the emissions units covered by the permit after a permit is issued but prior to commencement of construction.

2. The board determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.

3. The board determines that the permit must be amended to assure compliance with the applicable regulatory requirements or that the terms and conditions of the permit are not sufficient to meet all of the ~~standards and~~ requirements contained in this article.

B. Proceedings to reopen and reissue a permit shall follow the same procedures as apply to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists. Such reopening shall be made as expeditiously as practicable.

C. Reopenings shall not be initiated before a notice of such intent is provided to the source by the board at least 30 days in advance of the date that the permit is to be reopened, except that the board may provide a shorter time period in the case of an emergency.

VA.R. Doc. No. R09-1158; Filed May 19, 2009, 11:38 a.m.

STATE WATER CONTROL BOARD

Final Regulation

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

Title of Regulation: **9VAC25-720. Water Quality Management Planning Regulation (amending 9VAC25-720-50, 9VAC25-720-60, 9VAC25-720-90, 9VAC25-720-110).**

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

Effective Date: July 8, 2009.

Agency Contact: David Lazarus, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4299, FAX (804) 698-4116, or email david.lazarus@deq.virginia.gov.

Summary:

The amendments to the Water Quality Management Planning Regulation include nine new total maximum daily load (TMDL) wasteload allocations. The amendments are to the following river basins: Potomac-Shenandoah River Basin (9VAC25-720-50 A), James River Basin (9VAC25-720-60 A), Tennessee - Big Sandy River Basin (9VAC25-720-90 A), and the Chesapeake Bay-Small Coastal Basin (9VAC25-720-110 A).

9VAC25-720-50. Potomac-Shenandoah River Basin.

A. Total Maximum Daily Load (TMDLs).

TMDL #	Stream Name	TMDL Title	City/County	WBID	Pollutant	WLA	Units
1.	Muddy Creek	Nitrate TMDL Development for Muddy Creek/Dry River, Virginia	Rockingham	B21R	Nitrate	49,389.00	LB/YR
2.	Blacks Run	TMDL Development for Blacks Run and Cooks Creek	Rockingham	B25R	Sediment	32,844.00	LB/YR
3.	Cooks Creek	TMDL Development for Blacks Run and Cooks Creek	Rockingham	B25R	Sediment	69,301.00	LB/YR
4.	Cooks Creek	TMDL Development for Blacks Run and Cooks Creek	Rockingham	B25R	Phosphorus	0	LB/YR
5.	Muddy Creek	TMDL Development for Muddy Creek and Holmans Creek, Virginia	Rockingham	B22R	Sediment	286,939.00	LB/YR
6.	Muddy Creek	TMDL Development for Muddy Creek and Holmans Creek, Virginia	Rockingham	B22R	Phosphorus	38.00	LB/YR
7.	Holmans Creek	TMDL Development for Muddy Creek and Holmans Creek, Virginia	Rockingham/ Shenandoah	B45R	Sediment	78,141.00	LB/YR
8.	Mill Creek	TMDL Development for Mill Creek and Pleasant Run	Rockingham	B29R	Sediment	276.00	LB/YR
9.	Mill Creek	TMDL Development for Mill Creek and Pleasant Run	Rockingham	B29R	Phosphorus	138.00	LB/YR
10.	Pleasant Run	TMDL Development for Mill Creek and Pleasant Run	Rockingham	B27R	Sediment	0.00	LB/YR
11.	Pleasant Run	TMDL Development for Mill Creek and Pleasant Run	Rockingham	B27R	Phosphorus	0.00	LB/YR
12.	Linville Creek	Total Maximum Load	Rockingham	B46R	Sediment	5.50	TONS/YR

		Development for Linville Creek: Bacteria and Benthic Impairments					
13.	Quail Run	Benthic TMDL for Quail Run	Rockingham	B35R	Ammonia	7,185.00	KG/YR
14.	Quail Run	Benthic TMDL for Quail Run	Rockingham	B35R	Chlorine	27.63	KG/YR
15.	Shenandoah River	Development of Shenandoah River PCB TMDL (South Fork and Main Stem)	Warren & Clarke	B41R B55R B57R B58R	PCBs	179.38	G/YR
16.	Shenandoah River	Development of Shenandoah River PCB TMDL (North Fork)	Warren & Clarke	B51R	PCBs	0.00	G/YR
17.	Shenandoah River	Development of Shenandoah River PCB TMDL (Main Stem)	Warren & Clarke	WV	PCBs	179.38	G/YR
18.	Cockran Spring	Benthic TMDL Reports for Six Impaired Stream Segments in the Potomac-Shenandoah and James River Basins	Augusta	B10R	Organic Solids	1,556.00	LB/YR
19.	Lacey Spring	Benthic TMDL Reports for Six Impaired Stream Segments in the Potomac-Shenandoah and James River Basins	Rockingham	B47R	Organic Solids	680.00	LB/YR
20.	Orndorff Spring	Benthic TMDL Reports for Six Impaired Stream Segments in the Potomac-Shenandoah and James River Basins	Shenandoah	B52R	Organic Solids	103.00	LB/YR
21.	Toms Brook	Benthic TMDL for Toms Brook in Shenandoah County, Virginia	Shenandoah	B50R	Sediment	8.1	T/YR
22.	Goose Creek	Benthic TMDLs for the Goose Creek Watershed	Loudoun, Fauquier	A08R	Sediment	1,587	T/YR
23.	Little River	Benthic TMDLs for the Goose Creek Watershed	Loudoun	A08R	Sediment	105	T/YR
24.	Christians Creek	Fecal Bacteria and General Standard Total Maximum Daily Load Development for Impaired Streams in the Middle River and Upper South River Watersheds, Augusta County, VA	Augusta	B14R	Sediment	145	T/YR
25.	Moffett Creek	Fecal Bacteria and	Augusta	B13R	Sediment	0	T/YR

		General Standard Total Maximum Daily Load Development for Impaired Streams in the Middle River and Upper South River Watersheds, Augusta County, VA					
26.	Upper Middle River	Fecal Bacteria and General Standard Total Maximum Daily Load Development for Impaired Streams in the Middle River and Upper South River Watersheds, Augusta County, VA	Augusta	B10R	Sediment	1.355	T/YR
27.	Mossy Creek	Total Maximum Daily Load Development for Mossy Creek and Long Glade Run: Bacteria and General Standard (Benthic) Impairments	Rockingham	B19R	Sediment	0.04	T/YR
28.	Smith Creek	Total Maximum Daily Load (TMDL) Development for Smith Creek	Rockingham, Shenandoah	B47R	Sediment	353,867	LB/YR
29.	Abrams Creek	Opequon Watershed TMDLs for Benthic Impairments: Abrams Creek and Lower Opequon Creek, Frederick and Clarke counties, Virginia	Frederick	B09R	Sediment	478	T/YR
30.	Lower Opequon Creek	Opequon Watershed TMDLs for Benthic Impairments: Abrams Creek and Lower Opequon Creek, Frederick and Clarke counties, Virginia	Frederick, Clarke	B09R	Sediment	1,039	T/YR
31.	Mill Creek	Mill Creek Sediment TMDL for a Benthic Impairment, Shenandoah County, Virginia	Shenandoah	B48R	Sediment	0.9	T/YR
32.	South Run	Benthic TMDL Development for South Run, Virginia	Fauquier	A19R	Phosphorus	0.038	T/YR
33.	Lewis Creek	Total Maximum Daily Load Development for Lewis Creek, General Standard (Benthic)	Augusta	B12R	Sediment	40	T/YR

34.	Lewis Creek	Total Maximum Daily Load Development for Lewis Creek, General Standard (Benthic)	Augusta	B12R	Lead	0	KG/YR
35.	Lewis Creek	Total Maximum Daily Load Development for Lewis Creek, General Standard (Benthic)	Augusta	B12R	PAHs	0	KG/YR
36.	Bull Run	Total Maximum Daily Load Development for Lewis Creek, General Standard (Benthic)	Loudoun, Fairfax, and Prince William counties, and the Cities of Manassas and Manassas Park	A23R-01	Sediment	5,986.8	T/TR
37.	Popes Head Creek	Total Maximum Daily Load Development for Lewis Creek, General Standard (Benthic)	Fairfax County and Fairfax City	A23R-02	Sediment	1,594.2	T/YR
38.	Accotink Bay	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Fairfax	A15R	PCBs	0.0992	G/YR
39.	Aquia Creek	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Stafford	A28E	PCBs	6.34	G/YR
40.	Belmont Bay/ Occoquan Bay	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Prince William	A25E	PCBs	0.409	G/YR
41.	Chopawamsic Creek	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Prince William	A26E	PCBs	1.35	G/YR
42.	Coan River	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Northumberland	A34E	PCBs	0	G/YR
43.	Dogue Creek	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Fairfax	A14E	PCBs	20.2	G/YR

44.	Fourmile Run	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Arlington	A12E	PCBs	11	G/YR
45.	Gunston Cove	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Fairfax	A15E	PCBs	0.517	G/YR
46.	Hooff Run & Hunting Creek	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Fairfax	A13E	PCBs	36.8	G/YR
47.	Little Hunting Creek	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Fairfax	A14E	PCBs	10.1	G/YR
48.	Monroe Creek	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Fairfax	A31E	PCBs	.0177	G/YR
49.	Neabsco Creek	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Prince William	A25E	PCBs	6.63	G/YR
50.	Occoquan River	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Prince William	A25E	PCBs	2.86	G/YR
51.	Pohick Creek/Pohick Bay	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Fairfax	A16E	PCBs	13.5	G/YR
52.	Potomac Creek	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Stafford	A29E	PCBs	0.556	G/YR
53.	Potomac River, Fairview Beach	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	King George	A29E	PCBs	0.0183	G/YR

54.	Powells Creek	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Prince William	A26R	PCBs	0.0675	G/YR
55.	Quantico Creek	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Prince William	A26R	PCBs	0.742	G/YR
56.	Upper Machodoc Creek	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	King George	A30E	PCBs	0.0883	G/YR
57.	Difficult Creek	Benthic TMDL Development for Difficult Run, Virginia	Fairfax	A11R	Sediment	3,663.2	T/YR
58.	Abrams Creek	Opequon Watershed TMDLs for Benthic Impairments	Frederick and Clark	B09R	Sediment	1039	T/YR
59.	Lower Opequon	Opequon Watershed TMDLs for Benthic Impairments	Frederick and Clark	B09R	Sediment	1039	T/YR

B. Non-TMDL waste load allocations.

Water Body	Permit No.	Facility Name	Outfall No.	Receiving Stream	River Mile	Parameter Description	WLA	Units WLA
VAV-B02R	VA0023281	Monterey STP	001	West Strait Creek	3.85	$CBOD_5$	11.4	KG/D
VAV-B08R	VA0065552	Opequon Water Reclamation Facility	001	Opequon Creek	32.66	BOD_5, JUN-NOV	207	KG/D
		AKA Winchester - Frederick Regional				$CBOD_5$, DEC-MAY	1514	KG/D
VAV-B14R	VA0025291	Fishersville Regional STP	001	Christians Creek	12.36	BOD_5	182	KG/D
VAV-B23R	VA0060640	North River WWTF	001	North River	15.01	$CBOD_5$, JAN-MAY	700	KG/D
	7.23.04	AKA Harrisonburg - Rockingham Reg. Sewer Auth.				$CBOD_5$, JUN-DEC	800	KG/D
						TKN, JUN-DEC	420	KG/D
						TKN, JAN-MAY	850	KG/D
VAV-B32R	VA0002160	INVISTA - Waynesboro Formerly Dupont	001	South River	25.3	BOD_5	272	KG/D

		- Waynesboro						
VAV-B32R	VA0025151	Waynesboro STP	001	South River	23.54	$CBOD_5$	227	KG/D
						$CBOD_5$, JUN-OCT	113.6	KG/D
VAV-B32R	VA0028037	Skyline Swannanoa STP	001	South River UT	2.96	BOD_5	8.5	KG/D
VAV-B35R	VA0024732	Massanutten Public Service STP	001	Quail Run	5.07	BOD_5	75.7	KG/D
VAV-B37R	VA0002178	Merck & Company	001	S.F. Shenandoah River	88.09	BOD_5	1570	KG/D
						AMMONIA, AS N	645.9	KG/D
VAV-B49R	VA0028380	Stoney Creek Sanitary District STP	001	Stoney Creek	19.87	BOD_5, JUN-NOV	29.5	KG/D
VAV-B53R	VA0020982	Middletown STP	001	Meadow Brook	2.19	$CBOD_5$	24.0	KG/D
VAV-B58R	VA0020532	Berryville STP	001	Shenandoah River	24.23	$CBOD_5$	42.6	KG/D

C. Nitrogen and phosphorus waste load allocations to restore the Chesapeake Bay and its tidal rivers. The following table presents nitrogen and phosphorus waste load allocations for the identified significant dischargers and the total nitrogen and total phosphorus waste load allocations for the listed facilities.

Virginia Waterbody ID	Discharger Name	VPDES Permit No.	Total Nitrogen (TN) Waste Load Allocation (lbs/yr)	Total Phosphorus (TP) Waste Load Allocation (lbs/yr)
B37R	Coors Brewing Company	VA0073245	54,820	4,112
B14R	Fishersville Regional STP	VA0025291	48,729	3,655
B32R	INVISTA - Waynesboro (Outfall 101)	VA0002160	78,941	1,009
B39R	Luray STP	VA0062642	19,492	1,462
B35R	Massanutten PSA STP	VA0024732	18,273	1,371
B37R	Merck - Stonewall WWTP (Outfall 101)	VA0002178	14,619	1,096
B12R	Middle River Regional STP	VA0064793	82,839	6,213
B23R	North River WWTF (2)	VA0060640	253,391	19,004
B22R	VA Poultry Growers -Hinton	VA0002313	27,410	1,371
B38R	Pilgrims Pride - Alma	VA0001961	18,273	914
B31R	Stuarts Draft WWTP	VA0066877	48,729	3,655
B32R	Waynesboro STP	VA0025151	48,729	3,655
B23R	Weyers Cave STP	VA0022349	6,091	457

B58R	Berryville STP	VA0020532	8,528	640
B55R	Front Royal STP	VA0062812	48,729	3,655
B49R	Georges Chicken LLC	VA0077402	31,065	1,553
B48R	Mt. Jackson STP (3)	VA0026441	8,528	640
B45R	New Market STP	VA0022853	6,091	457
B45R	North Fork (SIL) WWTF	VA0090263	23,390	1,754
B49R	Stoney Creek SD STP	VA0028380	7,309	548
B50R	North Fork Regional WWTP (1)	VA0090328	9,137	685
B51R	Strasburg STP	VA0020311	11,939	895
B50R	Woodstock STP	VA0026468	24,364	1,827
A06R	Basham Simms WWTF (4)	VA0022802	18,273	1,371
A09R	Broad Run WRF (5)	VA0091383	134,005	3,350
A08R	Leesburg WPCF	MD0066184	121,822	9,137
A06R	Round Hill Town WWTF	VA0026212	9,137	685
A25R	DSC - Section 1 WWTF (6)	VA0024724	42,029	2,522
A25R	DSC - Section 8 WWTF (7)	VA0024678	42,029	2,522
A25E	H L Mooney WWTF	VA0025101	219,280	13,157
A22R	UOSA - Centreville	VA0024988	1,315,682	16,446
A19R	Vint Hill WWTF (8)	VA0020460	8,680	868
B08R	Opequon WRF	VA0065552	102,336	7,675
B08R	Parkins Mills STP (9)	VA0075191	60,911	4,568
A13E	Alexandria SA WWTF	VA0025160	493,381	29,603
A12E	Arlington County Water PCF	VA0025143	365,467	21,928
A16R	Noman M Cole Jr PCF	VA0025364	612,158	36,729
A12R	Blue Plains (VA Share)	DC0021199	581,458	26,166
A26R	Quantico WWTF	VA0028363	20,101	1,206
A28R	Aquia WWTF	VA0060968	73,093	4,386
A31E	Colonial Beach STP	VA0026409	18,273	1,827
A30E	Dahlgren WWTF	VA0026514	9,137	914
A29E	Fairview Beach	MD0056464	1,827	183
A30E	US NSWC-Dahlgren WWTF	VA0021067	6,578	658
A31R	Purkins Corner STP	VA0070106	1,096	110
	TOTALS:		5,156,169	246,635

NOTE: (1) Shenandoah Co. - North Fork Regional WWTP waste load allocations (WLAs) based on a design flow capacity of 0.75 million gallons per day (MGD). If plant is not certified to operate at 0.75 MGD design flow capacity by December 31, 2010, the WLAs will be deleted and facility removed from Significant Discharger List.

(2) Harrisonburg-Rockingham Regional S.A.-North River STP: waste load allocations (WLAs) based on a design flow capacity of 20.8 million gallons per day (MGD). If plant is not certified to operate at 20.8 MGD design flow capacity by December 31, 2010, the WLAs will decrease to TN = 194,916 lbs/yr; TP = 14,619 lbs/yr, based on a design flow capacity of 16.0 MGD.

(3) Mount Jackson STP: waste load allocations (WLAs) based on a design flow capacity of 0.7 million gallons per day (MGD). If plant is not certified to operate at 0.7 MGD design flow capacity by December 31, 2010, the WLAs will decrease to TN = 7,309 lbs/yr; TP = 548 lbs/yr, based on a design flow capacity of 0.6 MGD.

(4) Purcellville-Basham Simms STP: waste load allocations (WLAs) based on a design flow capacity of 1.5 million gallons per day (MGD). If plant is not certified to operate at 1.5 MGD design flow capacity by December 31, 2010, the WLAs will decrease to TN = 12,182 lbs/yr; TP = 914lbs/yr, based on a design flow capacity of 1.0 MGD.

(5) Loudoun Co. S.A.-Broad Run WRF: waste load allocations (WLAs) based on a design flow capacity of 11.0 million gallons per day (MGD). If plant is not certified to operate at 11.0 MGD design flow capacity by December 31, 2010, the WLAs will decrease to TN = 121,822 lbs/yr; TP = 3,046 lbs/yr, based on a design flow capacity of 10.0 MGD.

(6) Dale Service Corp.-Section 1 WWTF: waste load allocations (WLAs) based on a design flow capacity of 4.6 million gallons per day (MGD). If plant is not certified to operate at 4.6 MGD design flow capacity by December 31, 2010, the WLAs will decrease to TN = 36,547 lbs/yr; TP = 2,193 lbs/yr, based on a design flow capacity of 4.0 MGD.

(7) Dale Service Corp.-Section 8 WWTF: waste load allocations (WLAs) based on a design flow capacity of 4.6 million gallons per day (MGD). If plant is not certified to operate at 4.6 MGD design flow capacity by December 31, 2010, the WLAs will decrease to TN = 36,547 lbs/yr; TP = 2,193 lbs/yr, based on a design flow capacity of 4.0 MGD.

(8) Fauquier Co. W&SA-Vint Hill STP: waste load allocations (WLAs) based on a design flow capacity of 0.95 million gallons per day (MGD). If plant is not certified to operate at 0.95 MGD design flow capacity by December 31, 2010, the WLAs will decrease to TN = 5,482 lbs/yr; TP = 548 lbs/yr, based on a design flow capacity of 0.6 MGD.

(9) Parkins Mill STP: waste load allocations (WLAs) based on a design flow capacity of 5.0 million gallons per day (MGD). If plant is not certified to operate at 5.0 MGD design flow capacity by December 31, 2010, the WLAs will decrease to TN = 36,547 lbs/yr; TP = 2,741 lbs/yr, based on a design flow capacity of 3.0 MGD.

9VAC25-720-60. James River Basin.

A. Total maximum daily load (TMDLs).

TMDL #	Stream Name	TMDL Title	City/County	WBID	Pollutant	WLA	Units
1.	Pheasanty Run	Benthic TMDL Reports for Six Impaired Stream Segments in the Potomac-Shenandoah and James River Basins	Bath	I14R	Organic Solids	1,231.00	LB/YR
2.	Wallace Mill Stream	Benthic TMDL Reports for Six Impaired Stream Segments in the Potomac-Shenandoah and James River Basins	Augusta	I32R	Organic Solids	2,814.00	LB/YR
3.	Montebello Sp. Branch	Benthic TMDL Reports for Six Impaired Stream Segments in the Potomac-Shenandoah and James River Basins	Nelson	H09R	Organic Solids	37.00	LB/YR
4.	Unnamed Tributary to Deep Creek	General Standard Total Maximum Daily Load for Unnamed Tributary to Deep Creek	Nottoway	J11R	Raw Sewage	0	GAL/YR

5.	Unnamed Tributary to Chickahominy River	Total Maximum Daily Load (TMDL) Development for the Unnamed Tributary to the Chickahominy River	Hanover	G05R	Total Phosphorus	409.35	LB/YR
6.	Rivanna River	Benthic TMDL Development for the Rivanna River Watershed	Albemarle, Greene, Nelson, and Orange	H27R H28R	Sediment	10,229	Lbs/Day

B. Stream segment classifications, effluent limitations including water quality based effluent limitations, and waste load allocations.

TABLE B1 - UPPER JAMES RIVER BASIN RECOMMENDED SEGMENT CLASSIFICATION

Stream Name	Segment No.	Mile to Mile	Classification	Comments
Maury River	2-4	80.3-0.0	E.L.	Main & tributaries
James River	2-5	271.5-266.0	W.Q.	Main only
James River	2-6	266.0-115.0	E.L.	Main & tributaries except Tye & Rivanna River
Tye River	2-7	41.7-0.0	E.L.	Main & tributaries except Rutledge Creek
Rutledge Creek	2-8	3.0-0.0	W.Q.	Main only
Piney River	2-9	20.6-0.0	E.L.	Main & tributaries
Rivanna River	2-10	20.0-0.0	E.L.	Main & tributaries
Rivanna River	2-11	38.1-20.0	W.Q.	Main only
Rivanna River	2-12	76.7-38.1	E.L.	Main & tributaries
S.F. Rivanna River	2-13	12.2-0.0	E.L.	Main & tributaries
Mechum River	2-14	23.1-0.0	E.L.	Main & tributaries
N.F. Rivanna River	2-15	17.0-0.0	E.L.	Main & tributaries except Standardsville Run
Standardsville Run	2-16	1.2-0.0	W.Q.	Main only
Appomattox River	2-17	156.2-27.7	E.L.	Main & tributaries except Buffalo Creek, Courthouse Branch, and Deep Creek
Buffalo Creek	2-18	20.9-0.0	E.L.	Main & tributaries except Unnamed Tributary @ R.M. 9.3
Unnamed Tributary of Buffalo Creek @ R.M. 9.3	2-19	1.3-0.0	W.Q.	Main only
Courthouse Branch	2-20	0.6-0.0	W.Q.	Main only
Deep Creek	2-21	29.5-0.0	E.L.	Main & tributaries except Unnamed Tributary @ R.M. 25.0
Unnamed Tributary of Deep Creek @ R.M. 25.0	2-22	2.2-0.0	W.Q.	Main only

TABLE B2 - UPPER JAMES RIVER BASIN LOAD ALLOCATIONS BASED ON EXISTING DISCHARGE POINT[7]							
Stream Name	Segment Number	Classification	Mile to Mile	Significant Discharges	Total Assimilative Capacity of Stream BOD_5 lbs/day	Wasteload Allocation BOD_5 lbs/day[2]	Reserve BOD_5 lbs/day[5]
Cedar Creek	2-3	E.L.	1.9-0.0	Natural Bridge, Inc. STP	35.0	28.0	7.0 (20%)
Elk Creek	2-3	E.L.	2.8-0.0	Natural Bridge Camp for Boys STP	7.0	3.3	3.7 (53%)
Little Calfpasture River	2-4	E.L.	10.9-4.0	Craigsville	12.0	9.6	2.4 (20%)
Cabin River	2-4	E.L.	1.7-0.0	Millboro	Self - sustaining	None	None
Maury River	2-4	E.L.	19.6-12.2	Lexington STP	380.0	380.0	None
Maury River	2-4	E.L.	12.2-1.2	Georgia Bonded Fibers	760.0	102.0[3]	238.0 (31%)
				Buena Vista STP		420.0	
Maury River	2-4	E.L.	1.2-0.0	Lees Carpets	790.0	425.0[3]	290.0 (37%)
				Glasgow STP		75.0	
James River	2-5	W.Q.	271.5-266.0	Owens-Illinois	4,640.0	4,640.0[3]	None
James River	2-6	E.L.	257.5-231.0	Lynchburg STP	10,100.0	8,000.0	2,060.0 (20%)
				Babcock & Wilcox- NNFD		40.0[3]	
James River	2-6	E.L.	231.0-202.0	Virginia Fibre	3,500.0	3,500.0	None
Rutledge Creek	2-8	W.Q.	3.0-0.0	Amherst STP	46.0	37.0	9.0 (20%)
Town Creek	2-7	E.L.	2.1-0.0	Lovingston STP	26.0	21.0	5.0 (20%)
Ivy Creek	2-6	E.L.	0.1-0.0	Schuyler	13.8	11.0	2.8 (20%)
James River	2-6	E.L.	186.0-179.0	Uniroyal, Inc.	1,400.0	19.3[6]	1,336.0 (95%)
				Scottsville STP		45.0	

North Creek	2-6	E.L.	3.1-0.0	Fork Union STP	31.0	25.0	6.0 (20%)
Howells Branch and Licking Hole Creek	2-14	E.L.	0.7-0.0	Morton Frozen Foods	20.0	20.0[3]	None
Standardsville Run	2-16	W.Q.	1.2-0.0	Standardsville STP	17.9	14.3	3.6 (20%)
Rivanna River	2-11	W.Q.	23.5-20.0	Lake Monticello STP	480.0	380.0	100.0 (20%)
Rivanna River	2-10	E.L.	15.0-0.0	Palmyra	250.0	4.0	158.0 (63%)
				Schwarzenbach Huber		88.0[3]	
Unnamed Tributary of Whispering Creek	2-6	E.L.	1.2-00	Dillwyn STP	38.0	30.0	8.0 (21%)
South Fork Appomattox River	2-17	E.L.	5.5-0.0	Appomattox Lagoon	18.8	15.0	3.8 (20%)
Unnamed Tributary of Buffalo Creek	2-19	W.Q.	1.3-0.0	Hampden-Sydney Coll. STP	10.0	8.0	2.0 (20%)
Appomattox River	2-17	E.L.	106.1-88.0	Farmville STP	280.0	220.0	60.0 (21%)
Unnamed Tributary of Little Guinea Creek	2-17	E.L.	2.5-1.3	Cumberland H.S. Lagoon	0.6	0.5	0.1 (20%)
Unnamed Tributary of Tear Wallet Creek	2-17	E.L.	0.68-0.0	Cumberland Courthouse	8.8	7.0	1.8 (20%)
Courthouse Branch	2-22	W.Q.	2.2-0.0	Amelia STP	21.0	17.0	4.0 (20%)
Unnamed Tributary of Deep Creek	2-22	W.Q.	2.2-0.0	Crewe STP	50.3[11,12]	50.1[11, 12]	0.2 (0.4%)[11,12,13]

[1]Recommended classification.

[2]Based on 2020 loads or stream assimilative capacity less 20%.

[3]Load allocation based on published NPDES permits.

[4]This assimilative capacity is based upon an ammonia loading no greater than 125.1 lbs/day.

[5]Percentages refer to reserve as percent of total assimilative capacity. Minimum reserve for future growth and modeling accuracy is 20% unless otherwise noted.

[6]No NPDES Permits published (BPT not established) allocation base on maximum value monitored.

[7]This table is for the existing discharge point. The recommended plan may involve relocation or elimination of stream discharge.

[8]Assimilative capacity will be determined upon completion of the ongoing study by Hydroscience, Inc.

[9]Discharges into Karnes Creek, a tributary to the Jackson River.

[10]Discharges into Wilson Creek, near its confluence with Jackson River.

[11]Five-day Carbonaceous Biological Oxygen Demand ($cBOD_5$).

[12]Revision supersedes all subsequent Crewe STP stream capacity, allocation, and reserve references.

[13]0.4 percent reserve: determined by SWCB Piedmont Regional Office.

Source: Wiley & Wilson, Inc.

TABLE B3 - UPPER JAMES RIVER BASIN ADDITIONAL LOAD ALLOCATIONS
BASED ON RECOMMENDED DISCHARGE POINT

Stream Name	Segment Number	Classification[1]		Significant Discharges	Total Assimilative Capacity of Stream BOD_5 lbs/day	Wasteload[2] Allocation BOD_5 lbs/day	Reserve[4] BOD_5 lbs/day[5]
Mill Creek	2-4	E.L.	5.5-0.0	Millboro	30.0	7.3	22.7 (76%)
Calfpasture River	2-4	E.L.	4.9-0.0	Goshen	65.0	12.0	53.0 (82%)
Maury River	2-4	E.L.	1.2-0.0	Lees Carpet	790.0	425.0[3]	235.0 (30%)
				Glasgow Regional S.T.P.		130.0	
Buffalo River	2-7	E.L.	9.6-0.0	Amherst S.T.P.	150.0	120.0	30.0 (20%)
Rockfish River	2-6	E.L.	9.5-0.0	Schuyler S.T.P.	110.0	25.0	85.0 (77%)
Standardsville Run		E.L.		Standardsville	Land Application Recommended		
South Fork Appomattox River		E.L.		Appomattox Lagoon	Connect to Recommended Facility in Roanoke River Basin		
Buffalo Creek	2-17	E.L.	9.3-7.7	Hampden-Sydney College	46.0	23.0	23.0 (50%)
Unnamed trib. of Tear Wallet Creek		E.L.		Cumberland Courthouse	Land Application Recommended		
Courthouse Branch		E.L.		Amelia	Land Application Recommended		
Deep Creek	2-17	E.L.	25.0-12.8	Crewe S.T.P.	69.0	55.0	14.0 (20%)

[1]Recommended classification.

[2]Based on 2020 loads or stream assimilative capacity less 20%.

[3]Load allocation based on published NPDES permit.

[4]Percentages refer to reserve as percent of total assimilative capacity. Minimum reserve for future growth and modeling accuracy is 20% unless otherwise noted.

[5]Assimilative capacity will be determined upon completion of the ongoing study by Hydroscience, Inc.

Source: Wiley & Wilson, Inc.

TABLE B4 - SEGMENT CLASSIFICATION UPPER JAMES-JACKSON RIVER SUBAREA				
Stream Name	Segment Number	Mile to Mile	Stream Classification	Comments
Back Creek	2-1	16.06-8.46	W.Q.	Main Only
Jackson River	2-1	95.70-24.90	E.L.	Main and Tributaries
Jackson River	2-2	24.90-0.00	W.Q.	Main Only
Jackson River	2-2	24.90-0.00	E.L.	Tributaries Only
James River	2-3	349.50-308.50	E.L.	Main and Tributaries
James River	2-3	308.50-279.41	E.L.	Main and Tributaries

TABLE B5 - UPPER JAMES-JACKSON RIVER SUBAREA WASTELOAD ALLOCATIONS BASED ON EXISTING DISCHARGE POINT[1]								
MAP LOCATION	STREAM NAME	SEGMENT NUMBER	SEGMENT CLASSIFI-CATION STANDARDS	MILE to[2] MILE	DISCHARGER	VPDES PERMIT NUMBER	VPDES PERMIT LIMITS BOD_5 kg/day	303(e)[3] WASTELOAD ALLOCATIO N BOD_5 kg/day
1	Jackson River	2-1	E.L.	93.05-	Virginia Trout	VA0071722	N/A	Secondary
B	Warm Springs Run	2-1	E.L.	3.62-0.00	Warm Springs STP	VA0028233	9.10	Secondary
3	Back Creek	2-1	W.Q.	16.06-8.46	VEPCO	VA0053317	11.50	11.50
C	X-trib to Jackson River	2-1	E.L.	0.40-0.0	Bacova	VA0024091	9.10	Secondary
D	Hot Springs Run	2-1	E.L.	5.30-0.00	Hot Springs Reg. STP	VA0066303	51.10	Secondary
E	X-trib to Cascades Creek	2-1	E.L.	3.00-0.00	Ashwood-Healing Springs STP	VA0023726	11.30	Secondary
F	Jackson River	2-1	E.L.	50.36-	U.S. Forest Service Bolar Mountain	VA0032123	1.98	Secondary
G	Jackson River	2-1	E.L.	43.55	U.S. Army COE Morris Hill Complex	VA0032115	1.70	Secondary

H	Jackson River	2-1	E.L.	29.84-	Alleghany County Clearwater Park	VA0027955	5.70	Secondary
4	Jackson River	2-1	E.L.	25.99	Covington City Water Treatment Plant	VA0058491	N/A	Secondary
5	Jackson River	2-2	W.Q.	24.64-19.03	Westvaco	VA0003646	4,195.00	4,195.00[4]
6					Covington City[5] Asphalt Plant	VA0054411	N/A	N/A
7					Hercules, Inc[6]	VA0003450	94.00	94.00
J	Jackson River	2-2	W.Q.	19.03-10.5	Covington STP	VA0025542	341.00	341.00
K	Jackson River			10.5-0.0	Low Moor STP[7]	VA0027979	22.70	22.70
M					D.S. Lancaster CC[8]	VA0028509	3.60	3.60
L					Selma STP[9]	VA0028002	59.00	59.00
10					The Chessie System[10]	VA0003344	N/A	N/A
N					Clifton Forge STP[11]	VA0002984	227.00	227.00
11					Lydall[12]	VA0002984	6.00	6.00
P					Iron Gate STP[13]	VA0020541	60.00	60.00
8	Paint Bank Branch	2-2	E.L.	1.52	VDGIF Paint Bank Hatchery	VA0098432	N/A	Secondary
I	Jerrys Run	2-2	E.L.	6.72-	VDOT 1-64 Rest Area	VA0023159	0.54	Secondary
AA	East Branch (Sulfer Spring)	2-2	E.L.	2.16	Norman F. Nicholas	VA0078403	0.05	Secondary
BB	East Branch (Sulfer Spring)	2-2	E.L.	1.91-	Daryl C. Clark	VA0067890	0.068	Secondary
9	Smith Creek	2-2	E.L.	3.44-	Clifton Forge Water Treatment Plant	VA0006076	N/A	Secondary
O	Wilson Creek	2-2	E.L.	0.20-0.0	Cliftondale[14] Park STP	VA0027987	24.00	Secondary
2	Pheasanty Run	2-3	E.L.	0.01-	Coursey Springs	VA0006491	434.90	Secondary
Q	Grannys Creek	2-3	E.L	1.20-	Craig Spring Conference Grounds	VA0027952	3.40	Secondary
CC	X-trib to Big Creek	2-3	E.L	1.10-	Homer Kelly Residence	VA0074926	0.05	Secondary

12	Mill Creek	2-3	E.L	0.16-	Columbia Gas Transmission Corp.	VA0004839	N/A	Secondary
R	John Creek	2-3	E.L	0.20-	New Castle STP(old)	VA0024139	21.00	Secondary
S	Craig Creek	2-3	E.L	48.45-36.0	New Castle STP (new)	VA0064599	19.90	Secondary
T	Craig Creek	2-3	E.L	46.98-	Craig County Schools McCleary E.S.	VA0027758	0.57	Secondary
DD	Eagle Rock Creek	2-3	E.L.	0.08-	Eagle Rock STP[15 (Proposed)]	VA0076350	2.30	Secondary
U	X-trib to Catawba Creek	2-3	E.L.	0.16	VDMH & R Catawba Hospital	VA0029475	13.60	Secondary
14	Catawba Creek	2-3	E.L.	23.84	Tarmac-Lonestar	VA0078393	0.80	Secondary
FF	Borden Creek	2-3	E.L	2.00-	Shenandoah Baptist Church Camp	VA0075451	0.88	Secondary
EE	X-trib to Borden Creek	2-3	E.L	0.36	David B. Pope	VA0076031	0.07	Secondary
V	X-trib to Catawba Creek	2-3	E.L	3.21-	U.S. FHA Flatwood Acres	VA0068233	0.03	Secondary
W	Catawba Creek	2-3	E.L	11.54-	Fincastle STP	VA0068233	8.50	Secondary
X	Looney Mill Creek	2-3	E.L	1.83-	VDOT I-81 Rest Area	VA0023141	0.91	Secondary
Y	X-trib to Stoney	2-3	E.L	0.57	VDOC Field Unit No. 25 Battle Creek	VA0023523	1.10	Secondary
Z	James River	2-3	E.L.	308.5-286.0	Buchanan STP	VA0022225	27.00	Secondary

TABLE B5 - NOTES:

N/A Currently No BOD_5 limits or wasteload have been imposed by the VPDES permit. Should BOD_5 limits (wasteload) be imposed a WQMP amendment would be required for water quality limited segments only.

[1]Secondary treatment levels are required in effluent limiting (E.L.) segments. In water quality limiting (W.Q.) segments quantities listed represent wasteload allocations.

[2]Ending river miles have not been determined for some Effluent Limited segments.

[3]These allocations represent current and original (1977 WQMP) modeling. Future revisions may be necessary based on Virginia State Water Control Board modeling.

[4]The total assimilative capacity at critical stream flow for this portion of Segment 2-2 has been modeled and verified by Hydroscience, Inc. (March 1977) to be 4,914 kg/day BOD_5.

[5]The discharge is to an unnamed tributary to the Jackson River at Jackson River mile 22.93.

[6]The discharge is at Jackson River mile 19.22.

[7]The discharge is to the mouth of Karnes Creek, a tributary to the Jackson River at Jackson River mile 5.44.

[8]The discharge is at Jackson River mile 6.67.

[9]The discharge is at Jackson River mile 5.14.

[10]The discharge is at Jackson River mile 4.72.

[11]The discharge is at Jackson River mile 3.46.

[12]The discharge is at Jackson River mile 1.17

[13]The discharge is at Jackson River mile 0.76

[14]The discharge is to the mouth of Wilson Creek, a tributary to the Jackson River at Jackson River mile 2.44.

[15]The discharge is to the mouth of Eagle Rock Creek, a tributary to the Jackson River at Jackson River mile 330.35.

TABLE B6 - RICHMOND CRATER INTERIM WATER QUALITY MANAGEMENT PLAN STREAM CLASSIFICATIONS - JAMES RIVER BASIN

SEGMENT	SEGMENT NUMBER	MILE TO MILE	CLASSIFICATION
USGS HUC02080206 James River	2-19	115.0-60.5	W.Q.
USGS HUC02080207 Appomattox	2-23	30.1-0.0	W.Q.

TABLE B6 - *Note: A new stream segment classification for the Upper James Basin was adopted in 1981. The SWCB will renumber or realign these segments in the future to reflect these changes. This Plan covers only a portion of these segments.

TABLE B7 - RICHMOND CRATER INTERIM WATER QUALITY MANAGEMENT PLAN – CURRENT PERMITTED WASTE LOADS (March 1988)

	SUMMER (June-October)						WINTER (November-May)					
	FLOW (mgd)	BOD_5		NH_3-N[1]		DO[2] (mg/l)	FLOW (mgd)	BOD_5		NH_3-N[1]		DO[2] (mg/l)
		(lbs/d)	(mg/l)	(lbs/d)	(mg/l)			(lbs/d)	(mg/l)	(lbs/d)	(mg/l)	
City of Richmond STP[3]	45.00	3002	8.0	-	-	-	45.00	5367	14.3	-	-	-
E.I. DuPont-Spruance	8.68	936	-	-	-	-	8.68	936	-	-	-	-
Falling Creek STP	9.00	1202	16.0	-	-	5.9	9.00	2253	30.0	-	-	5.9
Proctor's Creek STP	6.40	1601	30.0	-	-	5.9	11.80	2952	30.0	-	-	5.9
Reynolds Metals Company	0.39	138	-	7	-	-	0.39	138	-	7	-	-
Henrico STP	30.00	3005	12.0	-	-	5.9	30.00	7260	29.0	-	-	5.9
American Tobacco Company	1.94	715	-	-	-	-	1.94	716	-	-	-	-
ICI Americas, Inc.	0.20	152	-	-	-	-	0.20	152	-	-	-	-
Phillip Morris-Park 500	1.50	559	-	-	-	-	1.50	557	-	-	-	-
Allied (Chesterfield)	51.00	1207	-	-	-	-	51.00	1207		-	-	-
Allied (Hopewell)	150.00	2500	-	-	-	-	150.00	2500	-	-	-	-

Hopewell Regional WTF	34.08	12507	44.0	-	-	4.8	34.08	12507	44.0	-	-	4.8
Petersburg STP	15.00	2804	22.4	-	-	5.0	15.00	2804	22.4	-	-	5.0
TOTAL	353.19	30328					358.59	39349				

[1]NH_3-N values represent ammonia as nitrogen.

[2]Dissolved oxygen limits represent average minimum allowable levels.

[3]Richmond STP's BOD_5 is permitted as $CBOD_5$

TABLE B7 - WASTE LOAD ALLOCATIONS FOR THE YEAR 1990

	SUMMER (June-October)						WINTER (November-May)				
	FLOW (mgd)	$CBOD_5$		NH_3-N[1,3]		DO[2] (mg/l)	$CBOD_5$		NH_3-N[1]		DO[2] (mg/l)
		(lbs/d)	(mg/l)	(lbs/d)	(mg/l)		(lbs/d)	(mg/l)	(lbs/d)	(mg/l)	
City of Richmond STP	45.00	3002	8.0	2403	6.4	5.6	5367	14.3	5707	15.2	5.6
E.I. DuPont-Spruance	11.05	948		590		4.4	948		756		2.9
Falling Creek STP	10.10	1348	16.0	539	6.4	5.9	2023	24.0	1281	15.2	5.9
Proctor's Creek STP	12.00	1602	16.0	961	9.6	5.9	2403	24.0	1402	14.0	5.9
Reynolds Metals Co.	0.49	172		8		6.5	172		8		6.5
Henrico STP	30.00	3002	12.0	2403	9.6	5.6	4756	19.0	3504	44.0	5.6
American Tobacco Co.	2.70	715		113		5.8	715		113		5.8
ICI Americas, Inc.	0.20	167		8		5.8	167		8		3.1
Phillip Morris- Park 500	2.20	819		92		4.6	819		92		4.6
Allied (Chesterfield)	53.00	1255		442		5.7	1255		442		5.7
Allied (Hopewell)	165.00	2750		10326		6.1	2750		10326		6.1
Hopewell Regional WTF	34.07	12502	44.0	12091	36.2	4.8	12502	44.0	10291	36.2	4.8
Petersburg STP	15.00	2802	22.4	801	6.4	5.0	2802	22.4	2028	16.2	5.0
TOTAL	380.81	31084		28978			36679	35958			

[1]NH_3-N values represent ammonia as nitrogen.

[2]Dissolved oxygen limits represent average minimum allowable levels.

[3]Allied (Hopewell) allocation may be redistributed to the Hopewell Regional WTF by VPDES permit.

TABLE B7 - WASTE LOAD ALLOCATION FOR THE YEAR 2000

	SUMMER (June-October)						WINTER (November-May)				
	FLOW (mgd)	$CBOD_5$		NH_3-$N^{1,3}$		DO[2] (mg/l)	$CBOD_5$		NH_3-N^{1}		DO[2] (mg/l)
		(lbs/d)	(mg/l)	(lbs/d)	(mg/l)		(lbs/d)	(mg/l)	(lbs/d)	(mg/l)	
City of Richmond STP	45.08	3002	8.0	2403	6.4	5.6	5367	14.3	5707	15.2	5.6
E.I. DuPont-Spruance	196.99	948		590		4.4	948		756		2.9
Falling Creek STP	10.10	1348	16.0	539	6.4	5.9	2023	24.0	1281	15.2	5.9
Proctor's Creek STP	16.80	1602	11.4	961	6.9	5.9	2403	17.1	1402	10.0	5.9
Reynolds Metals Co.	0.78	172		13		6.5	172		13		6.5
Henrico STP	32.80	3002	11.0	2403	8.8	5.6	4756	17.4	3504	12.8	5.6
American Tobacco Co.	3.00	715		113		5.8	715		113		5.8
ICI Americas, Inc.	0.20	167		8		5.8	167		8		3.1
Phillip Morris-Park 500	2.90	819		92		4.6	819		92		4.6
Allied (Chesterfield)	56.00	1255		442		5.7	1255		442		5.7
Allied (Hopewell)	170.00	2750		10326		6.1	2750		10326		6.1
Hopewell Regional WTF	36.78	12502	40.7	12091	33.5	4.8	12502	40.7	10291	33.5	4.8
Petersburg STP	15.00	2802	22.4	801	6.4	5.0	2802	22.4	2028	16.2	5.0
TOTAL	406.43	31084		28982			36679		35963		

[1]NH_3-N values represent ammonia as nitrogen.

[2]Dissolved oxygen limits represent average minimum allowable levels.

[3]Allied (Hopewell) allocation may be redistributed to the Hopewell Regional WTF by VPDES permit.

TABLE B7 - WASTE LOAD ALLOCATIONS FOR THE YEAR 2010

	SUMMER (June-October)						WINTER (November-May)				
	FLOW (mgd)	$CBOD_5$		NH_3-N[1,3]		DO[2] (mg/l)	$CBOD_5$		NH_3-N[1]		DO[2] (mg/l)
		(lbs/d)	(mg/l)	(lbs/d)	(mg/l)		(lbs/d)	(mg/l)	(lbs/d)	(mg/l)	
City of Richmond STP	45.86	3002	7.8	2403	6.3	5.6	5367	14.0	5707	14.9	5.6
E.I. DuPont-Spruance	16.99	948		590		4.4	948		756		2.9
Falling Creek STP	10.10	1348	16.0	539	6.4	5.9	2023	24.0	1281	15.2	5.9
Proctor's Creek STP	24.00	1602	8.0	961	4.8	5.9	2403	12.0	1402	7.0	5.9
Reynolds Metals Co.	0.78	172		13		6.5	172		13		6.5
Henrico STP	38.07	3002	9.5	2403	7.6	5.6	4756	15.0	3504	11.0	5.6
American Tobacco Co.	3.00	715		113		5.8	715		113		5.8
ICI Americas, Inc.	0.20	167		8		5.8	167		8		3.1
Phillip Morris-Park 500	2.90	819		92		4.6	819		92		4.6
Allied (Chesterfield)	56.00	1255		442		5.7	1255		442		5.7
Allied (Hopewell)	180.00	2750		10326		6.1	2750		10326		6.1
Hopewell Regional WTF	39.61	12502	37.8	10291	31.1	4.8	12502	37.8	10291	31.1	4.8
Petersburg STP	15.00	2802	22.4	801	6.4	5.0	2802	22.4	2028	16.2	5.0
TOTAL	432.1	31084		28982			36679		35963		

[1]NH_3-N values represent ammonia as nitrogen.

[2]Dissolved oxygen limits represent average minimum allowable levels.

[3]Allied (Hopewell) allocation may be redistributed to the Hopewell Regional WTF by VPDES permit.

C. Nitrogen and phosphorus waste load allocations to restore the Chesapeake Bay and its tidal rivers.

The following table presents nitrogen and phosphorus waste load allocations for the identified significant dischargers and the total nitrogen and total phosphorus waste load allocations for the listed facilities.

Virginia Waterbody ID	Discharger Name	VPDES Permit No.	Total Nitrogen (TN) Waste Load Allocation (lbs/yr)	Total Phosphorus (TP) Waste Load Allocation (lbs/yr)
I37R	Buena Vista STP	VA0020991	41,115	3,426
I09R	Clifton Forge STP	VA0022772	36,547	3,046
I09R	Covington STP	VA0025542	54,820	4,568
H02R	Georgia Pacific	VA0003026	122,489	49,658
I37R	Lees Carpets	VA0004677	30,456	12,182
I35R	Lexington-Rockbridge WQCF	VA0088161	54,820	4,568
I09R	Low Moor STP	VA0027979	9,137	761
I09R	Lower Jackson River STP	VA0090671	27,410	2,284
I04R	MeadWestvaco	VA0003646	394,400	159,892
H12R	Amherst STP	VA0031321	10,964	914
H05R	BWX Technologies Inc.	VA0003697	187,000	1,523
H05R	Greif Inc.	VA0006408	73,246	29,694
H31R	Lake Monticello STP	VA0024945	18,182	1,515
H05R	Lynchburg STP (1)	VA0024970	536,019	33,501
H28R	Moores Creek Regional STP	VA0025518	274,100	22,842
H38R	Powhatan CC STP	VA0020699	8,588	716
J11R	Crewe WWTP	VA0020303	9,137	761
J01R	Farmville WWTP	VA0083135	43,856	3,655
G02E	R. J. Reynolds	VA0002780	25,583	1,919
G01E	E I du Pont - Spruance	VA0004669	201,080	7,816
G01E	Falling Creek WWTP	VA0024996	153,801	15,380
G01E	Henrico County WWTP	VA0063690	1,142,085	114,209
G03E	Honeywell – Hopewell	VA0005291	1,090,798	51,592
G03R	Hopewell WWTP	VA0066630	1,827,336	76,139
G15E	HRSD – Boat Harbor STP	VA0081256	740,000	76,139
G11E	HRSD – James River STP	VA0081272	1,250,000	60,911
G10E	HRSD – Williamsburg STP	VA0081302	800,000	68,525
G02E	Philip Morris – Park 500	VA0026557	139,724	2,650
G01E	Proctors Creek WWTP	VA0060194	411,151	41,115
G01E	Richmond WWTP (1)	VA0063177	1,096,402	68,525
G02E	Dominion-Chesterfield (2)	VA0004146	352,036	210
J15R	South Central WW Authority	VA0025437	350,239	35,024
G07R	Chickahominy WWTP	VA0088480	6,167	123

G05R	Tyson Foods – Glen Allen	VA0004031	19,552	409
G11E	HRSD – Nansemond STP	VA0081299	750,000	91,367
G15E	HRSD – Army Base STP	VA0081230	610,000	54,820
G15E	HRSD – VIP WWTP	VA0081281	750,000	121,822
G15E	JH Miles & Company	VA0003263	153,500	21,500
C07E	HRSD – Ches.-Elizabeth STP	VA0081264	1,100,000	108,674
	TOTALS		14,901,739	1,354,375

NOTES: (1) Waste load allocations for localities served by combined sewers are based on dry weather design flow capacity. During wet weather flow events the discharge shall achieve a TN concentration of 8.0 mg/l and a TP concentration of 1.0 mg/l.

(2) Waste load allocations are "net" loads, based on the portion of the nutrient discharge introduced by the facility's process waste streams, and not originating in raw water intake.

9VAC25-720-90. Tennessee-Big Sandy River Basin.

A. Total Maximum Daily Load (TMDLs).

TMDL #	Stream Name	TMDL Title	City/County	WBID	Pollutant	WLA	Units
1.	Guest River	Guest River Total Maximum Load Report	Wise	P11R	Sediment	317.92	LB/YR
2.	Cedar Creek	Total Maximum Daily Load (TMDL) Development for Cedar Creek, Hall/Byers Creek and Hutton Creek	Washington	O05R	Sediment	1,789.93	LB/YR
3.	Hall/Byers Creek	Total Maximum Daily Load (TMDL) Development for Cedar Creek, Hall/Byers Creek and Hutton Creek	Washington	O05R	Sediment	57,533.49	LB/YR
4.	Hutton Creek	Total Maximum Daily Load (TMDL) Development for Cedar Creek, Hall/Byers Creek and Hutton Creek	Washington	O05R	Sediment	91.32	LB/YR
5.	Clinch River	Total Maximum Daily Load Development for the Upper Clinch River Watershed	Tazewell	P01R	Sediment	206,636	LB/YR
6.	Lewis Creek	Total Maximum Daily Load Development for the Lewis Creek Watershed	Russell	P04R	Sediment	40,008	LB/YR
7.	Black Creek	General Standard Total Maximum Daily Load Development for Black Creek, Wise County, Virginia	Wise	P17R	Manganese	2,127	KG/YR
8.	Dumps Creek	General Standard Total Maximum Daily Load Development for Dumps Creek, Russell County, Virginia	Russell	P08R	Total Dissolved Solids	1,631,575	KG/YR

9.	Dumps Creek	General Standard Total Maximum Daily Load Development for Dumps Creek, Russell County, Virginia	Russell	P08R	Total Suspended Solids	316,523	KG/YR
10.	Beaver Creek	Total Maximum Daily Load Development for the Beaver Creek Watershed	Washington	O07R	Sediment	784,036	LB/YR
11.	Stock Creek	General Standard (Benthic) Total Maximum Daily Load Development for Stock Creek	Scott	P13R	Sediment	0	T/YR
12.	Lick Creek	Lick Creek TMDLs for Benthic Impairments-Dickenson, Russell and Wise Counties	Dickenson, Russell and Wise	P10R	Sediment	63	T/YR
13.	Cigarette Hollow	Lick Creek TMDLs for Benthic Impairments-Dickenson, Russell and Wise Counties	Dickenson, Russell and Wise	P10R	Sediment	0.4	T/YR
14.	Laurel Branch	Lick Creek TMDLs for Benthic Impairments-Dickenson, Russell and Wise Counties	Dickenson, Russell and Wise	P10R	Sediment	3.9	T/YR
15.	Right Fork	Lick Creek TMDLs for Benthic Impairments-Dickenson, Russell and Wise Counties	Dickenson, Russell and Wise	P10R	Sediment	1.3	T/YR

B. Non-TMDL waste load allocations.

Water Body	Permit No.	Facility Name	Receiving Stream	River Mile	Outfall No.	Parameter Description	WLA	Units WLA
VAS-Q13R	VA0061913	Pound WWTP	Pound River	33.26	001	$CBOD_5$, JUN-NOV	28	KG/D
						$CBOD_5$, DEC-MAY	47	KG/D
						TKN, JUN-NOV	28	KG/D
VAS-Q14R	VA0026565	Clintwood WWTP	Cranes Nest River	9.77	001	BOD_5	30	KG/D
VAS-O06R	VA0026531	Wolf Creek Water Reclamation Facility	Wolf Creek	7.26	001	$CBOD_5$	249.8	KG/D
VAS-P01R	VA0026298	Tazewell WWTP	Clinch River	346.26	001	$CBOD_5$, JUN-NOV	76	KG/D
VAS-P03R	VA0021199	Richlands Regional WWTF	Clinch River	317.45	001	BOD_5, JUN-NOV	273	KG/D

VAS-P06R	VA0020745	Lebanon WWTP	Big Cedar Creek	5.22	001	BOD_5	91	KG/D
VAS-P11R	VA0077828	Coeburn Norton Wise Regional WWTP	Guest River	7.56	001	$CBOD_5$, JUN-NOV	303	KG/D
						$CBOD_5$, DEC-MAY	379	KG/D
VAS-P15R	VA0029564	Duffield Industrial Park WWTP	North Fork Clinch River	21.02	001	BOD_5	36	KG/D
VAS-P17R	VA0020940	Big Stone Gap Regional WWTP	Powell River	177.38	001	$CBOD_5$, JUN-NOV	110	KG/D

9VAC25-720-110. Chesapeake Bay -- Small Coastal -- Eastern Shore River Basin.

A. Total maximum Daily Load (TMDLs).

TMDL #	Stream Name	TMDL Title	City/County	WBID	Pollutant	WLA	Units
1.	Parker Creek	Benthic Total Maximum Daily Load (TMDL) Development for Parker Creek, Virginia	Accomack	D03E	Total Phosphorus	664.2	Lbs/YR

B. Stream segment classifications, effluent limitations including water quality based effluent limitations, and waste load allocations.

Small Coastal and Chesapeake Bay-

TABLE B1—CURRENT STREAM SEGMENT CLASSIFICATION

Segment No.	Name	Current State Class
7-12A	Pocomoke Sound	EL
7-12B	Messongo Creek	EL
7-12C	Beasley Bay	EL
7-12D	Chesconessex Creek	EL
7-13	Onancock Creek	WQ
7-14	Pungoteague	WQ
7-12E	Nandua Creek	EL
7-15	Occohannock Creek	WQ
7-12F	Nassawadox Creek	EL
7-12G	Hungars Creek	EL
7-12H	Cherrystone Inlet	EL
7-12I	South Bay	EL
7-12J	Tangier Island	_____
7-11A	Chincoteague	EL
7-11B	Hog Bogue	EL

7-11C	Metomkim Bay	EL
7-11D	Machipongo River	EL
7-11E	South Ocean	EL

Small Coastal and Chesapeake Bay

TABLE B2 - EASTERN SHORE WASTELOAD ALLOCATIONS

		INTERIM WASTELOAD ALLOCATIONS[1]			FINAL WASTELOAD ALLOCATIONS		
		(Current Permit Limits)					
NAME	RECEIVING STREAM OR ESTUARY	BOD_5 (lb/d)	SUSPENDED SOLIDS (lb/d)	OIL & GREASE (lb/d)	BOD_5 (lb/d)	SUSPENDED SOLIDS (lb/d)	OIL & GREASE (lb/d)
Commonwealth of Va. Rest Area	Pitts Cr.	4.3	4.3	--	4.3	4.3	--
Edgewood Park	Bullbegger Cr.	0.80	0.80	--	0.80	0.80	--
Holly Farms	Sandy Bottom Cr.	167[3]	167[3]	10 mg/l	Stream survey/model and determination of final wasteload allocations planned for the summer of 1980.		
Taylor Packing Company	Messongo Cr.	7006(3)	13010(3)	--	Stream survey/model was run previously. No change in permit anticipated.		
No. Accomack E.S.	Messongo Cr.	1.8	1.4	--	1.8	1.4	--
Messick & Wessels Nelsonia	Muddy Cr.	30mg/l(4)	30mg/l(4)	--	Interim wasteload allocations may be changed based on BAT guidance.		
Whispering Pines Motel	Deep Cr.	4.8	4.8	--	4.8	4.8	--
Town of Onancock	Onancock Cr.	21	21	--	21	21	--
Messick & Wessels	Onancock Cr.	30mg/l(4)	30mg/l(4)	--	Interim wasteload allocations may be changed based on guidance.		
So. Accomack E.S.	Pungoteague Cr.	1.8	1.4	--	1.8	1.4	--
A & P Exmore	Nassawadox Cr.	0.38	0.38	--	0.38	0.38	--
Norstrom Coin Laundry	Nassawadox Cr.	60mg/l(4) max.	60mg/l(4) max.	--	Interim wasteload allocation may be changed based on BAT guidance.		
NH-Acc. Memorial Hospital	Warehouse Cr.	12.5	12.5	--	21.5	12.5	--
Machipongo E.S. & H.H. Jr. High	Trib. To Oresbus Cr.	5.2	5.2	--	5.2	5.2	--
Town of Cape Charles	Cape Charles Harbor	62.6	62.6	--	62.6	62.6	--
America House	Chesapeake Bay	5	5	--	5	5	--

U.S. Coast Guard Chesapeake Bay	Chesapeake Bay	--	--	10/mgl(5)	--	--	10/mgl(5)
U.S. Government Cape Charles AFB	Magothy Bay	Currently No Discharge					
Exmore Foods (Process Water)	Trib. To Parting Cr.	200	100	--	Stream survey/model and determination of final wasteload allocations planned for the summer of 1980.		
Exmore Foods (Sanitary)	Trib. To Parting Cr.	30mg/l(5)	30mg/l(5)	--	30mg/l(5)	30mg/l(5)	--
Perdue Foods (process water)	Parker Cr.	May-Oct 275 367 Nov-Apr. 612 797	--	--	Interim Permit in process. Stream survey/models were run. No substantial change in permit anticipated.		
Perdue Foods (parking lot)	Parker Cr.	30mg/l(5)	30mg/l(5)	--	30mg/l(5)	30mg/l(5)	--
Accomack Nursing Home	Parker Cr.	2.7	2.6	--	2.7	2.6	--
U.S. Gov't NASA Wallops Island	Mosquito Cr.	75	75	--	75	75	--
U.S. Gov't NASA Wallops Island	Cat Cr.	1.25	1.25	--	1.25	1.25	--
F & G Laundromat	Chincoteague Channel	10	4.8	--	Interim wasteload allocations may be changed based on BAT guidance.		
U.S. Coast Guard	Chincoteatue Channel	--	--	15mg/l (max.)	--	--	15mg/l (max.)
Virginia- Carolina Seafood	Chincoteague Bay	342	264	5.5	342	264	5.5
Reginald Stubbs Seafood Co. (VA0005813)	Assateague Channel	--	20	95	--	20	95
Reginald Stubbs Seafood Co. (VA00056421)	Assateague Channel	--	20	98	--	20.4(2)	98
Shreaves	Chincoteague Bay	--	16(2)	1.4(2)	--	16(2)	1.4(2)
Chincoteague Seafood	Chincoteague Bay	342	264	5.5	342	264	5.5

TABLE B3 - EXISTING OR POTENTIAL SOURCES OF WATER POLLUTION

Location No.	Name	Receiving Estuary	Stream	Flow (MGD)	CBOD (mgl/#D)	NBOD (mgl/#D)	Total Suspended Solids (mgl/#D)	D.O. (mgl)	FC (MPN/ 100ml)	Treatment/ Operation
1	Comm. Va. Rest Area	Pocomoke Sound	Pitts Cr.	.003	7/0.18		10/0.3	7.5	1	Extended aeration. Sec. Holding pond, CL_2
2	H.E. Kelley	Pocomoke Sound	Pitts Cr.							Currently no discharges. Out of business
3	Edgewood Park	Pocomoke Sound	Bullbegger Creek	.006(3)	16/0.8(2)		16/0.8(2)			PRI, CL_2. Holding Pond
4	Holly Farms	Pocomoke Sound	Sand Bottom Creek	0.18	6/40		15/100	8.0	100	Aerated Lagoons, CL_2
5	J.W. Taylor	Messongo Creek	Trib. To Messongo	.001	60/50		150/125	8.0		Aerated Lagoons
6	No. Accomack E.S.	Messongo Creek	Trib. To Messongo	.005	22/0.9		30/1.3	9.0		Sec., Septic Tank, Sand Filter Holding Pond
7	Messick & Wessells-Nelsonia	Beasly Bay	Muddy Creek	.005	125/5.2		100/4.2			Sec., Extended Aeration
8	Willets Laundromat	Beasly Bay	Hunting Creek							Prl., Septic Tank
9	Byrd Food	Beasly Bay								No discharge industry
10	Whispering Pines Motel	Beasly Bay	Deep Creek	.009	25/1.9		30/2.3	6.0		Sec., Extended Aeration Holding Pond, CL_2
11	Town of Onancock	Onancock Creek	North Fork	.19	2/3.2		3/4.8	7.5	3	Primary, Primary Settling Sludge Digestion, CL_2
12	Messick & Wessels-Onley	Onancock Creek	Joynes Branch	.005	100/4.2		150/6.3			Sec., Extended Aeration
13	So. Accomack E.S.	Pungoteague	Trib. To Pungoteague		24/1.8(2)		19/1.4(2)			Sec., Septic Tank, Grease Trap, Sand Filter, Holding Pond. No discharge in 4 yrs.
14	Great Atlantic & Pacific Tea Company	Nassawadox	Nassawadox	.001	140/1.2		150/1.3		6.5	Sec., Extended Aeration CL_2

15	Norstrom Coin Laundry	Nassawadox	Trib. To Nassawadox	.008						Sec., Extended Aeration, permit in process
17	N.H.-Acc. Memorial Hospital	Nassawadox	Warehouse Creek	.03	25/1.6		35/2.2	6.5	750	Secondary Aerated Lagoon, CL_2 Holding pond Stab-Lagoon
18	Machipongo E.S. & N.H. Jr. High School	Hungars Creek	Trib. To Oresbus	0.3(1)	30/5.2(2)		30/5.2(2)			Sec., Stab-Lagoon, Holding Pond no discharge in 4 yrs.
19	B & B Laundromat	Cherry Stone Inlet	Old Castle Creek							Prl. Septic Tank w/ discharger
20	KMC Foods, Inc.	Cherry Stone Inlet								No-Discharge industry
21	Herbert West Laundromat	Cherry Stone Inlet	Kings Creek							Prl. Septic Tank w/ Discharger
22	Town of Cape Charles	Cape Charles Harbor	Cape Charles Harbor	.165(2)	290/400(3)		139/192(3)			Raw Sewage, Sewage Treatment to be completed by 1982
23	American House Inn	Chesapeake Bay	Chesapeake Bay		30/5(2)		30/5(2)			
24	U.S. Coast Guard	Chesapeake Bay	Chesapeake Bay	.001(2)	30/			5.0(2)	200(2)	Bilgewater
25	U.S. Gov't Cape Charles AFS	Magothy	Magothy	.001(2)				5.0(3)		Sec., CL_2, Aerated Lagoon, currently no-discharge
27	Exmore Frozen Foods	Machipongo	Trib. To Parting Cr.	.56	29/135		18/84	6.5		Grass Bays, Screening
28	Exmore Foods (Domestic)	Machipongo	Trib. To Parting Cr.	.02	5/0.8		9/1.5			Septic Tank, Sand Filter
30	Perdue Foods	Metomkin Bay	Parker Creek	1.7	11/156		15/213	6.5	150	Sec., Aerated Lagoon, Holding Pond, CL_2
31	Perdue Foods	Metomkin Bay	Parker Cr.	.01(4)			15/1.3			
32	Accomack Co. Nursing Home	Metomkin Bay	Parker Cr. North Fork	.011	20/1.8		28/2.6	6.5	100	Sec., Extended Aeration, Holding Pond, CL_2
33	U.S. Gov't NASA (Wallops Island)	Hog Creek	Cat Creek	.005	30/		30/			Sec., Stab., Pond, Holding Pond, CL_2

34	Robo Automatic Car	Chincoteague Channel	Little Simoneaton							
35	U.S. Gov't NASA	Chincoteague Channel	Mosquito Creek	.105	10.6/9.3[3]	112/28	2.0/1.8			Sec., Trickling Filter
36	Trail's End Rec. Vehicle Dev.	Chincoteague Channel	Trib to Mosquito Cr.							Septic Tank and Drainfield
37	Coin-Op Laundromat	Chincoteague Channel	Chincoteague Channel							No discharge
38	F & G Laundromat	Chincoteague Channel	Chincoteague Channel	.005						
39	U.S. Coast Guard	Chincoteague Channel	Chincoteague Channel	.001[2]			30/0.2[2]		200[2]	Discharge-Bilgewater
40	Phillip Custis	Ramshorn Bay								Spray Irrigation, no Discharge
43	Boggs (Melfa)	Nickowampus Creek								Septic tank waste lagoons, no discharge
44	Blake (Greenbush)	Deep Creek								Septic tank waste lagoon, no discharge
45	Cherrystone Campground	Kings Creek or Cherrystone Inlet								Stab-Lagoon, Holding pond, no discharge
46	Wallops Sanitary Landfill									Solid waste disposal site, no discharge
47	Chincoteague Dumpsite									Solid waste disposal site, no discharge
48	Bob Town Sanitary Landfill									Solid waste disposal site, no discharge
49	Northampton Sanitary Landfill									Solid waste site, no discharge
52	Dorsey's Seafood Market	Chincoteague								Oysters[5]
54	Va-Carolina Seafood Company, Inc.	Hog-Bogue					1152[2] Clams 68[2] Oysters 7.0[2] Scallops			Surf Clams, Oysters, Scallops

55	Chincoteague Island Oyster Farm	Chincoteague								(Oyster-Boat Operation (grows oysters & clams from larvae)[6]
	Reginald Stubbs Seafood Company	Assateague Channel		.002[4]	4.2		2.8			Oyster
58	Shreaves Bros.	Chincoteague		.002[4]	2.07		8.0			Oyster
60	Chincoteague Seafood Co.	Chincoteague		.063[4]	972		79.9			Surf-Clam
61	Ralph E. Watson Oyster Co.	Chincoteague		.003[4]	57		53			Oyster
62	McCready Bros. Inc.	Chincoteague								Oyster, no discharge
63	Wm. C. Bunting	Chincoteague		.001[4]	12		4.8			Oyster
64	Carpenters Seafood	Chincoteague		.001[4]	4.1		2.1			Oyster
64a	Burtons Seafood, Inc.	Chincoteague		.006[4]	10.3		.35			Oyster shell stock deal no discharge
69	Jones Bros. Seafood	Chincoteague	Sheepshead Cr.							Oyster & Clams
70	W.E. Jones Seafood	Chincoteague	Sheepshead Creek				46.4[2]			Oyster & Clams
71	Conner & McGee Seafood	Chincoteague	Sheepshead Creek							Oyster & Clams[6]
72	Hills Oyster Farm	Chincoteague								Oyster & Clams[5]
73	Thomas E. Reed Seafood	Chincoteague	Deep Hole Creek							Oyster & Clams[6]
74	Mears & Powell	Metomkin								Oyster-Building, also used to clean fish[5]
75	Wachapreague Seafood Company	Metomkin	Finney Creek	.036[4]			144			Sea Clam
76	George D. Spence and Son	Machipongo								Crab Shedding[6]
77	George D. Spence and Son	Machipongo								Crab Picking, no discharge
78	George T. Bell	Machipongo								No Discharge, Oyster
79	George D. Spence and Son	Machipongo	Upshur Bay							Oyster[6]

80	Peters Seafood	Machipongo								Oyster[6]
81	J.E. Hamblin	Machipongo								Oyster, No discharge
83	Nathan Bell Seafood	Machipongo								Clams, Hard[5]
84	John L. Marshall Seafood	Machipongo								Clams[5]
85	American Original Foods, Inc.	Machipongo	Parting Creek	.151[4]	2632		1337			
86	Harvey & Robert Bowen	Machipongo	Parting Creek	.0006[4]	6.2		1.7			Oyster
87	H.M. Terry	Machipongo	Parting Creek	.0004[4]	3.3		.62			Oyster
89	Webb's Island Seafood	South Ocean Area								Clams[6]
90	Cliff's Seafood	South Ocean Area	Mockhorn Bay							Oyster & Clam [6]
92	H. Allen Smith	South Ocean Area		.037[4]	213		522			Sea Clam
94	C & D Seafood, Inc.	South Ocean Area	Oyster Harbor	.04[4]	427		204 sea clam 34[2] oyster			Sea Clam, Oyster
95	B.L. Bell & Sons	South Ocean Area	Oyster Harbor	.001[4]	12		.9			Oyster
98	Lance Fisher Seafood Co.	Pocomoke		.02[4]	38		12.8			Oyster and Clam
99	Fisher & Williams/Lester Fisher	Messongo								Building used to shed soft crabs[5]
100	Grady Rhodes Seafood	Messongo								Sold business, Building used to shed soft crabs[5]
101	Bonowell Bros.	Messongo	Pocomoke Sound	.001[4]	12		2.5			Oyster
102	John H. Lewis & Co.	Messongo	Starling Creek							Oyster SS only, no discharge
103	Eastern Shore Seafood	Beasly								Crab, no discharge
106	Ashton's Seafood, Inc.	Pungoteague								Shell stock dealer-no discharge
107	Nandua Seafood Co.	Nandua		.0001[4]	.2		.9			Crab
108	A.M. Acuff	Cherrystone								Building used for storage, no discharge

110	D.L. Edgerton Co.	Cherrystone	Mud Creek							Conch. In operation. Retort drains overboard & fish wash-down[6]
111 & 112	Tangier Island Seafood, Inc.	Tangier								Crab[5]
113	Tangier	Chesapeake Bay								1000 KW Power Station
114	Chincoteague	Chincoteague Channel								2100 KW Power Station
115	Parksley									2400 KW Power Station
116	Tasley									1400 KW Power Station
117	Bayview									10,000 KW Power Station
118	Cape Charles	Cape Charles Harbor								1200 KW Power Station
119	Burdick Well & Pump Company									Holding Pond, no discharge
120	Marshall & Son Crab Company	Messongo Cr.								Crab Shedding[6]
	Linton & Lewis Crab Co.	Pocomoke Sound								Crab Shedding[6]
122	D.L. Edgerton	Chincoteague								Fish Wash-down[6]
123	Evans Bros. Seafood Co.	Pocomoke Sound								Crab Shedding[6]
124	Stanley F. Linton	Messongo	Starling Cr.							Crab Shedding[6]
125	H.V. Drewer & Son	Messongo	Starling Cr.	.035[4] .018[4]	349 180		736-clam 198-oyster			Oyster & Clam
126	Chincoteague Fish Co., Inc.	Chincoteague Channel								Fish Washdown[6]
127	Chincoteague Crab Company	Assateague Channel			.18[2]		.54[2]			Crab & Crab Shedding
128	Aldon Miles & Sons	Pocomoke Sound								Crab Shedding[6]
129	Saxis Crab Co.	Messongo	Starling Cr.							Crab Shedding[6]

	Paul Watkinson SFD	Pocomoke Sound								Crab Shedding[6]
131	Russell Fish Co., Inc	Chincoteague Channel								Fish[6]
132	Mason Seafood Co.	Chincoteague Channel		.002[4]	7.7		13.7			Oysters

NOTE: [1]Water quality data taken from Discharge Monitoring Reports or special studies unless indicated.

[2]NPDES Permit limits given since the permit is new and discharge monitoring reports not yet available.

[3]Data from Accomack-Northampton Co. Water Quality Management Plan.

[4]Estimated.

[5]May need a permit--either company has not responded to SWCB letter or operation has just started up.

[6]No limits -- has an NPDES permit, but is not required to monitor.

C. Nitrogen and phosphorus waste load allocations to restore the Chesapeake Bay and its tidal rivers. The following table presents nitrogen and phosphorus waste load allocations for the identified significant dischargers and the total nitrogen and total phosphorus waste load allocations for the listed facilities.

Virginia Waterbody ID	Discharger Name	VPDES Permit No.	Total Nitrogen (TN) Waste Load Allocation (lbs/yr)	Total Phosphorus (TP) Waste Load Allocation (lbs/yr)
C16E	Cape Charles Town WWTP (1)	VA0021288	6,091	457
C11E	Onancock WWTP (2)	VA0021253	9,137	685
C13E	Shore Memorial Hospital	VA0027537	1,218	91
C10E	Tangier WWTP	VA0067423	1,218	91
C10R	Tyson Foods – Temperanceville	VA0004049	22,842	1,142
	TOTALS:		40,506	2,467

NOTE: (1) Cape Charles STP: waste load allocations (WLAs) based on a design flow capacity of 0.5 million gallons per day (MGD). If plant is not certified to operate at 0.5 MGD design flow capacity by December 31, 2010, the WLAs will decrease to TN = 3,046 lbs/yr; TP = 228 lbs/yr, based on a design flow capacity of 0.25 MGD.

(2) Onancock STP: waste load allocations (WLAs) based on a design flow capacity of 0.75 million gallons per day (MGD). If plant is not certified to operate at 0.75 MGD design flow capacity by December 31, 2010, the WLAs will decrease to TN = 3,046 lbs/yr; TP = 228 lbs/yr, based on a design flow capacity of 0.25 MGD.

VA.R. Doc. No. R09-1955; Filed May 15, 2009, 12:39 p.m.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Proposed Regulation

Title of Regulation: **12VAC5-110. Regulations for the Immunization of School Children (amending 12VAC5-110-10, 12VAC5-110-20, 12VAC5-110-30, 12VAC5-110-70, 12VAC5-110-80, 12VAC5-110-90, 12VAC5-110-100, 12VAC5-110-130).**

Statutory Authority: §§ 22.1-271.2, 32.1-12, and 32.1-46 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comments: Public comments may be submitted until August 7, 2009.

Agency Contact: James Farrell, Director, Division of Immunization, Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-8055, or email james.farrell@vdh.virginia.gov.

Basis: Sections 22.1-271.2 and 32.1-46 of the Code of Virginia authorize the State Board of Health to promulgate regulations relating to immunization requirements for school children.

Purpose: Regulations are necessary to ensure children are protected to the extent possible from vaccine-preventable diseases and to indirectly protect the health of Virginians. Legislation enacted by the 2006 Virginia General Assembly requires the regulations to be updated to reflect current immunization recommendations and also added two new required vaccines. Legislation enacted by the 2007 Virginia General Assembly added an additional new vaccine requirement. The regulations must be amended to bring them into conformance with the new legislation as well as with current immunization recommendations.

Substance: Amendments to the current regulations will (i) update and clarify definitions; (ii) update childhood immunizations required for attendance at Virginia schools and day cares to include additional required vaccines and reflect current recommended immunization practices; (iii) add requirements for demonstrating existing immunity to varicella; and (iv) update responsibilities of admitting officials.

Issues: The proposed regulations will ensure that children are protected to the extent possible from vaccine-preventable diseases and will indirectly protect the health of all citizens of Virginia. Disadvantages may include increased costs associated with providing additional required vaccines. Additional time may be needed for parents to obtain and providers to document required vaccines.

The Department of Planning and Budget Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The State Board of Health (Board) proposes to amend its regulations governing the immunization of school children to incorporate immunization requirements enacted by the legislature in 2006 and 2007 and to reflect changes in the current immunization schedule recommended by the American Academy of Pediatrics and the American Academy of Family Physicians (this is also required by statute). The Board also proposes to add registered nurses to the list of entities that can administer immunizations and can provide certification that required vaccines would be detrimental to a child's health.

Result of Analysis. There is insufficient information to accurately gauge whether benefits will outweigh costs for this proposed regulatory action. Benefits and costs are discussed below.

Estimated Economic Impact. Currently, parents must make sure that their children have received a specified number of immunizations for specified diseases before they are enrolled in school (and continue receiving specified immunizations as a condition for staying enrolled). Alternately, parents may present a Certificate of Religious Exemption (CRE), certification from a physician or local health department that the required vaccines would be detrimental to their child's health or, for rubeola and rubella, proof that the child already has antibodies and would not, therefore need to be vaccinated.

The current regulatory vaccination schedule requires:

- Three doses of Diphtheria and Tetanus toxiods and Pertussis vaccine (DPT) before the child is seven years old; One of these doses must be administered after the child is four years old,
- A minimum of three doses of the polio vaccine, one of which must be administered after a child is four years old,
- Two doses of live Rubeola (measles) vaccine, one administered at age 12 months or older and one administered prior to entering kindergarten (this requirement is clarified in the proposed regulations and will have the second dose administered between the ages of four and six),
- A minimum of one dose of Rubella (German measles) vaccine administered at age 12 months or older,
- A minimum of one dose of mumps vaccine administered at 12 months of age or older,
- A maximum of four doses of Haemophilus Influenza type b (Hib) vaccine on an approved schedule that is "appropriate to the age of child and the age at which the immunization series was initiated" and
- A minimum of three doses of the Hepatitis B vaccine.

According to current regulatory text, a physician or his designee or a local Departments of Health can attest to the administration of immunizations (or attest that a child would be harmed by same).

The Board proposes to update this regulatory vaccination schedule to reflect changes in statutory requirements and changes in the current immunization schedule recommended by the American Academy of Pediatrics and the American Academy of Family Physicians. The Board proposes to list the three component parts of the DPT vaccine separately and add the requirement that a booster of each must be given prior to a child's enrollment in sixth grade, provided that at least five years had passed since the child's last dose of each. Even though these components will be listed separately in these regulations, they are normally combined into one shot for the purposes of childhood immunization. The proposed regulations include a required second dose of the mumps vaccine, to be administered between the ages of four and six, and an addition to the requirements for the Hepatitis B vaccine that allows children between the ages of 11 and 15 to only take two (rather than three) doses of this vaccine so long as they are taking the newly approved RECOMBIVAX HB produced by Merck.

The proposed regulations also include recently (in the last two years) passed legislative requirements that children born on or after January 1, 1997 receive two doses of the Varicella (chickenpox) vaccine, one dose on or after the age of 12 months and one dose between the ages of four and six, that all children under the age of 24 months receive a maximum of four doses of Pneumococcal Conjugate Vaccine (PCV) to protect against pneumonia and that girls must have three doses of the Human Papillomavirus (HPV), the first of which must be administered before admittance to sixth grade. Because HPV is not a disease that is communicable in a school setting and because requiring this vaccine is not without controversy, parents (guardians) may choose not to allow the HPV vaccine to be give to their daughters (charges). These parents (guardians) must review materials describing the link between certain HPV strains and cervical cancer prior to deciding whether to allow the vaccine to be given but do not have to sign a waiver.

The proposed regulations also includes chickenpox among the diseases for which a child does not need the vaccine if he already has antibodies and clarifies by explicitly listing registered nurses as individuals empowered to give vaccines or to certify, when necessary, that vaccines cannot be given because they would be harmful to a child.

Requiring a booster of each of the components of the DPT vaccine before a child enters sixth grade currently entails either an extra visit to the child's doctor (either completely paid for by the parent or with the cost split between the parent and their insurance company) or a visit to a local Department of Health where the vaccine will be given at no fee to the parent but where the parent may spend many hours waiting for the shot to be given. Parents who choose to allow their daughters to receive the HPV vaccine would likely choose to have this vaccine given at the same time as the DPT booster and, so, could lower the per shot cost (of time or money or both). Parents who do not choose to allow their daughters to receive the HPV virus will incur the cost of time spent reading Board approved materials about the link between HPV and cervical cancer.

Parents who will be immunizing infants and toddlers with the PCV vaccine, and parents whose children will be required to be vaccinated against chickenpox, will likely be able to have these vaccines administered with other required vaccines at normal well child visits. Any costs for parents for the PCV and chickenpox vaccines will likely be limited to any out of pocket costs for the vaccine doses themselves (this would likely only be an issue for parents paying all costs themselves since most insurance plans cover vaccines in the copay cost of well child visits).

The requirement for an additional dose of mumps vaccine and the allowance for a two dose course of Hepatitis B vaccine will likely not raise the total cost (in time or money) of immunization for parents who are having their children immunized on the recommended schedule because the recommended schedule already includes two doses of the combined measles, mumps and rubella (MMR) vaccine and because parents are unlikely to choose the two dose Hepatitis B vaccine unless they receive some benefit over the normal three dose course.

The Virginia Department of Health (VDH) reports that the state will incur extra costs for vaccines paid for by the state, and administered through local Departments of Health, and that local Departments of Health will likely lose revenue (costs for office visit and administration of vaccine) that they have received from parents paying for the optional second dose of chickenpox vaccine. The state has budgeted $1.4 million per year to cover the cost of the HPV vaccine and $280,110 per year to cover the (local Department of Health) cost of requiring the DPT booster before sixth grade. Local Departments of Health currently charge approximately $30 per child for administering a second chickenpox immunization; the state already pays for the actual vaccine doses.

To the extent that the new immunization schedule lowers the incidence of the diseases covered by the required vaccines, the public will benefit from fewer costs for illness (misery, permanent injury or death for the sick children, costs for medication to ameliorate symptoms and lost wages for parents) and, for diseases that are easily spread in a school setting, greater herd immunity. Any extra benefit from the changes to required immunizations have to be weighed against the not insignificant increases in costs to the state, to parents and to insurance companies.

Businesses and Entities Affected. VDH reports that these proposed regulations will affect parents and their children, all public and private health care providers who administer covered vaccines as well as school staff who must verify that children are in compliance with the required vaccine schedule. These proposed regulations will also likely affect insurance companies that cover required vaccinations.

Localities Particularly Affected. All local Departments of Health will likely lose revenue (costs for office visit and administration of vaccine) that they have received from parents paying for the optional second dose of chickenpox vaccine. Local Departments of Health currently charge approximately $30 per child for administering a second chickenpox immunization; the state pays for the actual vaccine doses.

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 Economic Impact Analysis: Virginia Department of Health concurs substantially with the economic impact analysis prepared by the Department of Planning and Budget on this proposed regulation.

Summary:

The proposed amendments (i) incorporate immunization requirements enacted by the legislature in 2006 and 2007, (ii) reflect changes in the current immunization schedule recommended by the American Academy of Pediatrics and the American Academy of Family Physicians, and (iii) add registered nurses to the list of entities that can administer immunizations and can provide certification that required vaccines would be detrimental to a child's health.

Part I
Definitions

12VAC5-110-10. Definitions.

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

"Adequate immunization" means the immunization requirements prescribed under 12VAC5-110-70.

"Admit" or "admission" means the official enrollment or reenrollment for attendance at any grade level, whether full-time or part-time, of any student by any school.

"Admitting official" means the school principal or his designated representative if a public school; if a nonpublic school or child care center, the principal, headmaster or director of the school or center.

"Board" means the State Board of Health.

"Commissioner" means the State Health Commissioner.

"Compliance" means the completion of the immunization requirements prescribed under 12VAC5-110-70.

"Conditional enrollment" means the enrollment of a student for a period of 90 days contingent upon the student having received at least one dose of each of the required vaccines and the student possessing a plan, from a physician or local health department, for completing his immunization requirements within the ensuing 90 calendar days. If the student requires more than two doses of Hepatitis B vaccine, the conditional enrollment period shall be 180 calendar days.

"Documentary proof" means an appropriately completed copy of ~~Form MCH 213B and the temporary certification form for Haemophilus influenzae type b disease where~~

~~applicable,~~ Form MCH ~~213C or a computer generated facsimile of Form 213C~~ 213F signed by a physician or his designee, registered nurse, or an official of a local health department. ~~The MCH 213C SUPPLEMENT~~ A copy of the immunization record signed or stamped by a physician or his designee, registered nurse, or an official of a local health department indicating the dates of administration including month, day, and year of the required vaccines, shall be acceptable in lieu of recording these dates on Form MCH ~~213C~~ 213F, as long as the ~~supplement~~ record is attached to Form MCH ~~213C~~ 213F and the remainder of Form MCH ~~213C~~ 213F has been appropriately completed. For a new student transferring from an out-of-state school, any immunization record, which contains the exact date (month/day/year) of administration of each of the required doses of vaccines ~~when indicated~~, is signed by a physician of his designee or registered nurse, and complies fully with the requirements prescribed under 12VAC5-110-70 shall be acceptable.

"Immunization" means the administration of a product licensed by the FDA to confer protection against one or more specific pathogens.

"Immunization schedule" means the schedule developed and published by the Centers for Disease Control and Prevention (CDC), the Advisory Committee on Immunization Practices (ACIP), the American Academy of Pediatrics (AAP), and the American Academy of Family Physicians (AAFP).

"Physician" means any person licensed to practice medicine in any of the 50 states or the District of Columbia.

"School" means:

1. Any public school from kindergarten through grade 12 operated under the authority of any locality within this Commonwealth;

2. Any private or ~~parochial~~ religious school that offers instruction at any level or grade from kindergarten through grade 12;

3. Any private or ~~parochial~~ religious nursery school or preschool, or any private or ~~parochial~~ religious child care center required to be licensed by this Commonwealth; and

4. Any preschool ~~handicapped~~ classes or Head Start classes operated by the school divisions within this Commonwealth.

"Student" means any person ~~less than 20 years of age who seeks admission to any Virginia school, or for whom admission to any Virginia school is sought by a parent or guardian~~ who seeks admission to a school, or for whom admission to a school is sought by a parent or guardian, and who will not have attained the age of 20 years by the start of the school term for which admission is sought.

"Twelve months of age" means the 365th day following the date of birth. For the purpose of evaluating records, vaccines administered up to four days prior to the first birthday (361 days following the date of birth) will be considered valid.

Part II
General Information

12VAC5-110-20. Purpose.

This chapter is designed to ensure that all students attending any ~~public, private or parochial~~ school ~~and all attendees of licensed child care centers~~ in the Commonwealth, are adequately immunized and protected against diphtheria, pertussis, tetanus, poliomyelitis, rubeola, rubella, mumps, haemophilus influenzae type b, ~~and~~ hepatitis B, varicella, pneumococcal, and human papillomavirus disease as appropriate for the age of the student.

12VAC5-110-30. Administration.

A. The Board of Health has the responsibility for promulgating regulations pertaining to the implementation of the school immunization law and standards of immunization by which a child attending ~~a~~ any school ~~or child care center~~ may be judged to be adequately immunized.

B. The State Health Commissioner is the executive officer for the State Board of Health with the authority of the board when it is not in session, subject to the rules and regulations of the board.

C. The local health director is responsible for providing assistance in implementing this chapter to the school divisions in his jurisdiction and for providing immunizations to children determined not to be adequately immunized, who present themselves to the local health department for immunization.

D. The school principals of public schools and the principals, headmasters and directors of nonpublic schools ~~and child care centers~~ shall require each student attending their institutions to provide documentary proof of immunization against the diseases listed in 12VAC5-110-70.

Part III
Immunization Requirements

12VAC5-110-70. Immunization requirements.

Every ~~new~~ student ~~and every child attending a licensed child care center~~ enrolling in a school shall provide documentary proof of adequate immunization with the prescribed number of doses of each of the vaccines and toxoids listed in the following subdivisions, as appropriate for his age according to the immunization schedule. Spacing, minimum ages, and minimum intervals shall be in accordance with the immunization schedule. A copy of every student's immunization record shall be on file in his school record.

~~1. Diphtheria and Tetanus Toxoids and Pertussis Vaccine (DTP). For students less than seven years of age, a minimum of three doses of DTP,with one dose administered after the student's fourth birthday. If any of these three doses must be administered on or after the seventh birthday, Td (adult tetanus toxoid full dose and diphtheria toxoid reduced dose) should be used instead of DTP.~~

1. Diphtheria Toxoid. A minimum of four or more properly spaced doses of diphtheria toxoid. One dose shall be administered on or after the fourth birthday. A booster dose shall be administered prior to entering the sixth grade if at least five years have passed since the last dose of diphtheria toxoid.

2. Tetanus Toxoid. A minimum of four or more properly spaced doses of tetanus toxoid. One dose shall be administered on or after the fourth birthday. A booster dose shall be administered prior to entering the sixth grade if at least five years have passed since the last dose of tetanus toxoid.

3. Acellular Pertussis Vaccine. A minimum of four or more properly spaced doses of acellular pertussis vaccine. One dose shall be administered on or after the fourth birthday. A booster dose shall be administered prior to entering the sixth grade if at least five years have passed since the last dose of pertussis vaccine.

~~2.~~ 4. Poliomyelitis Vaccine. A minimum of three doses of all trivalent oral poliomyelitis vaccine (OPV) or all inactivated polio vaccine (IPV), with one dose administered after the fourth birthday ~~or three doses of enhanced-potency inactivated poliomyelitis vaccine (IPV), with one dose administered after the fourth birthday when OPV is contraindicated~~.

~~3.~~ 5. Measles (Rubeola) Vaccine. ~~For students enrolling in kindergarten or first grade on and after July 1, 1991, one~~ One dose of live measles vaccine administered at age 12 months or older, and a second dose administered at four to six years of age or prior to entering kindergarten ~~or first grade, whichever occurs first. The two doses must be administered at least one month apart. Students entering sixth grade on and after July 1, 1992, shall also have received two doses of live measles vaccine, with the first dose administered at age 12 months or older and the second dose at least one month after the first dose. All other students shall have received at least one dose of live measles vaccine. Any measles immunization received after 1968 should be considered to have been administered using a live virus vaccine.~~

~~4. German Measles (Rubella)~~ 6. Rubella Vaccine. A minimum of one dose of rubella virus vaccine administered at age 12 months or older.

~~5.~~ 7. Mumps Vaccine. ~~A minimum of one~~ One dose of mumps virus vaccine administered at age 12 months or older and a second dose administered at four to six years of age or prior to entering kindergarten. ~~The requirement for mumps vaccine shall not apply to any child admitted for the first time to any grade level, kindergarten through grade 12 of a school prior to August 1, 1981.~~

~~6.~~ 8. Haemophilus Influenzae Type b (Hib) Vaccine. A complete series of Hib vaccine i.e., up to a maximum of four doses of vaccine as appropriate for the age of the child and the age at which the immunization series was initiated. The number of doses administered shall be in accordance with current immunization schedule recommendations ~~of either the American Academy of Pediatrics or those of the U.S. Public Health Service~~. Attestation by the physician or his designee, registered nurse, or an official of a local health department on ~~the temporary form documenting immunizations against Hib,~~ that portion of Form MCH ~~213C~~ 213F pertaining to Hib vaccine~~, a computer generated facsimile of MCH 213C, or on the MCH 213C Supplement as defined in 12VAC5-110-10 under "documentary proof"~~ shall mean that the child has satisfied the requirements of this section. This section shall not apply to children older than ~~30~~ 60 months of age or for admission to any grade level, kindergarten through grade 12.

~~The dosage schedule for Hib vaccine varies with the manufacturer. The number of doses of vaccine required is also governed by the age at which immunization is initiated. Hence the reason why the requirements for Hib vaccine are prescribed in a manner different from those for the other vaccines.~~

~~7.~~ 9. Hepatitis B Vaccine. A minimum of three doses of hepatitis B vaccine for all children ~~born on or after January 1, 1994~~. The FDA has approved a two-dose schedule only for adolescents 11 through 15 years of age and only when the Merck brand (RECOMBIVAX HB) Adult Formulation Hepatitis B vaccine is used. The two RECOMBIVAX HB adult doses must be separated by a minimum of four months. The two dose schedule using the adult formulation must be clearly documented in the Hepatitis B section on Form MCH 213F.

10. Varicella (Chickenpox) Vaccine. All susceptible children born on and after January 1, 1997, shall be required to have one dose of chickenpox vaccine on or after 12 months of age and a second dose administered at four to six years of age or prior to entering kindergarten.

11. Pneumococcal Conjugate Vaccine (PCV). A complete series of PCV, i.e., up to a maximum of four doses of vaccine as appropriate for the age of the child and the age at which the immunization series was initiated. The number of doses administered shall be in accordance with current immunization schedule recommendations.

Attestation by the physician or his designee, registered nurse, or an official of a local health department on that portion of Form MCH 213F pertaining to PCV vaccine shall mean that the child has satisfied the requirements of this section. This section shall not apply to children older than 24 months of age.

12. Human Papillomavirus (HPV) Vaccine. Three doses of properly spaced HPV vaccine for females, effective October 1, 2008. The first dose shall be administered before the child enters the sixth grade.

12VAC5-110-80. Exemptions from immunization requirements.

A. Religious and medical exemptions. No certificate of immunization shall be required of any student for admission to school if:

1. The student or his parent or guardian submits a Certificate of Religious Exemption (Form CRE 1), to the admitting official of the school to which the student is seeking admission. Form CRE 1 is an affidavit stating that the administration of immunizing agents conflicts with the student's religious tenets or practices. ~~For a student enrolled before July 1, 1983, any document present in the student's permanent school record claiming religious exemption shall be acceptable.~~ The form is available on the Division of Immunization website at http://www.vdh.virginia.gov//Epidemiology/Immunization/requirements.htm; or

2. The school has written certification on ~~any~~ either of the documents specified under "documentary proof" in 12VAC5-110-10 from a physician, registered nurse, or a local health department that one or more of the required immunizations may be detrimental to the student's health. Such certification of medical exemption shall specify the nature and probable duration of the medical condition or circumstance that contraindicates immunization. ~~For a student enrolled before July 1, 1983, any document attesting to the fact that one or more of the required immunizations may be detrimental to the student's health shall be acceptable.~~

3. Upon the identification of an outbreak, potential epidemic, or epidemic of a vaccine-preventable disease in a public or private school, the commissioner has the authority to require the exclusion from such school of all children who are not immunized against that disease.

B. Demonstration of existing immunity. The demonstration in a student of antibodies against ~~either~~ rubeola ~~or,~~ rubella, or varicella in sufficient quantity to ensure protection of that student against that disease, shall render that student exempt from the immunization requirements contained in 12VAC5-110-70 for the disease in question. Such protection should be demonstrated by means of a serological testing method appropriate for measuring protective antibodies against rubeola ~~or,~~ rubella, or varicella respectively. Reliable history of chickenpox disease diagnosed or verified by a health care provider shall render students exempt from varicella requirements.

C. HPV vaccine. Because the human papillomavirus is not communicable in a school setting, a parent or guardian, at the parent's or guardian's sole discretion, may elect for the parent's or guardian's child not to receive the HPV vaccine, after having reviewed materials describing the link between the human papillomavirus and cervical cancer approved for such use by the board.

Part IV
Procedures and Responsibilities

12VAC5-110-90. Responsibilities of admitting officials.

A. Procedures for determining the immunization status of students. Each admitting official or his designee shall review, before the first day of each school year, the school medical record of every new student seeking admission to his school, and that of every student enrolling in grade six for compliance with the ~~measles vaccine~~ requirements prescribed in subdivisions 1, 2, and 3 of 12VAC5-110-70 ~~3~~. Such review shall determine into which one of the following categories each student falls:

1. Students whose immunizations are adequately documented and complete in conformance with 12VAC5-110-70. Students with documentation of existing immunity to measles, rubella, or varicella as defined in 12VAC5-110-80 B shall be considered to be adequately immunized for such disease.

2. Students who are exempt from the immunization requirements of 12VAC5-110-70 because of medical contraindications or religious beliefs provided for by 12VAC5-110-80.

3. Students whose immunizations are inadequate according to the requirements of 12VAC5-110-70.

4. Students without any documentation of having been adequately immunized.

B. Notification of deficiencies. Upon identification of the students described in subdivisions A 3 and 4 of ~~12VAC5-110-90 A~~ this section, the admitting official shall notify the ~~student or his~~ parent or guardian of the student:

1. That there is no, or insufficient, documentary proof of adequate immunization in the student's school records.

2. That the student cannot be admitted to school unless he has documentary proof that he is exempted from immunization requirements pursuant to 12VAC5-110-70.

3. That the student may be immunized and receive certification by a licensed physician, registered nurse, or an official of a local health department.

4. How to contact the local health department to receive the necessary immunizations.

C. Conditional enrollment. Any student whose immunizations are incomplete may be admitted conditionally if that student provides documentary proof at the time of enrollment of having received at least one dose of the required immunizations accompanied by a schedule for completion of the required doses within 90 calendar days, during which time that student shall complete the immunizations required under 12VAC5-110-70. ~~The following table contains a suggested plan for ensuring the completion of these requirements within the 90 day conditional enrollment period.~~ If the student requires more than two doses of Hepatitis B vaccine, the conditional enrollment period shall be 180 calendar days. If a student is a homeless child or youth and does not have documentary proof of necessary immunizations or has incomplete immunizations and is not exempted from immunization as described in 12VAC5-110-80, the school administrator shall immediately admit such student and shall immediately refer the student to the local school division liaison, who shall assist in obtaining the documentary proof of, or completing, immunizations. The admitting official should examine the records of any conditionally enrolled student at regular intervals to ensure that such a student remains on schedule with his plan of completion.

~~A SUGGESTED PLAN FOR ENSURING COMPLIANCE~~	
~~TIME~~	~~ACTION STEP~~
~~Day 0~~	~~Conditional enrollment period starts. If student has not received first dose(s) of required vaccines, exclude student.~~
~~Day 1 to Day 42~~	~~Student should have received second dose(s) of required vaccines.~~
~~Day 43 to Day 88~~	~~Student should have received third dose(s) of required vaccines.~~
~~Day 89 and Day 90~~	~~Confirm that immunizations are completed; exclude children not in compliance.~~

D. Exclusion. The admitting official shall, at the end of the conditional enrollment period, exclude any student who is not in compliance with the immunization requirements under 12VAC5-110-70 and who has not been granted an exemption under 12VAC5-110-80 until that student provides documentary proof that his immunization schedule has been completed, unless documentary proof~~,~~ that a medical contraindication developed during the conditional enrollment period~~,~~ is submitted.

E. Transfer of records. The admitting official of every school shall be responsible for sending a student's immunization records or a copy thereof, along with his permanent academic or scholastic records, to the admitting official of the school to which a student is transferring within 30 days of his transfer to the new school.

F. Report of student immunization status. Each admitting official shall, within 30 days of the beginning of each school year or entrance of a student, or by October 15 of each school year, file with the State Health Department through the health department for his locality, a report summarizing the immunization status of the students in his school. This report shall be filed using the web-enabled reporting system or on Form SIS 1, the Student Immunization Status Report, and shall contain the number of students admitted to that school with documentary proof of immunization, the number of students who have been admitted with a medical or religious exemption and the number of students who have been conditionally admitted. The report for students entering the sixth grade shall include the number with a booster dose of tetanus, diphtheria, or pertussis containing vaccine within the last five years.

G. Each admitting official shall ensure that the parent or guardian of a female to be enrolled in the sixth grade receives educational materials describing the link between the human papillomavirus and cervical cancer. Materials shall be approved by the board and provided to the parent or guardian prior to the child's enrollment in the sixth grade.

12VAC5-110-100. Responsibilities of physicians and local health departments.

A. Documentary proof for students immunized in Virginia. Every physician, registered nurse, and local health department providing immunizations to a child shall provide documentary proof, as defined in 12VAC5-110-10, to the child or his parent or guardian of all immunizations administered.

B. Documentary proof for out-of-state students. For a student transferring from an out-of-state school to a Virginia school, the admitting official may accept as documentary proof any immunization record for that student ~~which~~ that is signed by a physician or nurse and that contains the exact date (month/day/year) of administration of each of the required doses of vaccines when indicated and ~~which~~ that complies fully with the requirements prescribed under 12VAC5-110-70. Any immunization record ~~which~~ that does not contain the signature of a physician or a nurse and does not contain the month/day/year of administration of each of the required vaccine doses shall not be accepted by the admitting official as documentary proof of adequate immunization ~~with the exception of immunization against Hib~~. Such a student's record shall be evaluated by an official of the local health department who shall determine if that student is adequately immunized in accordance with the provisions of 12VAC5-110-70. Should the local health department determine that such a student is not adequately immunized, that student shall be referred to his private physician or local health department for any required immunizations.

12VAC5-110-130. Responsibility of parent to have a child immunized.

In accordance with § 32.1-46 of the Code of Virginia, ~~"~~the parent, guardian or person standing in loco parentis of each child within this Commonwealth shall ~~cause such child to be~~ ensure such child is immunized ~~by vaccine against diphtheria, tetanus, whooping cough and poliomyelitis and hepatitis B before such child attains the age of one year, against Haemophilus influenzae type b before he attains the age of 30 months, and against measles (rubeola), German measles (rubella) and mumps before such child attains the age of two years. All children shall also be required to receive a second dose of measles (rubeola) vaccine in accordance with the regulations of the board. The board's regulations shall require that all children receive a second dose of measles (rubeola) vaccine prior to first entering kindergarten or first grade and that all children who have not yet received a second dose of measles (rubeola) vaccine receive such second dose prior to entering the sixth grade."~~ in accordance with the immunization schedule.

The parent or guardian of a child who is home instructed shall ensure such child is immunized in accordance with § 22.1-271.4 of the Code of Virginia.

Penalties for noncompliance shall be in accordance with § 32.1-27 of the Code of Virginia.

NOTICE: The forms used in administering the above regulation are not being published; however, the name of each form is listed below. The forms are available for public inspection by contacting the agency contact for this regulation, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS (12VAC5-110)

Certificate of Religious Exemption, ~~CRE-1 (Eff.~~ CRE-1, Rev. 00/92 (eff. 7/83).

School Entrance Physical Examination and Immunization Certification, ~~MCH 213C (Rev. 10/91)~~ MCH 213F (rev. 04/07).

DOCUMENTS INCORPORATED BY REFERENCE (12VAC5-110)

2009 Recommended Immunization Schedule for Persons Aged 0 through 6 Years, U.S. Department of Health and Human Services.

2009 Recommended Immunization Schedule for Persons Aged 7 through 18 Years, U.S. Department of Health and Human Services.

VA.R. Doc. No. R08-1339; Filed May 15, 2009, 1:05 p.m.

Proposed Regulation

Title of Regulation: **12VAC5-612. Regulations to Implement the Onsite Sewage Indemnification Fund (adding 12VAC5-612-10 through 12VAC5-612-100).**

Statutory Authority: § 32.1-164.1:01 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comments: Public comments may be submitted until 5 p.m. on August 7, 2009.

Agency Contact: Allen Knapp, Environmental Health Coordinator, Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7458, FAX (804) 864-7476, or email allen.knapp@vdh.virginia.gov.

Basis: Section 32.1-164.1:01 of the Code of Virginia gives the Board of Health authority to adopt regulations and administer Virginia's onsite sewage indemnification fund program. The Code of Virginia states that the Board of Health "may promulgate regulations pursuant to the Administrative Process Act (§ 2.2-4000 et seq.) for the administration of the fund consistent with this chapter." The authority is discretionary.

Purpose: The VDH proposes regulations to administer the fund. The regulation is essential because implementing the code through policy has led to uncertain outcomes, inconsistent results, and lengthy decision processes. The regulations will encourage owners to repair failing systems as quickly as possible.

The goals of the regulations are to provide notice of the fund, establish the application for reimbursement from the fund, and establish the procedure for investigating and processing requests for assistance.

Substance: The regulations will require all provisions and mandates in § 32.1-164.1:01 of the Code of Virginia. The regulations will require owners to submit complete applications within one year of the date of first failure. The regulations will specify the requirements for a complete application, which will include the actual cost of reimbursement. In cases of demonstrated financial hardship, the regulations will provide an opportunity for partial reimbursement before the complete system is actually installed. Before receiving payment, an owner must sign a release and hold harmless agreement. The regulations will include requirements for decisions and how owners may challenge decisions. The regulations will also state that the commissioner may assist owners whose sewage systems fail within three years of construction from private party error.

Issues: The public's primary advantage is getting a clear and simple application to seek reimbursement. The public will also have a clearly outlined evaluation process for considering reimbursement requests. Owners can anticipate consistent and fair outcomes with the regulations. In cases of

financial hardship, the public will have opportunity for reimbursement before the failing system is repaired. Because the regulation reimburses qualified owners, has financial hardship allowances, and provides an appeal process for unwanted outcomes, the agency does not foresee a disadvantage to the public, private citizens, or businesses.

The primary advantage to the agency is getting an established process with public input. An established process by regulation will assure that decisions are fair and consistent with the mandates of the Code of Virginia. The agency does not foresee any disadvantage with the regulations.

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

Summary of the Proposed Amendments to Regulation. Per Virginia Code § 32.1-164.1:01, the Onsite Sewage Indemnification Fund's purpose is to assist any Virginia real property owner holding a valid permit to operate an onsite sewage system when such system or components thereof fail within three years of construction and such failure results from the negligence of the Department of Health (Department). Currently, the fund is administered in accordance with a guidance document issued by the Department. This document establishes the application procedure for property owners to apply for assistance from the fund and establishes the procedure for investigating and processing requests for assistance from the fund. Additionally, it specifies what information must be included and which actions the owner must take in order to file a complete application for assistance from the fund.

The Board of Health (Board) proposes to incorporate the provisions of the guidance document into new regulations. Also, the proposed regulations would add a new provision which allows individuals who demonstrate a financial inability to repair the onsite sewage system to receive financial assistance before the onsite sewage system is repaired. Individuals who have the financial ability to repair the onsite sewage system must apply for assistance in the form of a reimbursement after the repairs are complete.

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

Estimated Economic Impact. Establishing the procedures and rules within the guidance document in regulation will be beneficial in that the public will have a clearly outlined and consistent evaluation process for considering reimbursement requests. Since guidance documents do not have the same binding legal authority as regulations, according to the Department property owners seeking assistance from the Fund have, in some cases, endured a long, unpredictable review process. Specifically, cases with similar facts have had different outcomes depending on the individual members of the Sewage Handling and Disposal Appeal Review Board's willingness to adhere to the procedures and rules within the guidance document that did not carry the force of law. The Department expects that there will be more consistency and less delay with the procedures and rules in regulation.

The proposed new provision which allows individuals who demonstrate a financial inability to repair the onsite sewage system to receive financial assistance before the onsite sewage system is repaired will clearly be beneficial for such individuals without producing significant costs. Thus a net benefit will be created.

Businesses and Entities Affected. The proposed amendments affect Virginia real property owners with an onsite sewage system that fails within three years of its construction date and who believe the failure is due to the negligence of the Department. The Department estimates that there are 24 to 30 such cases per year.

Localities Particularly Affected. The proposed amendments do not disproportionately affect particular localities.

Projected Impact on Employment. The proposed regulations are unlikely to significantly affect employment.

Effects on the Use and Value of Private Property. The proposal to allow individuals who demonstrate a financial inability to repair the onsite sewage system to receive financial assistance before the onsite sewage system is repaired will likely speed and perhaps increase the frequency that such sewage systems are repaired. This will increase the value of associated properties.

Small Businesses: Costs and Other Effects. The proposals do not adversely affect small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposals do not adversely affect small businesses.

Real Estate Development Costs. The proposed regulations are unlikely to significantly affect real estate development.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected

reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency concurs with the economic impact analysis submitted by the Department of Planning and Budget.

Summary:

The regulations administer § 32.1-164.1:01 of the Code of Virginia, which creates the Onsite Sewage Indemnification Fund. The fund reimburses Virginia real property owners whose onsite sewage systems fail within three years of construction from the negligence of the Virginia Department of Health (VDH). In order to receive assistance, the commissioner must find that the Virginia real property owner:

1. Meets the statutory requirements specified in the Code of Virginia (i.e., valid permit, failure of onsite sewage system within three years from installation, negligent actions by VDH caused failure);

2. Submits a complete application within one year of the date of failure;

3. Follows the requirements to repair or replace the failed system; and

4. Executes a release of claims against the Commonwealth related to the failed system.

If the commissioner finds that the onsite sewage system failed within three years from faulty construction or other private party error, then the commissioner may assist the owner in seeking redress from the system's builder or other private party.

CHAPTER 612
REGULATIONS FOR THE ONSITE SEWAGE INDEMNIFICATION FUND

12VAC5-612-10. Purpose.

The purpose of this chapter is to:

1. Provide notice of and administer the Onsite Sewage Indemnification Fund (hereinafter, the fund) as established by § 32.1-164.1:01 of the Code of Virginia.

2. Establish the application for Virginia real property owners to use for reimbursement from the fund.

3. Establish the procedure for investigating, processing, and evaluating requests for assistance from the fund.

12VAC5-612-20. Definitions.

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

"An onsite sewage system that has been permitted by the Department of Health" means that the Department of Health issued an operation permit in accordance with the Sewage Handling and Disposal Regulations, 12VAC5-610, or its successor.

"Appeal Review Board" means the Sewage Handling and Disposal Appeal Review Board as established by § 32.1-166.1 of the Code of Virginia.

"Commissioner" means the Commissioner of Health, Virginia Department of Health.

"Date of first failure" means the date that a Virginia real property owner submits a repair application to the local health department or the date that a local health department sends a notice to the owner that acknowledges that an apparent failure exists, whichever occurs first.

"Date of system construction" means the date that the local health department inspected and approved the onsite sewage system's construction or the date that the contractor or person who installed the onsite sewage system certifies that the onsite sewage system was installed properly (as evidenced by a completion statement), whichever occurs first. The date of construction is not the date that the local health department issued a permit to operate the sewage system.

"Department" means the Virginia Department of Health.

"Division" means the Division of Onsite Sewage and Water Services, Virginia Department of Health.

"Holding a valid permit to operate an onsite sewage system" means that the Virginia real property owner received a valid operation permit for the onsite sewage system that failed.

"Onsite sewage system" means a treatment works approved in accordance with the Sewage Handling and Disposal Regulations, 12VAC5-610, or its successor.

"Onsite sewage system failure" means an onsite sewage system is not operating in a normal or usual manner as defined by the Sewage Handling and Disposal Regulations, 12VAC5-610, or its successor.

"Onsite sewage system component failure" means that a part or discreet element of the onsite sewage system is not operating in a normal or usual manner, which, when corrected, repaired, or replaced, will return the system to normal function.

"Specific actions of the department were negligent and that those actions caused the failure" means (i) the department had a duty to perform, (ii) the department breached or failed to perform the duty, (iii) the breach of duty or failure to perform the duty proximately caused the actual damage or injury, and (iv) the owner incurred damage or injury.

12VAC5-612-30. Applicability.

This regulation applies to construction permits issued and approved in accordance with the Sewage Handling and Disposal Regulations (12VAC5-610), or its successor. The department will look to the Sewage Handling and Disposal Regulations to resolve any technical issue associated with a request for reimbursement from the fund.

12VAC5-612-40. Complete application.

A. To file a request for reimbursement, the Virginia real property owner must submit a complete application within one year of the date that the system or components thereof failed. The request must be sent by certified mail in a form approved by the division. If the owner was under a disability at the time the cause of action accrued, the tolling provisions of § 8.01-229 of the Code of Virginia will apply. In any action contesting the filing of the request for payment, the burden of proof will be on the Virginia real property owner to establish mailing and receipt.

B. A complete application shall contain all information required by the division, including, but not limited to the following:

1. The owner's name, current address, telephone numbers, and property identification;

2. The property address where the sewage system failed;

3. The date the contractor installed the sewage system;

4. The date the health department approved the sewage system (issued an operation permit);

5. The date the Virginia real property owner filed an application to repair the failed system with the local health department;

6. The date the Virginia real property owner received a notice from the local health department indicating that the sewage system had apparently or actually failed;

7. The date(s) the Virginia real property owner made or hired a contractor to make repairs to the failed sewage system;

8. A description of the repairs made, the date for each repair, and the itemized cost for repairs on each date; and

9. The Virginia real property owner's signature.

C. The Virginia real property owner must attach a copy of receipts, invoices, bills of sale, and canceled checks to substantiate the costs incurred to repair the failed sewage system. The division may request original receipts, invoices, or canceled checks. The commissioner may withhold reimbursement to the Virginia real property owner pending submission of the original receipts, invoices, or canceled checks.

D. Except as provided in 12VAC5-612-50, the commissioner will not act on an incomplete application. A complete application means that the onsite sewage system or components thereof that failed have been repaired or replaced in accordance with the Board of Health's applicable regulations.

E. By completing the application, the Virginia real property owner provides consent for the Virginia Department of Health, the division, the local health department, or other experts deemed necessary by the division to enter onto the property during normal business hours and to perform all tests and analysis deemed necessary to evaluate the request for assistance.

12VAC5-612-50. Financial hardship.

For situations where an application is incomplete because the Virginia real property owner cannot afford or does not have the financial ability to install the repair system or components thereof to comply with the Board of Health's regulations, then the commissioner may consider the incomplete application, subject to the following conditions:

1. The owner must substantiate and verify that he does not have the financial means to install the repair or components thereof. Acceptable verification of financial status may include, but is not limited to, the following: pay stubs, federal tax returns, written statements from employers, social security or retirement awards, unemployment compensation, child or spousal support from nondependant household members, or a bank loan denial letter.

a. For Virginia real property owners whose adjusted gross income is below 250% of the federal poverty guidelines as published each year in the Federal Register, the commissioner may review the incomplete application.

b. For owners whose adjusted gross income is 250% or greater than the federal poverty guidelines as published each year in the Federal Register, the commissioner may review the incomplete application when the Virginia real property owner has been denied a loan. The bank loan denial letter must cite that the Virginia real property owner cannot qualify for a personal loan, a home equity line of credit loan, or any other loan offered by the bank for the amount needed to repair the onsite sewage system or components thereof.

2. The Virginia real property owner must submit three estimates from properly licensed contractors based on the

repair permit issued by the local health department to install the repair system or components thereof. The commissioner may consider fewer estimates if requested by the Virginia real property owner and a sufficient reason is provided as to why three estimates cannot be obtained.

12VAC5-612-60. Informal fact-finding conference.

A. Following submission of a complete application, a Virginia real property owner may request an informal fact-finding conference in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) of the Code of Virginia to assist the division in gathering facts for an application to the fund.

B. A verbatim record of the informal fact-finding conference is not required. Any party may request a verbatim record and the requesting party is responsible for making a verbatim record. When a verbatim record is made at the commissioner's direction, it shall constitute the official record of the proceedings. The commissioner shall review the facts presented and render a case decision based upon those facts.

12VAC5-612-70. Decision.

A. The division will evaluate complete applications and provide a recommendation to the commissioner. Upon the commissioner's finding that (i) the onsite sewage system or components thereof failed within three years of construction; (ii) specific actions of the department were negligent and that those actions caused the failure; and (iii) the owner filed a request for payment from the fund within one year from the date the system or components thereof failed, then the commissioner will reimburse the Virginia real property owner for the reasonable cost of following the Board of Health's regulations to repair or replace the failed onsite sewage system or components thereof and subject to the limitations and conditions in this chapter and § 32.1-164.1:01 of the Code of Virginia.

B. If the commissioner finds that (i) the Virginia real property owner's onsite sewage system was permitted by the department, (ii) the system failed within three years of construction, and (iii) the failure resulted from faulty construction or other private party error (the department's negligence, if any, did not cause the sewage system to fail), then the commissioner may assist the owner of the failed system in seeking redress from the system's builder or other private party. The assistance will be limited to providing expert services and information.

12VAC5-612-80. Release and hold harmless agreement.

Reimbursement from the fund is conditioned upon the Virginia real property owner completing a release and hold harmless agreement as required by the division and in a form approved by the division. The Virginia real property owner must release and hold harmless the Commonwealth, its political subdivisions, agencies and instrumentalities, and any officer or employee of the Commonwealth in connection with or arising out of the occurrence complained of.

12VAC5-612-90. Appeal Review Board.

A. The Appeal Review Board may review the commissioner's decision to reimburse or to deny reimbursement under this chapter. To request a review, the Virginia real property owner must file a written request for review to the Appeal Review Board and in accordance with the Appeal Review Board's directives and authority.

B. In reviewing cases and rendering final administrative decisions, the Appeal Review Board is bound by statutes and the Board of Health's regulations in the same manner as implemented or directed by the department, the commissioner, or the local and district health departments.

C. The Appeal Review Board must cite in its written decision whether the appellant proved by a preponderance of the evidence that (i) the onsite sewage system or components thereof failed within three years of construction; (ii) specific actions of the department were negligent and that those actions caused the failure; and (iii) the owner filed a request for payment from the fund within one year from the date the system or components thereof failed. The decision must cite the date of construction, the date of first failure, and the date that the owner filed a request for payment from the fund. The decision must explain the specific actions of the department that were or were not negligent and how those actions did or did not cause the failure.

D. The Appeal Review Board may provide the Virginia real property owner and the department an opportunity to reconsider its written decision. Any party requesting a rehearing of the Appeal Review Board's decision must file a written request for rehearing to the secretary to the Appeal Review Board within 14 calendar days of the Appeal Review Board's decision. The request for rehearing must explain why it is requested and necessary. Upon such request, the Appeal Review Board may, at its own discretion, schedule a rehearing to reconsider or clarify its decision. The Appeal Review Board must notify the department and the Virginia real property owner within 14 calendar days of the request whether a rehearing will be granted or whether a new decision will be made. If the Appeal Review Board grants a rehearing of the case decision, then the prior case decision will be vacated.

E. In accordance with § 32.1-166.1 of the Code of Virginia, the Appeal Review Board shall render the final administrative decision, which may be appealed by a named party to the appropriate circuit court in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

12VAC5-612-100. Prohibitions and limitations.

A. A Virginia real property owner cannot be reimbursed for both the cost of the failed system and the cost for repairs or components thereof. If the costs to repair the system or components thereof are less than the cost of the failed system, only the costs to repair the system or components thereof can be reimbursed.

B. If the cost to repair the system or components thereof exceeds the cost of the failed system, only those costs that are directly attributed to labor (which includes design) and equipment (which includes materials) will be reimbursed.

C. Virginia real property owners will not be reimbursed for consequential damages in accordance with § 32.1-164.1:01 E of the Code of Virginia.

D. Installing or modifying a sewage system without a valid construction or repair permit automatically voids any application for assistance from the fund. Any Virginia real property owner who did not possess a valid operation permit for the onsite sewage system's installation or who operated the onsite sewage system without a valid permit will not be entitled to assistance from the fund.

E. In issuing a construction permit pursuant to § 32.1-163.5 of the Code of Virginia, the Department of Health will not assume liability for actions and decisions made by private parties.

F. The fund will not reimburse any Virginia real property owner more than $30,000 for an onsite sewage system failure or component thereof.

G. In the event the fund is insufficient to meet requests for payment, the creation of the fund shall not be construed to provide liability on the part of the department or any of its personnel where no such liability existed prior to July 1, 1994.

H. Before payment or assistance is disbursed, the Virginia real property owner must:

1. Submit an application to repair the sewage system or components thereof to the local health department in the city, county, or town where the property is located.

2. Receive a repair permit from the local health department.

3. Complete the requirements in the repair permit and receive an operation permit unless exempted by 12VAC5-612-50.

4. Sign the required release and hold harmless agreement.

NOTICE: The forms used in administering the above regulation are not being published; however, the name of each form is listed below. The forms are available for public inspection by contacting the agency contact for this regulation, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS (12VAC5-612)

Release and Hold Harmless Agreement, IF (eff. XX/XX).

Application for Indemnification, IF 2 (eff. XX/XX).

VA.R. Doc. No. R08-1337; Filed May 19, 2009, 12:45 p.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Fast-Track Regulation

Titles of Regulations: **12VAC30-20. Administration of Medical Assistance Services (amending 12VAC30-20-210).**

12VAC30-40. Eligibility Conditions and Requirements (amending 12VAC30-40-10).

12VAC30-130. Amount, Duration and Scope of Selected Services (amending 12VAC30-130-750, 12VAC30-130-790; repealing 12VAC30-130-780).

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

Public Hearing Information: No public hearings are scheduled.

Public Comments: Public comments may be submitted until 5 p.m. on July 8, 2009.

Effective Date: July 23, 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.

Basis: Section 32.1-325 of the Code of Virginia grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. Section 32.1-324 of the Code of Virginia authorizes the Director of DMAS to administer and amend the Plan for Medical Assistance according to the board's requirements. The Medicaid authority as established by § 1902 (a) of the Social Security Act (42 USC §1396a) provides governing authority for payments for services.

Purpose: In 1990 in an effort to achieve Medicaid cost savings, Congress added § 1906 to the Social Security Act, to provide for the *mandatory* enrollment of Medicaid eligibles in cost effective group health plans as a condition of Medicaid eligibility. States were required to pay premiums, deductibles, and coinsurance on behalf of Medicaid beneficiaries eligible for enrollment in employer-based group health plans when it was determined cost effective to do so. Thus the Health Insurance Premium Payment (HIPP) program was born. However, as a result of low enrollments

and difficulties encountered by states with implementing the requirements, § 4741 of the Balanced Budget Act (BBA) of 1997 amended §§ 1902(a)(25) and 1906(a)(1) of the Act making this provision optional, effective August 5, 1997.

The purpose of this regulatory change is to amend current Medicaid regulations to remove the requirement for enrollment in an employer-based group health plan, if such plan is available to the individual and is cost effective, as a condition of Medicaid eligibility. DMAS believes that the proposed amendment of current regulations contributes to preserving the health, safety, and welfare of the citizens of the Commonwealth.

Rationale for Using Fast-Track Process: The fast-track process is being utilized to promulgate this change in regulatory language as it is expected to be a noncontroversial amendment to existing regulations. The result of the change would relieve the current administrative burden to obtain and process HIPP applications placed on Medicaid applicants, employers, DSS eligibility staff, and HIPP unit staff that do not result in increased cost savings to the state. Additionally, the workload decrease for application processing would likely result in the program being more cost effective as a result of lower administrative costs. Reducing the administrative time required by this regulation would immediately increase the time available for HIPP and DSS eligibility staff to complete existing application processing requirements and reduce or eliminate the potential for increasing staff as a result of increased workloads.

Substance: The current HIPP regulations require as a condition of Medicaid eligibility that a Medicaid applicant or enrollee who has access to employer group health insurance must complete a HIPP application and enroll the Medicaid eligible household members in the employer's health insurance if it is determined to be cost effective. Cost effective means that it is likely to cost the state less to pay the employee's share of the health insurance premium and any cost-sharing items for the Medicaid eligible household members, than it would cost otherwise under Medicaid.

All applicants or enrollees must complete a HIPP application when a member of the household is working 30 hours or more a week and has access to employer-sponsored health insurance. In addition to the HIPP application form, an Employer Insurance Verification must be completed by the employer. The HIPP application forms are forwarded to DMAS HIPP unit staff to determine program eligibility, perform a cost effectiveness evaluation, and enroll in the HIPP program if eligible.

The current mandatory requirement for HIPP is administratively burdensome, time consuming, and inefficient for the Department of Social Services (DSS) eligibility staff, the DMAS HIPP unit staff, the Medicaid applicant/enrollee and employer. A significant amount of administrative time is expended to obtain and process HIPP applications as a result of this mandatory requirement. Seventy percent of these HIPP applications received by DMAS result in a denial, primarily because the Medicaid application does not coincide with the employer's health insurance open enrollment period. As a result DMAS loses much of the savings this program is projected to achieve. Changing the HIPP program to an optional program will result in a reduction of wasted administrative efforts on behalf of applicants, employers, DSS eligibility staff, and DMAS HIPP unit staff. Individuals will still be able to apply for the HIPP program on a voluntary basis. As a voluntary program, the number of applications would decrease to only those cases where the Medicaid eligible child is enrolled in the employer health plan or is being added to the plan during the open enrollment period. Cost savings to the state will continue for those Medicaid applicants/enrollees who desire to participate requiring less administrative effort while reducing the efforts currently expended with requiring everyone to apply even if they are not able to currently enroll in the health plan.

With the change to make the HIPP program optional, recipient eligibility should be expanded to include any Medicaid eligible family member covered under the employer's health insurance regardless of whether they reside in the same household. Currently as a mandatory requirement, all household members residing in the same household who were eligible for coverage under the group health plan and eligible for Medicaid are eligible for consideration for HIPP. Medicaid enrollees who do not reside in the same household as the family member who had access to employer health insurance are not eligible to participate in HIPP. With the proposed change to expand recipient eligibility, if a family member moved out of the household, eligibility for HIPP participation could continue.

Nearly 20% of the current enrollees are disabled adults, who are eligible to continue health insurance coverage on their parent's health plan as a result of meeting certain disability criteria. Currently, if the disabled adult elects to move out of the household, they would no longer remain eligible for enrollment in the HIPP program. The premise of the HIPP program is to enroll Medicaid eligible family members in an employer's group health plan when it is cost effective to do so. Whether a family member lives in the same household as the policy holder has no bearing on whether the employer health insurance plan is cost effective. Therefore, this regulation makes a change to permit an adult disabled child who remains eligible under a parent's health insurance plan after they turn 18 to remain eligible for HIPP even if they move out of their parent's home into their own residence or a group home setting. Individuals would be able to continue medical care with existing providers who have in many cases provided care throughout the individual's lifetime. For children in situations where parents separate or divorce and leave the household, the child would be able to continue care under current medical providers. If the employer health

insurance is dropped, the child would most likely be enrolled in a Medicaid Managed Care Organization with new medical provider. Medical continuity of care would be lost.

This regulation change has little impact on the HIPP program and would clarify current regulations regarding eligibility requirements and improve program operations. The change would provide greater stability and retention in employer's health insurance coverage. The regulation changes in 12VAC30-130-750, Time frames for determining cost effectiveness, and 12VAC30-130-790, Information required of applicants and recipients, is a clarification of existing policy.

Issues: There are no disadvantages to the public or the Commonwealth in this regulation. The advantage is to applicants and employers who would no longer be required to complete HIPP forms unnecessarily; eligibility and HIPP unit staff would not be burdened with obtaining and processing applications in which a majority were denied because the Medicaid eligible household member was not enrolled or could not enroll in the employer's health plan.

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

Summary of the Proposed Amendments to Regulation. The proposed regulations will make the currently mandatory participation in the Health Insurance Premium Payment program optional and extend the eligibility for participation to the family members who are not living in the same household but have coverage under the same group health plan.

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

Estimated Economic Impact. Currently, the participation in the Health Insurance Premium Payment (HIPP) program is mandatory and a condition of Medicaid eligibility. All Medicaid applicants who have access to employer-sponsored health insurance are required to apply, and if found cost effective, are required to enroll in the HIPP program. Under HIPP, Medicaid pays for employee's share of the health insurance premium and any other cost sharing fees. The proposed regulations will make the currently mandatory participation in HIPP optional.

According to the Department of Medical Assistance Services (DMAS), current regulations necessitate that all eligible HIPP applicants are considered while only a fraction is approved rendering the administration of the program costly. Based on Fiscal Year 2007 data, a total of 2,308 applications were received, 702 were approved, and 1,606 were denied. According to the same data, more than one half of the denials occurred when either the employee had employee-only coverage or it was not open-enrollment period. The proposed optional enrollment feature is expected to provide some administrative cost savings to Medicaid, to the participant, and to the employers.

Another proposed change will no longer require that the family members must be living in the same household for eligibility to participate in the program. Over the years, DMAS discovered that there are certain situations where a family member may be covered under the same group plan but may not be necessarily living within the same household. For example, a mentally ill adult sibling may be cared for in a non-household setting but may be covered under parent's group insurance. Thus, the proposed change is expected to make the HIPP program accessible to those individuals if they choose to participate. The main effect of additional participation would be increased savings.

However, it is worth noting that if the HIPP program is optional, there may not be any appealing reason for an applicant to apply for participation. Thus, the proposed optional enrollment feature is expected to result in very low enrollment levels. Given the fixed costs associated with keeping any program operational, it may be worthwhile for DMAS to evaluate the cost effectiveness of the HIPP program as an optional program.

Businesses and Entities Affected. The proposed regulations will no longer mandate the application for enrollment in the HIPP program. In fiscal year 2007, approximately 2,300 applications were received.

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

Projected Impact on Employment. The proposed regulations are expected to reduce administrative costs and therefore demand for administrative labor. However, the reduced administrative savings may be directed to other areas. Thus, the net effect of the proposed changes on employment is uncertain.

Effects on the Use and Value of Private Property. The proposed regulations are not expected to have a significant effect on the use and value of private property. However, reduced administrative costs on employers may contribute to their business' asset values.

Small Businesses: Costs and Other Effects. Most of the employers that may be affected are probably small businesses. The proposed regulations would reduce administrative costs on employers by no longer mandating application for enrollment in the HIPP program.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed regulations are not expected to result in adverse impact on small businesses.

Real Estate Development Costs. The proposed regulations are not expected to have any effect on real estate development costs.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the

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

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency has reviewed the economic impact analysis prepared by the Department of Planning and Budget regarding the regulations concerning HIPP Program Modifications (12VAC30-40-10, General conditions of eligibility; 12VAC30-20-210 State method on cost effectiveness of employer-based group health plans under § 1902(a)(25) and 1906(a)(1) of the Act; 12VAC30-130-750, Time frames for determining cost effectiveness; 12VAC 30-130-790, Information required of applicants and recipients). The agency raises no issues with this analysis.

Summary:

The amendments to the Health Insurance Premium Payment (HIPP) program change the participation requirement from a mandatory requirement and a condition of Medicaid eligibility, to an optional program. In 1997 the federal statute governing HIPP, 42 USC § 1396e, was amended to make the program optional. The mandatory requirement is inefficient, administratively time consuming and does not result in additional cost savings to the state. The amendments expand the eligibility requirement to allow family members who are not living in the same household but who have coverage under the group health plan to participate in HIPP.

12VAC30-20-210. State method on cost effectiveness of employer-based group health plans.

~~1.~~ A. Definitions. The following words and terms~~,~~ when used in these regulations~~,~~ shall have the following meanings~~,~~ unless the context clearly indicates otherwise:

"Case" means all ~~persons who are living in the same household~~ family members who are eligible for coverage under the group health plan and who are eligible for Medicaid.

"Code" means the Code of Virginia.

"Cost effective" and "cost effectiveness" mean the reduction in Title XIX expenditures, which are likely to be greater than the additional expenditures for premiums and cost-sharing items required under § 1906 of the Social Security Act (the Act), with respect to such enrollment.

"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~~, Chapter 10, Title 32.1, §§ 32.1 323 et seq~~.

"DSS" means the Department of Social Services consistent with Chapter 1 (§ 63.2-100 et seq.) of Title 63.2 of the Code of Virginia~~, Chapter 1, Title 63.1, § 63.1 1.1 et seq~~.

"Family member" means individuals who are related by blood, marriage, or adoption.

"Group health plan" means a plan which meets § 5000(b)(1) of the Internal Revenue Code of 1986, and includes continuation coverage pursuant to Title XXII of the Public Health Service Act, § 4980B of the Internal Revenue Code of 1986, or Title VI of the Employee Retirement Income Security Act of 1974. Section 5000(b)(1) of the Internal Revenue Code provides that a group health plan is ~~any~~ a plan, including a self-insured plan, of, or contributed to by, an employer (including a self-insured ~~plan)~~ person) or employee association to provide health care (directly or otherwise) to the ~~employer's~~ employees, former employees, or the families of such employees or former employees, or the employer.

"HIPP" means the Health Insurance Premium Payment Program administered by DMAS consistent with § 1906 of the Act.

"Premium" means that portion of the cost for the group health plan which is the responsibility of the person carrying the group health plan policy.

"Premium assistance" means the portion that DMAS will pay of the family's cost of participating in an employer's health plan to cover the Medicaid eligible members under the employer-sponsored plan if DMAS determines it is cost effective to do so.

"Recipient" means a person who is eligible for Medicaid~~,~~ as determined by the Department of Social Services.

~~2.~~ B. Program ~~Purpose~~ purpose. The purpose of the HIPP Program shall be to:

~~A. To identify cases in which enrollment of a recipient in~~ 1. Enroll recipients who have an available group health plan that is likely to be cost effective;

~~B. To require that recipients in those cases enroll in the available group health plan as a condition of Medicaid eligibility;~~

~~C. To provide~~ 2. Provide for payment of the premiums and other cost-sharing obligations for items and services otherwise covered under the State Plan for Medical Assistance (the Plan); and

~~D. To treat~~ 3. Treat coverage under such group health plan as a third party liability consistent with § 1906 of the Act.

~~3.~~ C. Recipient ~~Eligibility~~ eligibility. All ~~persons who are living in the same household~~ family members who are eligible for coverage under the group health plan and who are eligible for Medicaid shall be eligible for consideration for HIPP, except those identified below. The agency will consider recipients in ~~§ 3 A through § 3 D~~ this subsection for consideration for HIPP when extraordinary circumstances indicate the group health plan might be cost effective.

~~A.~~ 1. The recipient is Medicaid eligible due to "spend-down";

~~B.~~ 2. The recipient is only retroactively eligible for Medicaid;

~~C.~~ 3. The recipient is in a nursing home or has a deduction from patient pay responsibility to cover the insurance premium; or

~~D.~~ 4. The recipient is eligible for Medicare Part B, but is not enrolled in Part B.

~~4. Condition of Medicaid eligibility. When DMAS determines that a group health plan is likely to be cost effective based on the DMAS established methodology, DSS or DMAS shall require recipients to enroll in that group health plan as a condition of Medicaid eligibility. Non-compliance creates ineligibility for Medicaid until the recipient demonstrates a willingness to comply.~~

~~A. Cooperation required. The recipient shall, as a condition of Medicaid eligibility, obtain the required information on the group health plans available to the recipient, shall provide this information to DSS or DMAS, and shall apply for enrollment in the group health plan, as directed by DSS or DMAS unless good cause for failure to cooperate has been established or unless the recipient is unable to enroll on his own behalf. Once the good cause circumstances no longer exist, the recipient shall be required to comply.~~

~~B. Non-cooperation of parent or spouse. When a parent or spouse fails to provide DSS or DMAS with the required information necessary to determine availability of a group health plan, fails to enroll in the group health plan that DMAS has determined to be cost effective, as directed by DMAS, or disenrolls from a group health plan that DMAS has determined to be cost effective, eligibility for Medicaid benefits for the recipient child or recipient spouse shall not be affected.~~

~~C. Application required. If the recipient is not already enrolled in a group health plan at the time the cost effectiveness determination is made, the recipient may not be able to enroll in such group health plan until a later date (such as an open enrollment period). The recipient shall provide to DSS or DMAS a completed application for enrollment in the group health plan which DMAS has determined to be cost effective as proof of cooperation within 30 days of receipt of such request from DSS or DMAS. The recipient shall, as a condition of Medicaid eligibility, enroll in the group health plan at the earliest date in which enrollment is possible, unless good cause for failure to cooperate has been established or unless the recipient is unable to enroll on his own behalf.~~

~~D. Non-compliance. If a recipient refuses to obtain the required information on group health plans available to the recipient or refuses to provide such information to DSS or DMAS or does not enroll in the group health plan which DMAS has determined to be cost effective, as directed by DMAS, or refuses to provide DSS or DMAS a completed application for enrollment in the group health plan within the deadline given, the recipient shall lose eligibility for Medicaid. Medicaid eligibility shall end after appropriate written notice is given to the recipient as required by 42 CFR 431.211. This ineligibility shall remain effective until the recipient demonstrates willingness to enroll in the group health plan.~~

~~E. Disenrollment. If a recipient disenrolls from a group health plan which DMAS has determined to be cost effective, or fails to pay the premium to maintain the group health plan, the recipient shall lose eligibility for Medicaid. Medicaid eligibility shall end after appropriate written notice is given to the recipient as required by 42 CFR 431.211. This ineligibility shall remain effective until the recipient demonstrates willingness to enroll in the group health plan.~~

~~F. Multiple group health plans. When more than one group health plan is available to the recipient, the recipient shall, as a condition of Medicaid eligibility, enroll in one of the group health plans which DMAS has determined to be cost effective, as directed by DSS or DMAS unless good cause for failure to cooperate has been established or unless the recipient is unable to enroll on his own behalf or unless DMAS has determined that none of the available group health plan would be cost effective.~~

~~G. All of the requirements pertaining to recipients also apply to parents, spouses, and persons who are acting on behalf of recipients.~~

D. Application required. A completed HIPP application must be submitted to DMAS to be evaluated for eligibility

and cost effectiveness. The HIPP application consists of the forms prescribed by DMAS and any necessary information as required by the program to evaluate eligibility and perform a cost-effectiveness evaluation.

~~5.~~ E. Payments. When DMAS determines that a group health plan is likely to be cost effective based on the DMAS established methodology, DMAS shall provide for the payment of premiums and other cost-sharing obligations for items and services otherwise covered under the Plan, except for the nominal cost sharing amounts permitted under § 1916.

~~A.~~ 1. Effective date of premiums. Payment of premiums shall become effective on the first day of the month following the month in which DMAS makes the cost effectiveness determination or the first day of the month in which the group health plan coverage becomes effective, whichever is later. Payments shall be made to either the employer, the insurance company or to the individual who is carrying the group health plan coverage.

~~B.~~ 2. Termination date of premiums. Payment of premiums shall end:

~~1.~~ a. On the last day of the month in which eligibility for Medicaid ends;

~~2.~~ b. The last day of the month in which the recipient loses eligibility for coverage in the group health plan, or

~~3.~~ c. The last day of the month in which adequate notice has been given (consistent with federal requirements) that DMAS has redetermined that the group health plan is no longer cost effective, whichever comes later.

~~C.~~ 3. Non-Medicaid eligible family members. Payment of premiums for non-Medicaid eligible family members ~~shall~~ may be made when their enrollment in the group health plan is required in order for the recipient to obtain the group health plan coverage. Such payments shall be treated as payments for Medicaid benefits for the recipient. No payments for deductibles, coinsurances and other cost-sharing obligations for non-Medicaid eligible family members shall be made by DMAS.

~~D~~. 4. Evidence of ~~Enrollment Required~~ enrollment required. A person to whom DMAS is paying the group health plan premium shall, as a condition of receiving such payment, provide to DSS or DMAS, upon request, written evidence of the payment of the group health plan premium for the group health plan which DMAS determined to be cost effective.

~~6.~~ F. Guidelines for determining cost effectiveness.

~~A.~~ 1. Enrollment limitations. DMAS shall take into account that a recipient may only be eligible to enroll in the group health plan at limited times and only if other non-Medicaid eligible family members are also enrolled in the plan simultaneously.

~~B.~~ 2. Plans provided at no cost. Group health plans for which there is no premium to the person carrying the policy shall be considered to be cost effective.

~~C.~~ 3. Non-Medicaid eligible family members. When non-Medicaid eligible family members must enroll in a group health plan in order for the recipient to be enrolled, DMAS shall consider only the premiums of non-Medicaid eligible family members in determining the cost effectiveness of the group health plan.

~~D. 4. [Reserved.]~~

~~E.~~ 4. DMAS shall make the cost effectiveness determination based on the following methodology:

~~1.~~ a. Recipient and group health plan information. DMAS shall obtain demographic information on each recipient in the case, including, but not limited to: federal program designation, age, sex, geographic location. DMAS [or DSS] shall obtain specific information on all group health plans available to the recipients in the case, including, but not limited to~~:~~, the effective date of coverage, the services covered by the plan, the exclusions to the plan, and the amount of the premium.

~~2.~~ b. Average estimated Medicaid expenditures. DMAS shall estimate the average Medicaid expenditures for a ~~12 month~~ 12-month period for each recipient in the case based on the expenditures for persons similar to the recipient in demographic and eligibility characteristics. Expenditures shall be adjusted accordingly for inflation and scheduled provider reimbursement rate increases. Average estimated Medicaid expenditures shall be updated periodically.

~~3.~~ c. Medicaid expenditures covered by the group health plan. DMAS shall compute the percentage of expenditures for group health plan services against the expenditures for the same Medicaid services and then adjust the average estimated Medicaid expenditures by this percentage for each recipient in the case. These adjusted expenditures shall be added to obtain a total for the case.

~~4.~~ d. Group health plan allowance. DMAS shall multiply an allowance factor by the Medicaid expenditures covered by the group health plan to produce the estimated group health plan allowance. The allowance factor shall be based on a state specific factor, a national factor or a group health plan specific factor.

~~5.~~ e. Covered expense amount. DMAS shall multiply an average group health plan payment rate by the group health plan allowance to produce an estimated covered expense amount. The average group health plan payment rate shall be based on a state specific rate, national rate or group health plan specific rate.

~~6.~~ f. Administrative cost. DMAS shall total the administrative costs of the HIPP program and estimate an average administrative cost per recipient. DMAS shall add to the administrative cost any pre-enrollment costs required in order for the recipient to enroll in the group health plan.

~~7.~~ G. Determination of cost effectiveness. DMAS shall determine that a group health plan is likely to be cost effective if ~~a.~~ subdivision 1 of this subsection is less than ~~b. below~~ subdivision 2 of this subsection:

~~a. the~~ 1. The difference between the group health plan allowance and the covered expense amount, added to the premium and the administrative cost; and

~~b. the~~ 2. The Medicaid expenditures covered by the group health plan.

~~8.~~ If ~~a.~~ subdivision 1 of this subsection is not less than ~~b. above~~ subdivision 2 of this subsection, DMAS shall adjust the amount in ~~b.~~ subdivision 2 of this subsection using past medical utilization data on the recipient, provided by the Medicaid claims system or by the recipient, to account for any higher than average expected Medicaid expenditures. DMAS shall determine that a group health plan is likely to be cost effective if ~~a.~~ subdivision 1 of this subsection is less than ~~b.~~ subdivision 2 of this subsection once this adjustment has been made.

~~F.~~ 3. Redetermination. DMAS shall redetermine the cost effectiveness of the group health plan periodically, not to exceed every ~~twelve~~ 12 months. DMAS shall also redetermine the cost effectiveness of the group health plan whenever there is a change to the recipient and group health plan information ~~which~~ that was used in determining the cost effectiveness of the group health plan. When only part of the household loses Medicaid eligibility, DMAS shall redetermine the cost effectiveness to ascertain whether payment of the group health plan premiums continue to be ~~cost-effective~~ cost effective.

~~G.~~ 4. Multiple group health plans. When a recipient is eligible for more than one group health plan, DMAS shall perform the cost effectiveness determination on the group health plan in which the recipient is enrolled. If the recipient is not enrolled in a group health plan, DMAS shall perform the cost effectiveness determination on each group health plan available to the recipient.

~~7.~~ H. Third party liability. When recipients are enrolled in group health plans, these plans shall become the first sources of health care benefits, up to the limits of such plans, prior to the availability of Title XIX benefits.

~~8.~~ I. Appeal ~~Rights~~ rights. Recipients shall be given the opportunity to appeal adverse agency decisions consistent with agency regulations for client appeals ~~(12VAC30-110-10 et seq.)~~ (12VAC30-110).

~~9.~~ J. Provider requirements. Providers shall be required to accept the greater of the group health plan's reimbursement rate or the Medicaid rate as payment in full and shall be prohibited from charging the recipient or Medicaid amounts that would result in aggregate payments greater than the Medicaid rate as required by 42 CFR 447.20.

~~10. HIPP Program Phase in across the Commonwealth. The Health Insurance Premium Payment (HIPP) Program will be implemented in phases. The first phase will be implemented in certain pilot areas, full statewide implementation will occur once the pilot phase is completed. DMAS has the Health Care Financing Administration's (HCFA) approval for conducting a pilot phase before full statewide implementation. The pilot phase of the program will be implemented March 1, 1993.~~

Part I
General Conditions of Eligibility

12VAC30-40-10. General conditions of eligibility.

Each individual covered under the plan:

1. Is financially eligible (using the methods and standards described in Parts II and III of this chapter) to receive services.

2. Meets the applicable nonfinancial eligibility conditions.

a. For the categorically needy:

(i) Except as specified under items (ii) and (iii) below, for AFDC-related individuals, meets the nonfinancial eligibility conditions of the AFDC program.

(ii) For SSI-related individuals, meets the nonfinancial criteria of the SSI program or more restrictive SSI-related categorically needy criteria.

(iii) For financially eligible pregnant women, infants or children covered under § 1902(a)(10)(A)(i)(IV), 1902(a)(10)(A)(i)(VI), 1902(a)(10)(A)(i)(VII), and 1902(a)(10)(A)(ii)(IX) of the Act, meets the nonfinancial criteria of § 1902(l) of the Act.

(iv) For financially eligible aged and disabled individuals covered under § 1902(a)(10)(A)(ii)(X) of the Act, meets the nonfinancial criteria of § 1902(m) of the Act.

b. For the medically needy, meets the nonfinancial eligibility conditions of 42 CFR 435.

c. For financially eligible qualified Medicare beneficiaries covered under § 1902(a)(10)(E)(i) of the Act, meets the nonfinancial criteria of § 1905(p) of the Act.

d. For financially eligible qualified disabled and working individuals covered under § 1902(a)(10)(E)(ii) of the Act, meets the nonfinancial criteria of § 1905(s).

3. Is residing in the United States and:

a. Is a citizen; or

b. Is a qualified alien as defined under Public Law 104-193 who arrived in the United States prior to August 22, 1996;

c. Is a qualified alien as defined under Public Law 104-193 who arrived in the United States on or after August 22, 1996, and whose coverage is mandated by Public Law 104-193;

d. Is an alien who is not a qualified alien, or who is a qualified alien who arrived in the United States on or after August 22, 1996, whose coverage is not mandated by Public Law 104-193 (coverage must be restricted to certain emergency services).

4. Is a resident of the state, regardless of whether or not the individual maintains the residence permanently or maintains it a fixed address.

The state has open agreement(s).

5. Is not an inmate of a public institution. Public institutions do not include medical institutions, nursing facilities and intermediate care facilities for the mentally retarded, or publicly operated community residences that serve no more than 16 residents, or certain child care institutions.

6. Is required, as a condition of eligibility, to assign rights to medical support and to payments for medical care from any third party, to cooperate in obtaining such support and payments, and to cooperate in identifying and providing information to assist in pursuing any liable third party. The assignment of rights obtained from an applicant or recipient is effective only for services that are reimbursed by Medicaid. The requirements of 42 CFR 433.146 through 433.148 are met.

An applicant or recipient must also cooperate in establishing the paternity of any eligible child and in obtaining medical support and payments for himself or herself and any other person who is eligible for Medicaid and on whose behalf the individual can make an assignment; except that individuals described in § 1902(1)(1)(A) of the Social Security Act (pregnant women and women in the post-partum period) are exempt from these requirements involving paternity and obtaining support. Any individual may be exempt from the cooperation requirements by demonstrating good cause for refusing to cooperate.

An applicant or recipient must also cooperate in identifying any third party who may be liable to pay for care that is covered under the state plan and providing information to assist in pursuing these third parties. Any individual may be exempt from the cooperation requirements by demonstrating good cause for refusing to cooperate.

7. a. Is required, as a condition of eligibility, to furnish his social security account number (or numbers, if he has more than one number) except for aliens seeking medical assistance for the treatment of an emergency medical condition under § 1903(v)(2) of the Social Security Act (§ 1137(f)).

b. Applicant or recipient is required, under § 1903(x) to furnish satisfactory documentary evidence of both identity and of U.S. citizenship upon signing the declaration of citizenship required by § 1137(d). Qualified aliens signing the declaration of satisfactory immigration status required by § 1137(d) must also present and have verified documents establishing the claimed immigration status under § 137(d). Exception: Nonqualified aliens seeking medical assistance for the treatment of an emergency medical condition under § 1903(v)(2) as described in § 1137(f).

8. Is not required to apply for AFDC benefits under Title IV-A as a condition of applying for, or receiving Medicaid if the individual is a pregnant women, infant, or child that the state elects to cover under § 1902(a)(10)(A)(i)(IV) and 1902(a)(10)(A)(ii)(IX) of the Act.

9. Is not required, as an individual child or pregnant woman, to meet requirements under § 402(a)(43) of the Act to be in certain living arrangements. (Prior to terminating AFDC individuals who do not meet such requirements under a state's AFDC plan, the agency determines if they are otherwise eligible under the state's Medicaid plan.)

~~10. Is required to apply for enrollment in an employer-based cost-effective group health plan (as determined by the state agency), if such plan is available to the individual. Enrollment is a condition of eligibility except for the individual who is unable to enroll on his own behalf (failure of a parent to enroll a child does not affect a child's eligibility).~~

~~11.~~ 10. Is required to apply for coverage under Medicare A, B and/or D if it is likely that the individual would meet the eligibility criteria for any or all of those programs. The state agrees to pay any applicable premiums and cost-sharing (except those applicable under Part D) for individuals required to apply for Medicare. Application for Medicare is a condition of eligibility unless the state does not pay the Medicare premiums, deductibles or co-insurance (except those applicable under Part D) for persons covered by the Medicaid eligibility group under which the individual is applying.

~~12.~~ 11. Is required, as a condition of eligibility for Medicaid payment of long-term care services, to disclose at the time of application for or renewal of Medicaid eligibility, a description of any interest the individual or his spouse has in an annuity (or similar financial instrument as

may be specified by the Secretary of Health and Human Services). By virtue of the provision of medical assistance, the state shall become a remainder beneficiary for all annuities purchased on or after February 8, 2006.

~~13.~~ 12. Is ineligible for Medicaid payment of nursing facility or other long-term care services if the individual's equity interest in his home exceeds $500,000. This dollar amount shall be increased beginning with 2011 from year to year based on the percentage increase in the Consumer Price Index for all Urban Consumers rounded to the nearest $1,000.

This provision shall not apply if the individual's spouse, or the individual's child who is under age 21 or who is disabled, as defined in § 1614 of the Social Security Act, is lawfully residing in the individual's home.

12VAC30-130-750. Time frames for determining cost effectiveness.

A. The department (DMAS) shall determine ~~cost effectiveness of the group health plan~~ eligibility for the program and shall provide notice to the recipient within 45 calendar days from the date ~~the completed Insurance Information Request Form is received from DSS~~ of receiving an application that contains all information and verifications necessary to determine eligibility.

B. Incomplete applications shall be held for a period of 30 calendar days to enable applicants to provide outstanding information needed for an eligibility determination. Any applicant who fails to provide information or verifications necessary to determine eligibility within 30 calendar days of the receipt of the initial application shall have his application denied.

12VAC30-130-780. ~~Good cause for failure to cooperate.~~ (Repealed.)

~~Good cause for failure to cooperate shall be established when the recipient, parent, spouse, or person acting on behalf of the recipient demonstrates one or more of the following conditions:~~

~~1. There was a serious illness or death of the parent, spouse or a member of the parent's family.~~

~~2. There was a family emergency or household disaster, such as fire, flood, or tornado.~~

~~3. The parent or spouse offers a good cause beyond the parent's or spouse's control.~~

~~4. There was a failure to receive DMAS' request for information or notification for a reason not attributable to the parent or spouse. Lack of a forwarding address is attributable to the parent or spouse.~~

~~5. The required information on the group health plan could not be obtained from the employer.~~

~~6. The recipient demonstrates a medical need for specific coverage provided by an available group health plan which does not meet the DMAS established cost effectiveness criteria. This specific coverage is not provided by Medicaid or other group health plans which do meet the DMAS established cost effectiveness criteria.~~

12VAC30-130-790. Information required of applicants and recipients.

All applicants and recipients shall be required to provide ~~all~~ the information ~~contained in the DMAS form Insurance Information Request Form~~ required on the prescribed DMAS HIPP applications forms and all requested information to determine eligibility and cost effectiveness.

VA.R. Doc. No. R09-1721; Filed May 14, 2009, 3:57 p.m.

Final Regulation

REGISTRAR'S NOTICE: The Department of Medical Assistance Services is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation. 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.

Title of Regulation: **12VAC30-30. Groups Covered and Agencies Responsible for Eligibility Determination (amending 12VAC30-30-10).**

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

Effective Date: July 9, 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:

Current Medicaid regulations provide that a child born to a mother eligible for Medicaid coverage on the date of the child's birth is automatically eligible for Medicaid for one year as long as certain conditions are met. The conditions require that a newborn is only deemed eligible for Medicaid coverage through age one as long as he remains in the mother's household and the mother remains eligible for Medicaid (or would have remained eligible if pregnant during the one-year period). The requirement to remain in the mother's home and for the mother to otherwise remain eligible for Medicaid is problematic as many children never go home with their mothers, leading to loss of Medicaid coverage for the children.

A provision in CHIPRA mandates continuous eligibility for newborns through age one regardless of the child's living arrangement or the mother's eligibility. The amendment removes the requirement for the child to live in the home with the mother and the mother to remain eligible for Medicaid to ensure that the child will receive ongoing Medicaid coverage through his first year of life.

12VAC30-30-10. Mandatory coverage: Categorically needy and other required special groups.

The Title IV-A agency or the Department of Medical Assistance Services Central Processing Unit determines eligibility for Title XIX services.

1. Recipients of AFDC.

a. The approved state AFDC plan includes:

(1) Families with an unemployed parent for the mandatory six-month period and an optional extension of 0 months.

(2) AFDC children age 18 who are full-time students in a secondary school or in the equivalent level of vocational or technical training.

b. The standards for AFDC payments are listed in 12VAC30-40-220.

2. Deemed recipients of AFDC.

a. Individuals denied a Title IV-A cash payment solely because the amount would be less than $10.

b. Effective October 1, 1990, participants in a work supplementation program under Title IV-A and any child or relative of such individual (or other individual living in the same household as such individuals) who would be eligible for AFDC if there were no work supplementation program, in accordance with § 482(e)(6) of the Act.

c. Individuals whose AFDC payments are reduced to zero by reason of recovery of overpayment of AFDC funds.

d. An assistance unit deemed to be receiving AFDC for a period of four calendar months because the family becomes ineligible for AFDC as a result of collection or increased collection of support and meets the requirements of § 406(h) of the Act.

e. Individuals deemed to be receiving AFDC who meet the requirements of § 473(b)(1) or (2) for whom an adoption of assistance agreement is in effect or foster care maintenance payments are being made under Title IV-E of the Act.

3. Effective October 1, 1990, qualified family members who would be eligible to receive AFDC under § 407 of the Act because the principal wage earner is unemployed.

4. Families terminated from AFDC solely because of earnings, hours of employment, or loss of earned income disregards entitled up to 12 months of extended benefits in accordance with § 1925 of the Act.

5. Individuals who are ineligible for AFDC solely because of eligibility requirements that are specifically prohibited under Medicaid. Included are:

a. Families denied AFDC solely because of income and resources deemed to be available from:

(1) Stepparents who are not legally liable for support of stepchildren under a state law of general applicability;

(2) Grandparents;

(3) Legal guardians; and

(4) Individual alien sponsors (who are not spouses of the individual or the individual's parent);

b. Families denied AFDC solely because of the involuntary inclusion of siblings who have income and resources of their own in the filing unit.

c. Families denied AFDC because the family transferred a resource without receiving adequate compensation.

6. Individuals who would be eligible for AFDC except for the increases in OASDI benefits under P.L. 92-336 (July 1, 1972), who were entitled to OASDI in August 1972 and who were receiving cash assistance in August 1972.

a. Includes persons who would have been eligible for cash assistance but had not applied in August 1972 (this group was included in the state's August 1972 plan).

b. Includes persons who would have been eligible for cash assistance in August 1972 if not in a medical institution or intermediate care facility (this group was included in this state's August 1972 plan).

7. Qualified pregnant women and children.

a. A pregnant woman whose pregnancy has been medically verified who:

(1) Would be eligible for an AFDC cash payment if the child had been born and was living with her;

(2) Is a member of a family that would be eligible for aid to families with dependent children of unemployed parents if the state had an AFDC-unemployed parents program; or

(3) Would be eligible for an AFDC cash payment on the basis of the income and resource requirements of the state's approved AFDC plan.

b. Children born after September 30, 1973 (specify optional earlier date), who are under age 19 and who would be eligible for an AFDC cash payment on the

basis of the income and resource requirements of the state's approved AFDC plan.

12VAC30-40-280 and 12VAC30-40-290 describe the more liberal methods of treating income and resources under § 1902(r)(2) of the Act.

8. Pregnant women and infants under one year of age with family incomes up to 133% of the federal poverty level who are described in §§ 1902(a) (10)(A)(i)(IV) and 1902(l)(A) and (B) of the Act. The income level for this group is specified in 12VAC30-40-220.

9. Children:

a. Who have attained one year of age but have not attained six years of age, with family incomes at or below 133% of the federal poverty levels.

b. Born after September 30, 1983, who have attained six years of age but have not attained 19 years of age, with family incomes at or below 100% of the federal poverty levels.

Income levels for these groups are specified in 12VAC30-40-220.

10. Individuals other than qualified pregnant women and children under subdivision 7 of this section who are members of a family that would be receiving AFDC under § 407 of the Act if the state had not exercised the option under § 407(b)(2)(B)(i) of the Act to limit the number of months for which a family may receive AFDC.

11. a. A woman who, while pregnant, was eligible for, applied for, and receives Medicaid under the approved state plan on the day her pregnancy ends. The woman continues to be eligible, as though she were pregnant, for all pregnancy-related and postpartum medical assistance under the plan for a 60-day period (beginning on the last day of her pregnancy) and for any remaining days in the month in which the 60th day falls.

b. A pregnant women who would otherwise lose eligibility because of an increase in income (of the family in which she is a member) during the pregnancy or the postpartum period which extends through the end of the month in which the 60-day period (beginning on the last day of pregnancy) ends.

12. A child born to a woman who is eligible for and receiving Medicaid as categorically needy on the date of the child's birth. The child is deemed eligible for one year from birth ~~as long as the mother remains eligible or would remain eligible if still pregnant and the child remains in the same household as the mother~~.

13. Aged, blind and disabled individuals receiving cash assistance.

a. Individuals who meet more restrictive requirements for Medicaid than the SSI requirements. (This includes persons who qualify for benefits under § 1619(a) of the Act or who meet the eligibility requirements for SSI status under § 1619(b)(1) of the Act and who met the state's more restrictive requirements for Medicaid in the month before the month they qualified for SSI under § 1619(a) or met the requirements under § 1619(b)(1) of the Act. Medicaid eligibility for these individuals continues as long as they continue to meet the § 1619(a) eligibility standard or the requirements of § 1619(b) of the Act.)

b. These persons include the aged, the blind, and the disabled.

c. Protected SSI children (pursuant to § 1902(a)(10)(A)(i)(II) of the Act) (P.L. 105-33 § 4913). Children who meet the pre-welfare reform definition of childhood disability who lost their SSI coverage solely as a result of the change in the definition of childhood disability, and who also meet the more restrictive requirements for Medicaid than the SSI requirements.

d. The more restrictive categorical eligibility criteria are described below:

(1) See 12VAC30-30-40.

(2) Financial criteria are described in 12VAC30-40-10.

14. Qualified severely impaired blind and disabled individuals under age 65 who:

a. For the month preceding the first month of eligibility under the requirements of § 1905(q)(2) of the Act, received SSI, a state supplemental payment under § 1616 of the Act or under § 212 of P.L. 93-66 or benefits under § 1619(a) of the Act and were eligible for Medicaid; or

b. For the month of June 1987, were considered to be receiving SSI under § 1619(b) of the Act and were eligible for Medicaid. These individuals must:

(1) Continue to meet the criteria for blindness or have the disabling physical or mental impairment under which the individual was found to be disabled;

(2) Except for earnings, continue to meet all nondisability-related requirements for eligibility for SSI benefits;

(3) Have unearned income in amounts that would not cause them to be ineligible for a payment under § 1611(b) of the Act;

(4) Be seriously inhibited by the lack of Medicaid coverage in their ability to continue to work or obtain employment; and

(5) Have earnings that are not sufficient to provide for himself or herself a reasonable equivalent of the

Medicaid, SSI (including any federally administered SSP), or public funded attendant care services that would be available if he or she did have such earnings.

The state applies more restrictive eligibility requirements for Medicaid than under SSI and under 42 CFR 435.121. Individuals who qualify for benefits under § 1619(a) of the Act or individuals described above who meet the eligibility requirements for SSI benefits under § 1619(b)(1) of the Act and who met the state's more restrictive requirements in the month before the month they qualified for SSI under § 1619(a) or met the requirements of § 1619(b)(1) of the Act are covered. Eligibility for these individuals continues as long as they continue to qualify for benefits under § 1619(a) of the Act or meet the SSI requirements under § 1619(b)(1) of the Act.

15. Except in states that apply more restrictive requirements for Medicaid than under SSI, blind or disabled individuals who:

a. Are at least 18 years of age;

b. Lose SSI eligibility because they become entitled to OASDI child's benefits under § 202(d) of the Act or an increase in these benefits based on their disability. Medicaid eligibility for these individuals continues for as long as they would be eligible for SSI, absence their OASDI eligibility.

c. The state does not apply more restrictive income eligibility requirements than those under SSI.

16. Except in states that apply more restrictive eligibility requirements for Medicaid than under SSI, individuals who are ineligible for SSI or optional state supplements (if the agency provides Medicaid under § 435.230 of the Act), because of requirements that do not apply under Title XIX of the Act.

17. Individuals receiving mandatory state supplements.

18. Individuals who in December 1973 were eligible for Medicaid as an essential spouse and who have continued, as spouse, to live with and be essential to the well-being of a recipient of cash assistance. The recipient with whom the essential spouse is living continues to meet the December 1973 eligibility requirements of the state's approved plan for OAA, AB, APTD, or AABD and the spouse continues to meet the December 1973 requirements for have his or her needs included in computing the cash payment.

In December 1973, Medicaid coverage of the essential spouse was limited to: the aged; the blind; and the disabled.

19. Institutionalized individuals who were eligible for Medicaid in December 1973 as inpatients of Title XIX medical institutions or residents of Title XIX intermediate care facilities, if, for each consecutive month after December 1973, they:

a. Continue to meet the December 1973 Medicaid State Plan eligibility requirements;

b. Remain institutionalized; and

c. Continue to need institutional care.

20. Blind and disabled individuals who:

a. Meet all current requirements for Medicaid eligibility except the blindness or disability criteria; and

b. Were eligible for Medicaid in December 1973 as blind or disabled; and

c. For each consecutive month after December 1973 continue to meet December 1973 eligibility criteria.

21. Individuals who would be SSI/SSP eligible except for the increase in OASDI benefits under P.L. 92-336 (July 1, 1972), who were entitled to OASDI in August 1972, and who were receiving cash assistance in August 1972.

This includes persons who would have been eligible for cash assistance but had not applied in August 1972 (this group was included in this state's August 1972 plan), and persons who would have been eligible for cash assistance in August 1972 if not in a medical institution or intermediate care facility (this group was included in this state's August 1972 plan).

22. Individuals who:

a. Are receiving OASDI and were receiving SSI/SSP but became ineligible for SSI/SSP after April 1977; and

b. Would still be eligible for SSI or SSP if cost-of-living increases in OASDI paid under § 215(i) of the Act received after the last month for which the individual was eligible for and received SSI/SSP and OASDI, concurrently, were deducted from income.

The state applies more restrictive eligibility requirements than those under SSI and the amount of increase that caused SSI/SSP ineligibility and subsequent increases are deducted when determining the amount of countable income for categorically needy eligibility.

23. Disabled widows and widowers who would be eligible for SSI or SSP except for the increase in their OASDI benefits as a result of the elimination of the reduction factor required by § 134 of P.L. 98-21 and who are deemed, for purposes of Title XIX, to be SSI beneficiaries or SSP beneficiaries for individuals who would be eligible for SSP only, under § 1634(b) of the Act.

The state does not apply more restrictive income eligibility standards than those under SSI.

24. Disabled widows, disabled widowers, and disabled unmarried divorced spouses who had been married to the insured individual for a period of at least 10 years before the divorce became effective, who have attained the age of 50, who are receiving Title II payments, and who because of the receipt of Title II income lost eligibility for SSI or SSP which they received in the month prior to the month in which they began to receive Title II payments, who would be eligible for SSI or SSP if the amount of the Title II benefit were not counted as income, and who are not entitled to Medicare Part A.

The state applies more restrictive eligibility requirements for its blind or disabled than those of the SSI program.

25. Qualified Medicare beneficiaries:

a. Who are entitled to hospital insurance benefits under Medicare Part A (but not pursuant to an enrollment under § 1818 of the Act);

b. Whose income does not exceed 100% of the federal level; and

c. Whose resources do not exceed twice the maximum standard under SSI.

(Medical assistance for this group is limited to Medicare cost sharing as defined in item 3.2 of this plan.)

26. Qualified disabled and working individuals:

a. Who are entitled to hospital insurance benefits under Medicare Part A under § 1818A of the Act;

b. Whose income does not exceed 200% of the federal poverty level; and

c. Whose resources do not exceed twice the maximum standard under SSI.

d. Who are not otherwise eligible for medical assistance under Title XIX of the Act.

(Medical assistance for this group is limited to Medicare Part A premiums under §§ 1818 and 1818A of the Act.)

27. Specified low-income Medicare beneficiaries:

a. Who are entitled to hospital insurance benefits under Medicare Part A (but not pursuant to an enrollment under § 1818A of the Act);

b. Whose income for calendar years 1993 and 1994 exceeds the income level in subdivision 25 b of this section, but is less than 110% of the federal poverty level, and whose income for calendar years beginning 1995 is less than 120% of the federal poverty level; and

c. Whose resources do not exceed twice the maximum standard under SSI.

(Medical assistance for this group is limited to Medicare Part B premiums under § 1839 of the Act.)

28. a. Each person to whom SSI benefits by reason of disability are not payable for any month solely by reason of clause (i) or (v) of § 1611(e)(3)(A) shall be treated, for purposes of Title XIX, as receiving SSI benefits for the month.

b. The state applies more restrictive eligibility standards than those under SSI.

Individuals whose eligibility for SSI benefits are based solely on disability who are not payable for any months solely by reason of clause (i) or (v) of § 1611(e)(3)(A) and who continue to meet the more restrictive requirements for Medicaid eligibility under the state plan, are eligible for Medicaid as categorically needy.

VA.R. Doc. No. R09-1939; Filed May 18, 2009, 3:47 p.m.

Proposed Regulation

Title of Regulation: **12VAC30-50. Amount, Duration, and Scope of Medical and Remedial Care Services (amending 12VAC30-50-130).**

Statutory Authority: §§ 32.1-324 and 32.1-325 of the Code of Virginia; 42 USC § 1396 et seq.

Public Hearing Information: No public hearings are scheduled.

Public Comments: Public comments may be submitted until 5 p.m. on August 7, 2009.

Agency Contact: Catherine Hancock, Project Manager, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 225-4272, FAX (804) 786-1680, or email catherine.hancock@dmas.virginia.gov.

Basis: Section 32.1-325 of the Code of Virginia grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. Section 32.1-324 of the Code of Virginia authorizes the Director of DMAS to administer and amend the Plan for Medical Assistance according to the board's requirements. The Medicaid authority as established by § 1902 (a) of the Social Security Act (42 USC § 1396a) provides governing authority for payments for services.

Chapter 879 of the 2008 Acts of Assembly (Item 306 OO) provides DMAS the authority to implement prior authorization and utilization review for community-based mental health services for children and adults.

Purpose: This regulatory action will help protect the health, safety and welfare of Medicaid recipients by minimizing inappropriate utilization of unnecessary services, thereby preserving these important medical services for the recipients who truly need them.

Substance: This action implements new prior authorization requirements for intensive in-home services for children and

adolescents. DMAS already has regulations that address prior authorization for children's group home services (Levels A & B) and performs utilization review for community-based mental health services. Therefore those aspects of the Item 306 OO of the 2008 Acts of Assembly are already in operation and need not be addressed in this package.

The particular change implemented in this action is directed to 12VAC30-50-130 B 5 a (community mental health services). This subdivision describes intensive in-home services to children and adolescents under age 21, which includes the following: crisis treatment; individual and family counseling; and communication skills (e.g., counseling to assist the child and his parents to understand and practice appropriate problem solving, anger management, and interpersonal interaction, etc.); case management activities and coordination with other required services; and 24-hour emergency response. Intensive in-home services are already limited annually to 26 weeks. In this action DMAS is adding the requirement for prior authorization that providers must obtain in order for them to be reimbursed for these services.

Issues: The addition of prior authorization will help ensure that services are provided to individuals who meet medical necessity criteria. This will prevent inappropriate utilization of the services and preclude expenditures for unnecessary services.

This regulatory action will require providers to request prior authorization for this service. DMAS made efforts to minimize the amount of documents required for authorization and the frequency for requesting authorization to mitigate the impact on providers.

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

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 879, Item 306 OO of the 2008 Acts of Assembly, the proposed changes implement a prior authorization and utilization review program for community-based mental health services for children and adults. The proposed changes have already been implemented under emergency regulations since July 2008.

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

Estimated Economic Impact. Pursuant to Chapter 879, Item 306 OO of the 2008 Acts of Assembly, the proposed changes implement a prior authorization and utilization review program for community-based mental health services for children and adults.

According to Department of Medical Assistance Services (DMAS), the utilization of intensive in-home services has increased substantially in recent years and the expenditures are expected to increase by 25% in fiscal year 2008. As a result, the General Assembly passed legislation to implement a prior authorization and utilization review for intensive in-home services to ensure that the services are provided to those who truly need them.

Under the proposed regulations, after an initial period (currently 12 weeks), prior authorization will be required for reimbursement. Prior authorization is a well known cost-containment mechanism. DMAS estimates that it will cost $1.4 million per year in total funds to implement the prior authorization program through a contractor. The savings in term of reduced expenditures is expected to be about $2.9 million per year in total funds.

Businesses and Entities Affected. The proposed regulations apply to intensive in-home services. In fiscal year 2007 there were 10,316 recipients. Also, there are approximately 279 providers that may be affected.

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

Projected Impact on Employment. The proposed prior authorization program will create additional demand for labor to administer the prior authorization program. However, a reduction in demand for in-home service providers is also expected. The net of the two opposing effects on employment is unknown.

Effects on the Use and Value of Private Property. The proposed regulations do not have a direct effect on the use and value of private property. However, increased demand for administrative services may have a positive effect on the asset value of the contracted prior authorization businesses and reduced demand for in-home services may have a negative effect on the asset value of Medicaid in-home services businesses.

Small Businesses: Costs and Other Effects. All of the 279 affected providers are believed to be small businesses. So, the costs and other affects discussed above apply to them.

Small Businesses: Alternative Method that Minimizes Adverse Impact. Given the legislative language, there does not seem to be an alternative method that would minimize the adverse impact.

Real Estate Development Costs. The proposed regulations are not anticipated to have an impact on real estate development costs.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected,

the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency concurs with the economic impact analysis prepared by the Department of Planning and Budget regarding the regulations concerning Prior Authorization of Intensive In-Home Services (12VAC30-50-130).

Summary:

The proposed amendment implements Item 306 OO of Chapter 879 of the 2008 Acts of Assembly by requiring providers to obtain prior authorization in order to be reimbursed for intensive in-home services to children and adolescents. This requirement has been in effect since July 2, 2008, under emergency regulations.

12VAC30-50-130. Skilled nursing facility services, EPSDT, school health services and family planning.

A. Skilled nursing facility services (other than services in an institution for mental diseases) for individuals 21 years of age or older.

Service must be ordered or prescribed and directed or performed within the scope of a license of the practitioner of the healing arts.

B. Early and periodic screening and diagnosis of individuals under 21 years of age, and treatment of conditions found.

1. Payment of medical assistance services shall be made on behalf of individuals under 21 years of age, who are Medicaid eligible, for medically necessary stays in acute care facilities, and the accompanying attendant physician care, in excess of 21 days per admission when such services are rendered for the purpose of diagnosis and treatment of health conditions identified through a physical examination.

2. Routine physicals and immunizations (except as provided through EPSDT) are not covered except that well-child examinations in a private physician's office are covered for foster children of the local social services departments on specific referral from those departments.

3. Orthoptics services shall only be reimbursed if medically necessary to correct a visual defect identified by an EPSDT examination or evaluation. The department shall place appropriate utilization controls upon this service.

4. Consistent with the Omnibus Budget Reconciliation Act of 1989 § 6403, early and periodic screening, diagnostic, and treatment services means the following services: screening services, vision services, dental services, hearing services, and such other necessary health care, diagnostic services, treatment, and other measures described in Social Security Act § 1905(a) to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening services and which are medically necessary, whether or not such services are covered under the State Plan and notwithstanding the limitations, applicable to recipients ages 21 and over, provided for by the Act § 1905(a).

5. Community mental health services.

a. Intensive in-home services to children and adolescents under age 21 shall be time-limited interventions provided typically but not solely in the residence of a child who is at risk of being moved into an out-of-home placement or who is being transitioned to home from out-of-home placement due to a documented medical need of the child. These services provide crisis treatment; individual and family counseling; and communication skills (e.g., counseling to assist the child and his parents to understand and practice appropriate problem solving, anger management, and interpersonal interaction, etc.); case management activities and coordination with other required services; and 24-hour emergency response. These services shall be limited annually to 26 weeks. After an initial period, prior authorization is required for Medicaid reimbursement.

b. Therapeutic day treatment shall be provided two or more hours per day in order to provide therapeutic interventions. Day treatment programs, limited annually to 780 units, provide evaluation; medication; education and management; opportunities to learn and use daily living skills and to enhance social and interpersonal skills (e.g., problem solving, anger management, community responsibility, increased impulse control, and appropriate peer relations, etc.); and individual, group and family psychotherapy.

c. Community-Based Services for Children and Adolescents under 21 (Level A).

(1) Such services shall be a combination of therapeutic services rendered in a residential setting. The residential services will provide structure for daily activities,

psychoeducation, therapeutic supervision and psychiatric treatment to ensure the attainment of therapeutic mental health goals as identified in the individual service plan (plan of care). Individuals qualifying for this service must demonstrate medical necessity for the service arising from a condition due to mental, behavioral or emotional illness that results in significant functional impairments in major life activities in the home, school, at work, or in the community. The service must reasonably be expected to improve the child's condition or prevent regression so that the services will no longer be needed. DMAS will reimburse only for services provided in facilities or programs with no more than 16 beds.

(2) In addition to the residential services, the child must receive, at least weekly, individual psychotherapy that is provided by a licensed mental health professional.

(3) Individuals must be discharged from this service when other less intensive services may achieve stabilization.

(4) Authorization is required for Medicaid reimbursement.

(5) Room and board costs are not reimbursed. Facilities that only provide independent living services are not reimbursed.

(6) Providers must be licensed by the Department of Social Services, Department of Juvenile Justice, or Department of Education under the Standards for Interdepartmental Regulation of Children's Residential Facilities (22VAC42-10).

(7) Psychoeducational programming must include, but is not limited to, development or maintenance of daily living skills, anger management, social skills, family living skills, communication skills, and stress management.

(8) The facility/group home must coordinate services with other providers.

d. Therapeutic Behavioral Services (Level B).

(1) Such services must be therapeutic services rendered in a residential setting that provides structure for daily activities, psychoeducation, therapeutic supervision and psychiatric treatment to ensure the attainment of therapeutic mental health goals as identified in the individual service plan (plan of care). Individuals qualifying for this service must demonstrate medical necessity for the service arising from a condition due to mental, behavioral or emotional illness that results in significant functional impairments in major life activities in the home, school, at work, or in the community. The service must reasonably be expected to improve the child's condition or prevent regression so that the services will no longer be needed. DMAS will reimburse only for services provided in facilities or programs with no more than 16 beds.

(2) Authorization is required for Medicaid reimbursement.

(3) Room and board costs are not reimbursed. Facilities that only provide independent living services are not reimbursed.

(4) Providers must be licensed by the Department of Mental Health, Mental Retardation, and Substance Abuse Services (DMHMRSAS) under the Standards for Interdepartmental Regulation of Children's Residential Facilities (22VAC42-10).

(5) Psychoeducational programming must include, but is not limited to, development or maintenance of daily living skills, anger management, social skills, family living skills, communication skills, and stress management. This service may be provided in a program setting or a community-based group home.

(6) The child must receive, at least weekly, individual psychotherapy and, at least weekly, group psychotherapy that is provided as part of the program.

(7) Individuals must be discharged from this service when other less intensive services may achieve stabilization.

6. Inpatient psychiatric services shall be covered for individuals younger than age 21 for medically necessary stays for the purpose of diagnosis and treatment of mental health and behavioral disorders identified under EPSDT when such services are rendered by:

a. A psychiatric hospital or an inpatient psychiatric program in a hospital accredited by the Joint Commission on Accreditation of Healthcare Organizations; or a psychiatric facility that is accredited by the Joint Commission on Accreditation of Healthcare Organizations, the Commission on Accreditation of Rehabilitation Facilities, the Council on Accreditation of Services for Families and Children or the Council on Quality and Leadership.

b. Inpatient psychiatric hospital admissions at general acute care hospitals and freestanding psychiatric hospitals shall also be subject to the requirements of 12VAC30-50-100, 12VAC30-50-105, and 12VAC30-60-25. Inpatient psychiatric admissions to residential treatment facilities shall also be subject to the requirements of Part XIV (12VAC30-130-850 et seq.) of this chapter.

c. Inpatient psychiatric services are reimbursable only when the treatment program is fully in compliance with 42 CFR Part 441 Subpart D, as contained in 42 CFR

441.151 (a) and (b) and 441.152 through 441.156. Each admission must be preauthorized and the treatment must meet DMAS requirements for clinical necessity.

7. Hearing aids shall be reimbursed for individuals younger than 21 years of age according to medical necessity when provided by practitioners licensed to engage in the practice of fitting or dealing in hearing aids under the Code of Virginia.

C. School health services.

1. School health assistant services are repealed effective July 1, 2006.

2. School divisions may provide routine well-child screening services under the State Plan. Diagnostic and treatment services that are otherwise covered under early and periodic screening, diagnosis and treatment services, shall not be covered for school divisions. School divisions to receive reimbursement for the screenings shall be enrolled with DMAS as clinic providers.

a. Children enrolled in managed care organizations shall receive screenings from those organizations. School divisions shall not receive reimbursement for screenings from DMAS for these children.

b. School-based services are listed in a recipient's Individualized Education Program (IEP) and covered under one or more of the service categories described in § 1905(a) of the Social Security Act. These services are necessary to correct or ameliorate defects of physical or mental illnesses or conditions.

3. Service providers shall be licensed under the applicable state practice act or comparable licensing criteria by the Virginia Department of Education, and shall meet applicable qualifications under 42 CFR Part 440. Identification of defects, illnesses or conditions and services necessary to correct or ameliorate them shall be performed by practitioners qualified to make those determinations within their licensed scope of practice, either as a member of the IEP team or by a qualified practitioner outside the IEP team.

a. Service providers shall be employed by the school division or under contract to the school division.

b. Supervision of services by providers recognized in subdivision 4 of this subsection shall occur as allowed under federal regulations and consistent with Virginia law, regulations, and DMAS provider manuals.

c. The services described in subdivision 4 of this subsection shall be delivered by school providers, but may also be available in the community from other providers.

d. Services in this subsection are subject to utilization control as provided under 42 CFR Parts 455 and 456.

e. The IEP shall determine whether or not the services described in subdivision 4 of this subsection are medically necessary and that the treatment prescribed is in accordance with standards of medical practice. Medical necessity is defined as services ordered by IEP providers. The IEP providers are qualified Medicaid providers to make the medical necessity determination in accordance with their scope of practice. The services must be described as to the amount, duration and scope.

4. Covered services include:

a. Physical therapy, occupational therapy and services for individuals with speech, hearing, and language disorders, performed by, or under the direction of, providers who meet the qualifications set forth at 42 CFR 440.110. This coverage includes audiology services;

b. Skilled nursing services are covered under 42 CFR 440.60. These services are to be rendered in accordance to the licensing standards and criteria of the Virginia Board of Nursing. Nursing services are to be provided by licensed registered nurses or licensed practical nurses but may be delegated by licensed registered nurses in accordance with the regulations of the Virginia Board of Nursing, especially the section on delegation of nursing tasks and procedures. the licensed practical nurse is under the supervision of a registered nurse.

(1) The coverage of skilled nursing services shall be of a level of complexity and sophistication (based on assessment, planning, implementation and evaluation) that is consistent with skilled nursing services when performed by a licensed registered nurse or a licensed practical nurse. These skilled nursing services shall include, but not necessarily be limited to dressing changes, maintaining patent airways, medication administration/monitoring and urinary catheterizations.

(2) Skilled nursing services shall be directly and specifically related to an active, written plan of care developed by a registered nurse that is based on a written order from a physician, physician assistant or nurse practitioner for skilled nursing services. This order shall be recertified on an annual basis.

c. Psychiatric and psychological services performed by licensed practitioners within the scope of practice are defined under state law or regulations and covered as physicians' services under 42 CFR 440.50 or medical or other remedial care under 42 CFR 440.60. These outpatient services include individual medical psychotherapy, group medical psychotherapy coverage, and family medical psychotherapy. Psychological and neuropsychological testing are allowed when done for purposes other than educational diagnosis, school admission, evaluation of an individual with mental retardation prior to admission to a nursing facility, or any

placement issue. These services are covered in the nonschool settings also. School providers who may render these services when licensed by the state include psychiatrists, licensed clinical psychologists, school psychologists, licensed clinical social workers, professional counselors, psychiatric clinical nurse specialist, marriage and family therapists, and school social workers.

d. Personal care services are covered under 42 CFR 440.167 and performed by persons qualified under this subsection. The personal care assistant is supervised by a DMAS recognized school-based health professional who is acting within the scope of licensure. This practitioner develops a written plan for meeting the needs of the child, which is implemented by the assistant. The assistant must have qualifications comparable to those for other personal care aides recognized by the Virginia Department of Medical Assistance Services. The assistant performs services such as assisting with toileting, ambulation, and eating. The assistant may serve as an aide on a specially adapted school vehicle that enables transportation to or from the school or school contracted provider on days when the student is receiving a Medicaid-covered service under the IEP. Children requiring an aide during transportation on a specially adapted vehicle shall have this stated in the IEP.

e. Medical evaluation services are covered as physicians' services under 42 CFR 440.50 or as medical or other remedial care under 42 CFR 440.60. Persons performing these services shall be licensed physicians, physician assistants, or nurse practitioners. These practitioners shall identify the nature or extent of a child's medical or other health related condition.

f. Transportation is covered as allowed under 42 CFR 431.53 and described at State Plan Attachment 3.1-D. Transportation shall be rendered only by school division personnel or contractors. Transportation is covered for a child who requires transportation on a specially adapted school vehicle that enables transportation to or from the school or school contracted provider on days when the student is receiving a Medicaid-covered service under the IEP. Transportation shall be listed in the child's IEP. Children requiring an aide during transportation on a specially adapted vehicle shall have this stated in the IEP.

g. Assessments are covered as necessary to assess or reassess the need for medical services in a child's IEP and shall be performed by any of the above licensed practitioners within the scope of practice. Assessments and reassessments not tied to medical needs of the child shall not be covered.

5. DMAS will ensure through quality management review that duplication of services will be monitored. School divisions have a responsibility to ensure that if a child is receiving additional therapy outside of the school, that there will be coordination of services to avoid duplication of service.

D. Family planning services and supplies for individuals of child-bearing age.

1. Service must be ordered or prescribed and directed or performed within the scope of the license of a practitioner of the healing arts.

2. Family planning services shall be defined as those services that delay or prevent pregnancy. Coverage of such services shall not include services to treat infertility nor services to promote fertility.

VA.R. Doc. No. R08-1328; Filed May 13, 2009, 2:40 p.m.

Final Regulation

Title of Regulation: **12VAC30-60. Standards Established and Methods Used to Assure High Quality Care (adding 12VAC30-60-500).**

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

Effective Date: July 9, 2009.

Agency Contact: Suzanne Gore, Policy & Research Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 786-1609, FAX (804) 786-1680, or email suzanne.gore@dmas.virginia.gov.

Summary:

The amendments establish a voluntary alternative benefit package (known as the Healthy Returns[SM] program) that combines traditional Medicaid services with comprehensive disease management (DM) services. Previous emergency regulations provided that (i) both adults and children in fee-for-service who are determined to have asthma and diabetes could participate in this program and (ii) individuals 21 years and older having coronary artery disease (CAD), congestive heart failure (CHF), and chronic obstructive pulmonary disease (COPD) were eligible for the Healthy Returns[SM] program. The substantive change to the regulation drops the age limit of 21 years for CHF, CAD, and COPD to age 18 years and older.

Changes are made to the proposed regulation clarifying that designated disease management program administrators may also perform disease management services.

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

12VAC30-60-500. Disease management services.

A. The Commonwealth elects to provide secretary-approved coverage as appropriate for the population served under § 1937 of the Social Security Act (the Act). Virginia's disease management program is designed to help patients better understand and manage their condition or conditions through prevention, education, lifestyle changes, and adherence to their physician-prescribed plans of care (POC). The purpose of the program is not to offer medical advice, but rather to support providers in reinforcing patients' POCs.

B. Populations.

1. The Commonwealth shall provide the alternative benefit package to individuals who voluntarily enroll in the program (opt-in). Individuals shall be informed of the available benefit options prior to having the option to voluntarily enroll.

a. Opt-in alternative coverage will be offered to the following populations of Medicaid recipients:

(1) All individuals in fee-for-service who have asthma or diabetes.

(2) All individuals in fee-for-service age 18 and over who have congestive heart failure (CHF), coronary artery disease (CAD), or chronic obstructive pulmonary disease (COPD).

b. Individuals who choose to participate in the opt-in program shall maintain their eligibility for the regular Medicaid benefits at all times.

2. Persons excluded from this program shall be those:

a. Who have third-party insurance;

b. Who are enrolled in Medicaid managed care organizations;

c. Who reside in institutional settings;

d. Who are enrolled in both Medicare and Medicaid (dual eligibles); or

e. Who are children enrolled in Virginia's Title XXI program, Family Access to Medical Insurance Security (FAMIS). Children enrolled in FAMIS receive disease management services through the FAMIS program pursuant to 12VAC30-141-200.

3. The Commonwealth shall inform each individual that such enrollment is voluntary, that such individual may opt out of such alternative benefit package at any time, and retain eligibility for the standard Medicaid program under the State Plan.

4. Individuals are to be encouraged to participate in the program through mailings and telephonic outreach by DMAS or the [designated] disease management program administrator.

C. Benchmark benefits. In addition to all regular Medicaid program benefits, the alternative benefit package includes at least the following disease management services:

1. Condition-specific education on an ongoing basis;

2. Access to a 24-hour nurse call line;

3. Regularly scheduled telephonic condition management, support and referrals (for individuals identified by DMAS [or the designated disease management program administrator] as having more acute or intensive health care needs); and

4. Patient health activity monitoring and providing information feedback to primary care physicians to help facilitate changes to patients' plans of care pursuant to the provision of disease management services (for individuals identified by DMAS [or the designated disease management program administrator] as having more acute or intensive health care needs).

D. Geographical classification. Services under this alternative benefit package shall be available statewide.

E. Service delivery system. Alternative benefits shall be offered through a prepaid ambulatory health plan, under contract with the Commonwealth. All other Medicaid State Plan services shall be provided on a fee-for-service basis.

F. Additional assurances.

1. The Commonwealth assures that individuals shall have access, through benchmark coverage, benchmark-equivalent coverage, or otherwise, to rural health clinic services and federally qualified health center services as defined in § 1905(a)(2) (B) and (C) of the Act.

2. The Commonwealth assures that payment for rural health clinic and federally qualified health clinic services shall be made in accordance with the requirements of § 1902(bb) of the Act.

G. Cost effectiveness of plans. Benchmark or benchmark-equivalent coverage and any additional benefits are provided in accordance with economy and efficiency principles.

H. Compliance with the law. The Commonwealth shall continue to comply with all other provisions of the Social Security Act in the administration of the Commonwealth's disease management program under this chapter.

VA.R. Doc. No. R07-738; Filed May 14, 2009, 3:52 p.m.

Proposed Regulation

Title of Regulation: **12VAC30-80. Methods and Standards for Establishing Payment Rates; Other Types of Care (amending 12VAC30-80-40).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comments: Public comments may be submitted until 5 p.m. on August 7, 2009.

Agency Contact: Keith Hayashi, Project Manager, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 225-2773, or email keith.hayashi@dmas.virginia.gov.

Basis: Section 32.1-325 of the Code of Virginia grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. Section 32.1-324 of the Code of Virginia authorizes the Director of DMAS to administer and amend the Plan for Medical Assistance according to the board's requirements. The Medicaid authority as established by § 1902 (a) of the Social Security Act (42 USC § 1396a) provides governing authority for payments for services.

Item 306 CC of Chapter 879 of the 2008 Acts of Assembly directed DMAS to promulgate emergency regulations to provide for this new specialty drug reimbursement methodology. DMAS complied with that mandate and is currently reimbursing for the drug products affected by this action under that new reimbursement methodology.

Purpose: The department is promulgating this regulation to create a specialty drug reimbursement methodology based upon the Wholesale Acquisition Cost (WAC) of designated specialty drugs. Specialty drug products are products used to treat chronic, high-cost or rare diseases, including drugs for the treatment of Hepatitis C and Multiple Sclerosis, as well as drugs such as growth hormone agents and interferon. These drugs tend to be much higher in cost than standard pharmaceutical products and also tend to have significantly higher per patient costs. This action implements a new methodology to help contain the higher costs associated with these drugs. This action is not expected to affect the health, safety, or welfare of citizens of the Commonwealth as it is a reimbursement methodology change. DMAS paid for these drugs prior to the current emergency regulations but with a methodology that was not as well controlled and lacked the care management component.

Substance: Currently, DMAS' regulations contain no specific provisions for the reimbursement of specialty drugs. These drugs are currently paid for, along with all other covered pharmaceuticals, under the existing reimbursement methodology set out in 12VAC30-80-40. The payment algorithm pays for drugs at the lowest of either: (i) the federal Upper Drug Limit, (ii) the higher of either the lowest Wholesale Acquisition Cost (WAC) plus 10%, or the second lowest WAC plus 6.0%, (iii) the provider's usual and customary charge to the public, or (iv) the Estimated Acquisition Cost. Generally, these drugs are being reimbursed at the rate of the Wholesale Acquisition Cost plus 4.75%. Due to advances in pharmaceutical technology which typically produce ever more expensive and complex pharmaceutical products, DMAS has determined that it would be appropriate to separate out this particular group of drugs for a unique payment and care management methodology.

Specialty (or "biotechnology") drugs are a category of drugs resulting from advances in drug development research, technology, and design. These drugs are used to treat specific chronic or genetic conditions. Specialty drugs include biological drugs, blood-derived products, complex molecules, and select oral, injectable and infused medications. They also typically include tailored patient education for safe and cost-effective use, patient-specific dosing, close patient monitoring, and can require special handling (such as refrigeration). Examples of some conditions that specialty drugs address include Acromegaly, Cancer, Chronic Granulomatous Disease, Cystic Fibrosis, HIV/AIDS, Multiple Sclerosis, Psoriasis, Rheumatoid Arthritis, Hepatitis C, and Respiratory Syncytial Virus (RSV).

Specialty drugs have a direct impact on any health benefit program's prescription drug expenditures. A 2004 DMAS analysis revealed that nationwide, total population spending on specialty medications grew 26.6% in 2003 with surges in treatments for Rheumatoid Arthritis and Cancer. According to the 2004 analysis, annual per patient costs of specialty drug therapies can range from $6,000 to $350,000 annually. Total public and private sector spending reached $54 billion by the end of 2007 and is expected to reach $100 billion by 2010.

In Virginia, it is estimated that within the fee-for-service component of the Medicaid program, about $18 million annually is expended on specialty drugs related to only five chronic or genetic conditions. This point-of-sale data represented 9,000 claims and affected only 2,700 individual recipients.

Recipients who receive care through managed care organizations (MCOs) currently get their prescriptions through the MCO's network of providers. MCOs, via the capitation payments received from Medicaid, provide all required prescription drugs and assume the risk that one of their members will require such specialty prescriptions. No additional payments are made to MCOs in such instances.

A 2005 article from a Cigna Pharmacy Management newsletter indicates that the cost of specialty drugs is increasing up to 30% annually, and utilization of these medications is increasing at a rate near 20%. Furthermore, at any given time approximately 800 new specialty drugs are under development; these new specialty drugs drive significant increases in medical expenditures. The rapid expansion of biotechnology drugs makes it the fastest growing segment for drug costs in America.

In an effort to control the growing costs of specialty drugs and improve the health outcomes of these affected recipients,

DMAS has proposed the development of a specialty drug program. Appropriation Act language was included in the 2006-2008 budget language during the 2006 General Assembly to support the funding of a specialty drug program. In implementing a specialty drug program, DMAS has focused on (i) implementing an appropriate care management model for those patients who require specialty drug therapy and (ii) establishing a discounted pricing model. In achieving these objectives, DMAS is working to limit disruption in the specialty drug market, maintain patient access to specialty drugs, and minimize administrative requirements.

This action implements a new methodology for the reimbursement of designated specialty drugs. The new methodology, described in the new subdivision 5 of 12VAC30-80-40, is a formula based upon the Wholesale Acquisition Cost (WAC) of these specialty drugs. The methodology computes a price above a given percentage of the WAC for each specified drug. The current percentage value is 4.75%. In addition to the formula, the new subsection also references the location of the list of designated drugs subject to the new methodology on the DMAS website, and states that the new pricing methodology is reviewed and subject to the same dispute resolution and appeal rights as the standard Maximum Allowable Cost pricing methodology. Lowering the percentage of Average Wholesale Price (AWP) that DMAS pays for the specified specialty drugs will help limit some of the rising costs associated with specialty drugs.

Presently, both physicians and pharmacies are permitted to obtain these specialty drugs from manufacturers and bill their costs to the Medicaid program for Medicaid recipients. As a result of federal statutory requirements in the Deficit Reduction Act of 2005, DMAS is now securing rebates from the pharmaceutical manufacturers for these drugs. This open access by all such providers will not be affected by this regulatory action.

Specialty drugs are a dynamic group of emerging medications, and different strategies will have to be employed to better manage these expenditures, and coordinate patient care. The department will work with its Pharmacy Liaison Committee and other interested parties to develop appropriate care coordination models as part of the later phase of the specialty drug program. Through this process, DMAS and its partners will further identify additional disease conditions that lend themselves to improved outcomes when under specialty drug management and develop a program design that will most effectively manage these conditions.

DMAS may contract with a vendor to create a care management program for recipients with selected conditions requiring specialty drugs. Care management is expected to provide monitoring of patients' utilization of services and relevant clinical data specific to each condition. The patient would be contacted directly and care coordination would be provided, when necessary. This program would be similar to the current disease management model being used by DMAS to manage selected health conditions (e.g., asthma, chronic obstructive pulmonary disease, congestive heart failure, coronary artery disease, and diabetes). Some recipients of specialty drugs already receive care management services from their specialty pharmacy providers, such as confidential counseling, compliance monitoring, educational information, and health care coordination. DMAS will continue to research opportunities to improve care management for recipients with hemophilia and implement services directly and/or through coordination with specialty pharmacies.

Issues: Specialty pharmaceuticals represent the fastest growing segment of the prescription drug market in the U.S. Industry projections estimate the growth rate at 20% per year. Typically, these products are used to treat complex chronic and/or rare diseases, are high cost, and can be administered by injection, infusion inhalation, or orally. DMAS is promulgating this regulation in an effort to help contain the costs of these complex and expensive drugs and to improve care management for these affected recipients. Pharmacy reimbursement is one of the highest dollar expenditures in the Medicaid budget.

The primary advantage to the Commonwealth of this regulatory action is expected to be improved health outcomes for these affected recipients as well as some cost savings for the agency and Commonwealth. The disadvantage to the pharmaceutical industry will be reduced profits due to reduced payments for these drugs.

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

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 879 of the 2008 Acts of Assembly, Item 306 CC, the proposed regulations establish a new reimbursement methodology for specialty drugs. The proposed regulations have already been in effect under emergency regulations since October 2008.

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

Estimated Economic Impact. Pursuant to Chapter 879 of the 2008 Acts of Assembly, Item 306 CC, the proposed regulations establish a new reimbursement methodology for specialty drugs. Specialty drugs are drugs that are bio-engineered in laboratories from living cells rather than chemicals to treat diseases such as cancer, multiple sclerosis, and hepatitis-C. They may also include growth hormone agents. Unlike most other drugs, their production may not be replicated easily. The key element in their production is not the chemicals used but rather the process by which the living cells are bio-engineered. This bio-engineering process is non-public information often considered "a trade secret" which is not subject to expiration like a patent may be. These characteristics create a monopolistic market for specialty

drugs. In the absence of competition, the market price is set by the seller (irrespective of the cost of production) that maximizes the revenues. For example, even though a specialty drug may cost only a few dollars to produce, its price may be in thousands of dollars.

According to a 2004 analysis by the Department of Medical Assistance Services (DMAS), annual per patient costs of specialty drug therapies can range from $6,000 to $350,000 annually. Also, it is estimated within the fee-for-service component of the Virginia Medicaid program, about $18 million annually is spent on specialty drugs related to only five chronic or genetic conditions. Also, DMAS analysis revealed that nationwide total population spending on specialty medications grew 26.6% in 2003. Given the high per patient costs and the fast growth in utilization and innovation, Medicaid specialty drug expenditure growth appears to be vulnerable.

Prior to the emergency regulations, specialty drugs were reimbursed just like any other drugs. The reimbursement was the lowest of i) the federal Upper Drug Limit, ii) the higher of either the lowest Wholesale Acquisition Cost (WAC) plus 10%, or the second lowest WAC plus 6%, iii) the provider's usual and customary charge to the public, or iv) the estimated Acquisition Cost. The proposed regulations establish that specialty drugs shall be reimbursed by the lowest of i through iv and also WAC price plus WAC percentage which is identified each year for all generic code numbers. This year WAC percentage in effect is 4.75%. The proposed changes give DMAS the ability to apply a different reimbursement price specific to specialty drugs and also the ability to designate specialty drugs by publishing them on its website.

Economic theory supports the use of concentrated market buying power (such as the one Medicaid has) to negotiate and reduce the price set by a monopoly (such as the producers of specialty drugs). Note that neither the monopolistic seller nor the monopsonistic buyer even consider the cost of production while trying to determine the prevailing market price. Instead, the market price is determined by the relative bargaining powers of the unique seller and large buyer. In that sense, the proposed regulations are well justified in the sense that it gives DMAS an additional bargaining power when purchasing these drugs for the Medicaid recipients.

Since the proposed regulations are already implemented under emergency regulations, no savings are expected immediately upon promulgation of the proposed regulations. However, DMAS estimates that roughly about $250,000 annually may be saved in total funds upon promulgation of the proposed new pricing methodology for specialty drugs. Due to Medicaid funding mechanism, one half of the savings are expected to accrue to the Commonwealth while the rest are expected to accrue to the federal government. On the other hand, DMAS estimates that approximately $63,750 initially and approximately $75,000 on ongoing basis is needed to be paid to private contractors to implement and maintain the proposed new specialty drug reimbursement methodology.

Businesses and Entities Affected. The proposed regulations affect the prices of specialty drugs. Roughly about 20 manufacturers are estimated to be supplying the specialty drugs whose prices may be affected by the proposed changes.

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

Projected Impact on Employment. The effect on the employment in Virginia may be positive as the demand for contractor services to administer the new methodology is likely to increase.

Effects on the Use and Value of Private Property. The direct effect on the use and value of private property in Virginia is not known with any certainty but not anticipated to be significant.

Small Businesses: Costs and Other Effects. The proposed regulations are not likely to directly affect small businesses as the directly affected entities are drug manufacturers that cannot be considered small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed regulations are not anticipated to directly affect any entity that may be considered a small business.

Real Estate Development Costs. No real estate development costs are expected.

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

the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency concurs with the economic impact analysis prepared by the Department of Planning and Budget regarding the regulations concerning MAC Reimbursement for Specialty Drugs (12VAC30-80-40).

Summary:

This proposed action creates a method of reimbursement for specialty drugs, which are covered by the Virginia Medicaid program, based on the Wholesale Acquisition Cost of the drug. Specialty drug products are those which are used to treat chronic, high-cost or rare diseases, including drugs for the treatment of Hepatitis C and Multiple Sclerosis, as well as drugs such as growth hormone agents and interferon. These drugs tend to be much higher in cost than standard pharmaceutical products, can sometimes require special handling techniques and typically also require unique patient education and monitoring. This action implements a new methodology to help contain the higher costs associated with these drugs.

12VAC30-80-40. Fee-for-service providers: pharmacy.

Payment for pharmacy services shall be the lowest of items 1 through 5 (except that items 1 and 2 will not apply when prescriptions are certified as brand necessary by the prescribing physician in accordance with the procedures set forth in ~~42 CFR 447.331 (e)~~ 42 CFR 447.512(c) if the brand cost is greater than the Centers for Medicare and Medicaid Services (CMS) upper limit of VMAC cost) subject to the conditions, where applicable, set forth in subdivisions 6 and 7 of this section:

1. The upper limit established by the CMS for multiple source drugs pursuant to ~~42 CFR 447.331~~ 42 CFR 447.512 and ~~447.332~~ 447.514, as determined by the CMS Upper Limit List plus a dispensing fee. If the agency provides payment for any drugs on the HCFA Upper Limit List, the payment shall be subject to the aggregate upper limit payment test.

2. The methodology used to reimburse for generic drug products shall be the higher of either (i) the lowest Wholesale Acquisition Cost (WAC) plus 10% or (ii) the second lowest WAC plus 6.0%. This methodology shall reimburse for products' costs based on a Maximum Allowable Cost (VMAC) list to be established by the single state agency.

a. In developing the maximum allowable reimbursement rate for generic pharmaceuticals, the department or its designated contractor shall:

(1) Identify three different suppliers, including manufacturers that are able to supply pharmaceutical products in sufficient quantities. The drugs considered must be listed as therapeutically and pharmaceutically equivalent in the Food and Drug Administration's most recent version of the Approved Drug Products with Therapeutic Equivalence Evaluations (Orange Book). Pharmaceutical products that are not available from three different suppliers, including manufacturers, shall not be subject to the VMAC list.

(2) Identify that the use of a VMAC rate is lower than the Federal Upper Limit (FUL) for the drug. The FUL is a known, widely published price provided by CMS; and

(3) Distribute the list of state VMAC rates to pharmacy providers in a timely manner prior to the implementation of VMAC rates and subsequent modifications. DMAS shall publish on its website, each month, the information used to set the Commonwealth's prospective VMAC rates, including, but not necessarily limited to:

(a) The identity of applicable reference products used to set the VMAC rates;

(b) The Generic Code Number (GCN) or National Drug Code (NDC), as may be appropriate, of reference products;

(c) The difference by which the VMAC rate exceeds the appropriate WAC price; and

(d) The identity and date of the published compendia used to determine reference products and set the VMAC rate. The difference by which the VMAC rate exceeds the appropriate WAC price shall be at least or equal to 10% above the lowest-published wholesale acquisition cost for products widely available for purchase in the Commonwealth and shall be included in national pricing compendia.

b. Development of a VMAC rate that does not have a FUL rate shall not result in the use of higher-cost innovator brand name or single source drugs in the Medicaid program.

c. DMAS or its designated contractor shall:

(1) Implement and maintain a procedure to add or eliminate products from the list, or modify VMAC rates, consistent with changes in the fluctuating marketplace. DMAS or its designated contractor will regularly review manufacturers' pricing and monitor drug availability in the marketplace to determine the inclusion or exclusion of drugs on the VMAC list; and

(2) Provide a pricing dispute resolution procedure to allow a dispensing provider to contest a listed VMAC rate. DMAS or its designated contractor shall confirm receipt of pricing disputes within 24 hours, via telephone

or facsimile, with the appropriate documentation of relevant information, e.g., invoices. Disputes shall be resolved within three business days of confirmation. The pricing dispute resolution process will include DMAS' or the contractor's verification of accurate pricing to ensure consistency with marketplace pricing and drug availability. Providers will be reimbursed, as appropriate, based on findings. Providers shall be required to use this dispute resolution process prior to exercising any applicable appeal rights.

3. The provider's usual and customary charge to the public, as identified by the claim charge.

4. The Estimated Acquisition Cost (EAC), which shall be based on the published Average Wholesale Price (AWP) minus a percentage discount established by the General Assembly (as set forth in subdivision ~~8~~ 9 of this section) or, in the absence thereof, by the following methodology set out in subdivisions a through c ~~below~~ of this subdivision.

a. Percentage discount shall be determined by a statewide survey of providers' acquisition cost.

b. The survey shall reflect statistical analysis of actual provider purchase invoices.

c. The agency will conduct surveys at intervals deemed necessary by DMAS.

5. MAC methodology for specialty drugs. Payment for drug products designated by DMAS as specialty drugs shall be the lesser of subdivisions 1 through 4 of this section or the following method, whichever is least:

a. The methodology used to reimburse for designated specialty drug products shall be the WAC price plus the WAC percentage. The WAC percentage is a constant percentage identified each year for all GCNs.

b. Designated specialty drug products are certain products used to treat chronic, high-cost or rare diseases; the drugs subject to this pricing methodology and their current reimbursement rates are listed on the DMAS website at the following internet address: http://www.dmas.virginia.gov/downloads/pdfs/pharm-special_mac_list.pdf.

c. The MAC reimbursement methodology for specialty drugs shall be subject to the pricing review and dispute resolution procedures described in subdivisions 2 c (1) and 2 c (2) of this section.

~~5.~~ 6. Payment for pharmacy services will be as described above; however, payment for legend drugs will include the allowed cost of the drug plus only one dispensing fee per month for each specific drug. Exceptions to the monthly dispensing fees shall be allowed for drugs determined by the department to have unique dispensing requirements. The dispensing fee for brand name and generic drugs is $3.75.

~~6.~~ 7. The Program pays additional reimbursement for unit dose dispensing systems of dispensing drugs. DMAS defines its unit dose dispensing system coverage consistent with that of the Board of Pharmacy of the Department of Health Professions (18VAC110-20-420). This service is paid only for patients residing in nursing facilities. Reimbursements are based on the allowed payments described above plus the unit dose per capita fee to be calculated by DMAS' fiscal agent based on monthly per nursing home resident service per pharmacy provider. Only one service fee per month may be paid to the pharmacy for each patient receiving unit dose dispensing services. Multisource drugs will be reimbursed at the maximum allowed drug cost for specific multiple source drugs as identified by the state agency or CMS' upper limits as applicable. All other drugs will be reimbursed at drug costs not to exceed the estimated acquisition cost determined by the state agency. The original per capita fee shall be determined by a DMAS analysis of costs related to such dispensing, and shall be reevaluated at periodic intervals for appropriate adjustment. The unit dose dispensing fee is $5.00 per recipient per month per pharmacy provider.

~~7.~~ 8. Determination of EAC was the result of a report by the Office of the Inspector General that focused on appropriate Medicaid marketplace pricing of pharmaceuticals based on the documented costs to the pharmacy. An EAC of AWP minus 10.25% shall become effective July 1, 2002.

The dispensing fee for brand name and generic drugs of $3.75 shall remain in effect, creating a payment methodology based on the previous algorithm (least of subdivisions ~~1 through 5~~ of this ~~subsection above~~ section) plus a dispensing fee where applicable.

~~8.~~ 9. Home infusion therapy.

a. The following therapy categories shall have a pharmacy service day rate payment allowable: hydration therapy, chemotherapy, pain management therapy, drug therapy, total parenteral nutrition (TPN). The service day rate payment for the pharmacy component shall apply to the basic components and services intrinsic to the therapy category. Submission of claims for the per diem rate shall be accomplished by use of the CMS 1500 claim form.

b. The cost of the active ingredient or ingredients for chemotherapy, pain management and drug therapies shall be submitted as a separate claim through the pharmacy program, using standard pharmacy format. Payment for this component shall be consistent with the current reimbursement for pharmacy services. Multiple applications of the same therapy shall be reimbursed one service day rate for the pharmacy services. Multiple

applications of different therapies shall be reimbursed at 100% of standard pharmacy reimbursement for each active ingredient.

~~9.~~ 10. Supplemental rebate agreement. Based on the requirements in § 1927 of the Social Security Act, the Commonwealth of Virginia has the following policies for the supplemental drug rebate program for Medicaid recipients:

a. The model supplemental rebate agreement between the Commonwealth and pharmaceutical manufacturers for legend drugs provided to Medicaid recipients, submitted to CMS on February 5, 2004, and entitled Virginia Supplemental Drug Rebate Agreement Contract A and Amendment #2 to Contract A has been authorized by CMS.

b. The model supplemental rebate agreement between the Commonwealth and pharmaceutical manufacturers for drugs provided to Medicaid recipients, submitted to CMS on February 5, 2004, and entitled Virginia Supplemental Drug Rebate Agreement Contract B and Amendment #2 to Contract B has been authorized by CMS.

c. The model supplemental rebate agreement between the Commonwealth and pharmaceutical manufacturers for drugs provided to Medicaid recipients, submitted to CMS on February 5, 2004, and entitled Virginia Supplemental Drug Rebate Agreement Contract C, and Amendments #1 and #2 to Contract C has been authorized by CMS.

d. Supplemental drug rebates received by the state in excess of those required under the national drug rebate agreement will be shared with the federal government on the same percentage basis as applied under the national drug rebate agreement.

e. Prior authorization requirements found in § 1927(d)(5) of the Social Security Act have been met.

f. Nonpreferred drugs are those that were reviewed by the Pharmacy and Therapeutics Committee and not included on the preferred drug list. Nonpreferred drugs will be made available to Medicaid beneficiaries through prior authorization.

g. Payment of supplemental rebates may result in a product's inclusion on the PDL.

VA.R. Doc. No. R08-1319; Filed May 18, 2009, 3:48 p.m.

Proposed Regulation

Title of Regulation: **12VAC30-80. Methods and Standards for Establishing Payment Rates; Other Types of Care (amending 12VAC30-80-30, 12VAC30-80-190).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comments: Public comments may be submitted until 5 p.m. on August 7, 2009.

Agency Contact: Carla Russell, Health Care Reimbursement Manager, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 225-4586, FAX (804) 371-8892, or email carla.russell@dmas.virginia.gov.

Basis: Section 32.1-325 of the Code of Virginia grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. Section 32.1-324 of the Code of Virginia authorizes the director of DMAS to administer and amend the Plan for Medical Assistance according to the board's requirements. The Medicaid authority as established by § 1902 (a) of the Social Security Act (42 USC § 1396a) provides governing authority for payments for services.

In Chapter 879 of the 2008 Acts of Assembly, Item 306 PP directed DMAS to recalibrate its Resource Based Relative Value System (RBRVS) physician reimbursement rates by implementing a site of service differential payment policy.

Purpose: This proposed regulation is not essential to protect the health, safety, or welfare of citizens. This proposed action modifies the methodology for reimbursing physicians based on the site of the service delivery. There are no expected environmental benefits from this change.

Substance: Currently, the DMAS-portion of the Virginia Administrative Code contains a Resource Based Relative Value System (RBRVS) for computing reimbursement for physician services (12VAC30-80-190). This RBRVS method was originally developed by the Centers for Medicare and Medicaid Services for use in the Medicare program for reimbursing physicians. In addition to this regulation, DMAS also has a secondary regulation (12VAC30-80-30) that reduced the amount of reimbursement to physicians when services were performed in the hospital setting as compared to the physicians' offices.

Currently, the DMAS methodology uses only the nonfacility Relative Value Unit (RVU) in calculating rates. Beginning in 1999, and fully phased in by 2002, Medicare adjusted its physician fees based on the setting in which the service was taking place. Medicare paid a lower fee for a service provided in a facility setting (i.e., outpatient hospital) than for the same service provided in a nonfacility setting (i.e., physician's office). As a result of computer system limitations at that time, DMAS did not implement a site of service differential and adopted the nonfacility RVU in the calculation of its physician reimbursement fees.

Over time the gap in the Medicare RVUs between facility and nonfacility sites of service has widened and the use of site of

service differentials has expanded to many more procedure codes. As a result of this growing disconnect between the Medicare physician methodology and the DMAS methodology, DMAS is now paying very different fees for many services than Medicare now pays when the service is performed in the facility setting. In many of these cases, the DMAS fee for a service in a facility setting is much higher than the Medicare fee, sometimes even higher than physicians' charges.

12VAC30-80-190 is being amended to implement a site of service differential for RBRVS physician rates. Payment for physician services in some cases will be recalibrated to implement different rates for services depending on the site of service, based on the relative value units (RVUs) for a procedure code published by the Centers for Medicare and Medicaid Services (CMS). For procedure codes that can be performed in either a facility or nonfacility, CMS has been publishing separate RVUs for several years and Medicare rates are based on site of service.

Different Medicaid rates calculated by site of service will be phased-in over a four-year period. In FY09, DMAS will add 75% of the difference between the facility RVU and nonfacility RVU to the facility RVU. In FY10, DMAS will add 50% of the difference between the facility RVU and nonfacility RVU to the facility RVU. In FY11, DMAS will add 25% of the difference between the facility RVU and nonfacility RVU to the facility RVU. In subsequent fiscal years, DMAS will use the Medicare facility RVU.

Different rates based on site of service will be implemented in a budget neutral manner. Any savings in total reimbursement to physicians as a result of the implementation of site of service rates will be reallocated proportionately to all physician categories of service as a percentage increase. The annual RBRVS update to physician services will be performed in conjunction with the implementation of site of service.

Issues: Implementation of site of service will align the DMAS physician methodology more closely to the Medicare physician methodology. This change will increase the efficiency and effectiveness of payments made by DMAS to physician providers. The intent of legislative changes to adjust physician rates will be applied more appropriately. There are no advantages or disadvantages to the citizens of the Commonwealth for this change.

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

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 879 of the 2008 Acts of the Assembly, Item 306 PP, the proposed regulations implement a site of service differential in physician reimbursement rates in a budget neutral manner. The proposed regulations have been in effect since July 2008 under emergency regulations.

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

Estimated Economic Impact. Pursuant to Chapter 879 of the 2008 Acts of the Assembly, Item 306 PP, the proposed regulations implement a site of service differential in physician reimbursement rates in a budget neutral manner. The proposed regulations have been in effect since July 2008 under emergency regulations.

While the Virginia Medicaid physician reimbursement methodology and rates have been closely modeled after Medicare methodology, due to computer system limitations at the time, Virginia Medicaid could not implement the site of service differential that was adopted by Medicare in 1999 and fully phased in by 2002. Instead, Virginia Medicaid had reimbursed for all physician services as if they were all performed in a non-facility (i.e. physician office) setting. Non-facility rates are higher than facility setting (i.e. outpatient hospital) rates because the physician cost of providing care in a non-facility setting is higher as there is no other entity such as a hospital to pay for a significant portion of the physicians' associated costs. Simply put, the cost of providing care to the physicians in their office is higher than the cost of providing care in a hospital setting. Over the years, the site of service difference has grown significantly and caused Virginia Medicaid to pay significantly higher rates than Medicare for physician services performed in a facility setting.

Currently, Virginia Medicaid has the technical capability to incorporate the site of service differential in physician reimbursement rates. Pursuant to the legislative mandate, the proposed regulations implement differential reimbursement rates for services provided in a facility and in a non-facility. Because all physician services prior to emergency regulations were reimbursed at non-facility rates and non-facility rates are higher, the estimated reduction in total physician reimbursements, holding everything else constant, would have been about $6 million in total funds. However, the proposed regulations provide a percentage increase phased in over a four-year period in all physician categories of service that offsets the site of service differential reduction. In other words, one fourth of the difference between the facility and non-facility rates and the corresponding percentage increase in other rates will be implemented this year, another one fourth next year, and so on.

At the aggregate, the total amount paid by Virginia Medicaid to all of the physicians is expected to stay the same. However, it is possible that physicians that provide most of their services in a non-facility setting may experience a reduction in their total reimbursement as the percentage increase in other rates may not fully compensate the reduction due to site of service differential. Also, recognition of differential costs arising from site of service in reimbursement methodology is

expected to improve allocative efficiency of Virginia Medicaid dollars.

Businesses and Entities Affected. The proposed regulations recalibrate the physician rates in a budget neutral fashion. Approximately 65,290 physicians and other practitioners are enrolled in the Virginia Medicaid program.

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

Projected Impact on Employment. No significant impact on net employment is expected.

Effects on the Use and Value of Private Property. No significant impact on the net use and value of private property is expected.

Small Businesses: Costs and Other Effects. On net, no costs or other effects are expected on small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. On net, no costs or other adverse effects are expected on small businesses.

Real Estate Development Costs. No effect on real estate development costs is expected.

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

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency concurs with the economic impact analysis prepared by the Department of Planning and Budget regarding the regulations concerning recalibrating physician services by implementing site of service (12VAC30-80-30 and 12VAC30-80-190).

Summary:

Item 306 PP of Chapter 879 of the 2008 Acts of Assembly directed DMAS to recalibrate its Resource Based Relative Value System (RBRVS) physician reimbursement rates by implementing a site of service differential payment policy.

12VAC30-80-190 is being amended to implement a site of service differential for RBRVS physician rates. Payment for physician services in some cases will be recalibrated to implement different rates for services depending on the site of service based on the relative value units (RVUs) for a procedure code published by the Centers for Medicare and Medicaid Services (CMS). For procedures that can be performed in either a facility or nonfacility, CMS has been publishing separate RVUs for several years and Medicare rates are based on site of service. Different Medicaid rates by site of service will be phased in over a four-year period.

12VAC30-80-30 is being amended to remove the long-standing payment reduction applied to physician services when performed in hospital settings, as compared to physicians' offices.

12VAC30-80-30. Fee-for-service providers.

A. Payment for the following services, except for physician services, shall be the lower of the state agency fee schedule (12VAC30-80-190 has information about the state agency fee schedule) or actual charge (charge to the general public):

1. Physicians' services ~~(12VAC30-80-160 has obstetric/pediatric fees)~~. Payment for physician services shall be the lower of the state agency fee schedule or actual charge (charge to the general public)~~, except that reimbursement rates for designated physician services when performed in hospital outpatient settings shall be 50% of the reimbursement rate established for those services when performed in a physician's office~~. The following limitations shall apply to emergency physician services.

a. Definitions. The following words and terms, when used in this subdivision 1 shall have the following meanings when applied to emergency services unless the context clearly indicates otherwise:

"All-inclusive" means all emergency service and ancillary service charges claimed in association with the emergency department visit, with the exception of laboratory services.

"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.

"Emergency physician services" means services that are necessary to prevent the death or serious impairment of the health of the recipient. The threat to the life or health of the recipient necessitates the use of the most accessible hospital available that is equipped to furnish the services.

"Recent injury" means an injury that has occurred less than 72 hours prior to the emergency department visit.

b. Scope. DMAS shall differentiate, as determined by the attending physician's diagnosis, the kinds of care routinely rendered in emergency departments and reimburse physicians for nonemergency care rendered in emergency departments at a reduced rate.

(1) DMAS shall reimburse at a reduced and all-inclusive reimbursement rate for all physician services, including those obstetric and pediatric procedures contained in 12VAC30-80-160, rendered in emergency departments that DMAS determines are nonemergency care.

(2) Services determined by the attending physician to be emergencies shall be reimbursed under the existing methodologies and at the existing rates.

(3) Services determined by the attending physician that may be emergencies shall be manually reviewed. If such services meet certain criteria, they shall be paid under the methodology in subdivision 1 b (2) of this subsection. Services not meeting certain criteria shall be paid under the methodology in subdivision 1 b (1) of this subsection. Such criteria shall include, but not be limited to:

(a) The initial treatment following a recent obvious injury.

(b) Treatment related to an injury sustained more than 72 hours prior to the visit with the deterioration of the symptoms to the point of requiring medical treatment for stabilization.

(c) The initial treatment for medical emergencies including indications of severe chest pain, dyspnea, gastrointestinal hemorrhage, spontaneous abortion, loss of consciousness, status epilepticus, or other conditions considered life threatening.

(d) A visit in which the recipient's condition requires immediate hospital admission or the transfer to another facility for further treatment or a visit in which the recipient dies.

(e) Services provided for acute vital sign changes as specified in the provider manual.

(f) Services provided for severe pain when combined with one or more of the other guidelines.

(4) Payment shall be determined based on ICD-9-CM diagnosis codes and necessary supporting documentation.

(5) DMAS shall review on an ongoing basis the effectiveness of this program in achieving its objectives and for its effect on recipients, physicians, and hospitals. Program components may be revised subject to achieving program intent objectives, the accuracy and effectiveness of the ICD-9-CM code designations, and the impact on recipients and providers.

2. Dentists' services.

3. Mental health services including: (i) community mental health services; (ii) services of a licensed clinical psychologist; or (iii) mental health services provided by a physician.

a. Services provided by licensed clinical psychologists shall be reimbursed at 90% of the reimbursement rate for psychiatrists.

b. Services provided by independently enrolled licensed clinical social workers, licensed professional counselors or licensed clinical nurse specialists-psychiatric shall be reimbursed at 75% of the reimbursement rate for licensed clinical psychologists.

4. Podiatry.

5. Nurse-midwife services.

6. Durable medical equipment (DME).

a. For those items that have a national Healthcare Common Procedure Coding System (HCPCS) code, the rate for durable medical equipment shall be set at the Durable Medical Equipment Regional Carrier (DMERC) reimbursement level.

b. The rate paid for all items of durable medical equipment except nutritional supplements shall be the lower of the state agency fee schedule that existed prior to July 1, 1996, less 4.5%, or the actual charge.

c. The rate paid for nutritional supplements shall be the lower of the state agency fee schedule or the actual charge.

d. Certain durable medical equipment used for intravenous therapy and oxygen therapy shall be bundled under specified procedure codes and reimbursed as determined by the agency. Certain services/durable medical equipment such as service maintenance agreements shall be bundled under specified procedure codes and reimbursed as determined by the agency.

(1) Intravenous therapies. The DME for a single therapy, administered in one day, shall be reimbursed at the established service day rate for the bundled durable medical equipment and the standard pharmacy payment, consistent with the ingredient cost as described in 12VAC30-80-40, plus the pharmacy service day and dispensing fee. Multiple applications of the same therapy

shall be included in one service day rate of reimbursement. Multiple applications of different therapies administered in one day shall be reimbursed for the bundled durable medical equipment service day rate as follows: the most expensive therapy shall be reimbursed at 100% of cost; the second and all subsequent most expensive therapies shall be reimbursed at 50% of cost. Multiple therapies administered in one day shall be reimbursed at the pharmacy service day rate plus 100% of every active therapeutic ingredient in the compound (at the lowest ingredient cost methodology) plus the appropriate pharmacy dispensing fee.

(2) Respiratory therapies. The DME for oxygen therapy shall have supplies or components bundled under a service day rate based on oxygen liter flow rate or blood gas levels. Equipment associated with respiratory therapy may have ancillary components bundled with the main component for reimbursement. The reimbursement shall be a service day per diem rate for rental of equipment or a total amount of purchase for the purchase of equipment. Such respiratory equipment shall include, but not be limited to, oxygen tanks and tubing, ventilators, noncontinuous ventilators, and suction machines. Ventilators, noncontinuous ventilators, and suction machines may be purchased based on the individual patient's medical necessity and length of need.

(3) Service maintenance agreements. Provision shall be made for a combination of services, routine maintenance, and supplies, to be known as agreements, under a single reimbursement code only for equipment that is recipient owned. Such bundled agreements shall be reimbursed either monthly or in units per year based on the individual agreement between the DME provider and DMAS. Such bundled agreements may apply to, but not necessarily be limited to, either respiratory equipment or apnea monitors.

7. Local health services.

8. Laboratory services (other than inpatient hospital).

9. Payments to physicians who handle laboratory specimens, but do not perform laboratory analysis (limited to payment for handling).

10. X-Ray services.

11. Optometry services.

12. Medical supplies and equipment.

13. Home health services. Effective June 30, 1991, cost reimbursement for home health services is eliminated. A rate per visit by discipline shall be established as set forth by 12VAC30-80-180.

14. Physical therapy; occupational therapy; and speech, hearing, language disorders services when rendered to noninstitutionalized recipients.

15. Clinic services, as defined under 42 CFR 440.90.

16. Supplemental payments for services provided by Type I physicians.

a. In addition to payments for physician services specified elsewhere in this State Plan, DMAS provides supplemental payments to Type I physicians for furnished services provided on or after July 2, 2002. A Type I physician is a member of a practice group organized by or under the control of a state academic health system or an academic health system that operates under a state authority and includes a hospital, who has entered into contractual agreements for the assignment of payments in accordance with 42 CFR 447.10.

b. Effective July 2, 2002, the supplemental payment amount for Type I physician services shall be the difference between the Medicaid payments otherwise made for Type I physician services and Medicare rates. Effective August 13, 2002, the supplemental payment amount for Type I physician services shall be the difference between the Medicaid payments otherwise made for physician services and 143% of Medicare rates. This percentage was determined by dividing the total commercial allowed amounts for Type I physicians for at least the top five commercial insurers in CY 2004 by what Medicare would have allowed. The average commercial allowed amount was determined by multiplying the relative value units times the conversion factor for RBRVS procedures and by multiplying the unit cost times anesthesia units for anesthesia procedures for each insurer and practice group with Type I physicians and summing for all insurers and practice groups. The Medicare equivalent amount was determined by multiplying the total commercial relative value units for Type I physicians times the Medicare conversion factor for RBRVS procedures and by multiplying the Medicare unit cost times total commercial anesthesia units for anesthesia procedures for all Type I physicians and summing.

c. Supplemental payments shall be made quarterly.

d. Payment will not be made to the extent that this would duplicate payments based on physician costs covered by the supplemental payments.

17. Supplemental payments to nonstate government-owned or operated clinics.

a. In addition to payments for clinic services specified elsewhere in the regulations, DMAS provides supplemental payments to qualifying nonstate government-owned or operated clinics for outpatient

services provided to Medicaid patients on or after July 2, 2002. Clinic means a facility that is not part of a hospital but is organized and operated to provide medical care to outpatients. Outpatient services include those furnished by or under the direction of a physician, dentist or other medical professional acting within the scope of his license to an eligible individual. Effective July 1, 2005, a qualifying clinic is a clinic operated by a community services board. The state share for supplemental clinic payments will be funded by general fund appropriations.

b. The amount of the supplemental payment made to each qualifying nonstate government-owned or operated clinic is determined by:

(1) Calculating for each clinic the annual difference between the upper payment limit attributed to each clinic according to subdivision 17 d and the amount otherwise actually paid for the services by the Medicaid program;

(2) Dividing the difference determined in subdivision 17 b (1) for each qualifying clinic by the aggregate difference for all such qualifying clinics; and

(3) Multiplying the proportion determined in subdivision (2) of this subdivision 17 b by the aggregate upper payment limit amount for all such clinics as determined in accordance with 42 CFR 447.321 less all payments made to such clinics other than under this section.

c. Payments for furnished services made under this section may be made in one or more installments at such times, within the fiscal year or thereafter, as is determined by DMAS.

d. To determine the aggregate upper payment limit referred to in subdivision 17 b (3), Medicaid payments to nonstate government-owned or operated clinics will be divided by the "additional factor" whose calculation is described in Attachment 4.19-B, Supplement 4 (12VAC30-80-190 B 2) in regard to the state agency fee schedule for RBRVS. Medicaid payments will be estimated using payments for dates of service from the prior fiscal year adjusted for expected claim payments. Additional adjustments will be made for any program changes in Medicare or Medicaid payments.

B. Hospice services payments must be no lower than the amounts using the same methodology used under Part A of Title XVIII, and take into account the room and board furnished by the facility, equal to at least 95% of the rate that would have been paid by the state under the plan for facility services in that facility for that individual. Hospice services shall be paid according to the location of the service delivery and not the location of the agency's home office.

12VAC30-80-190. State agency fee schedule for RBRVS.

A. Reimbursement of fee-for-service providers. Effective for dates of service on or after July 1, 1995, the Department of Medical Assistance Services (DMAS) shall reimburse fee-for-service providers, with the exception of home health services (see 12VAC30-80-180) and durable medical equipment services (see 12VAC30-80-30), using a fee schedule that is based on a Resource Based Relative Value Scale (RBRVS).

B. Fee schedule.

1. For those services or procedures which are included in the RBRVS published by the Centers for Medicare and Medicaid Services (CMS) as amended from time to time, DMAS' fee schedule shall employ the Relative Value Units (RVUs) developed by CMS as periodically updated.

a. Effective for dates of service on or after July 1, 2008, DMAS shall implement site of service differentials and employ both nonfacility and facility RVUs. The implementation shall be budget neutral using the methodology in subdivision 2 of this subsection.

b. The implementation of site of service shall be transitioned over a four-year period.

(1) Effective for dates of service on or after July 1, 2008, DMAS shall calculate the transitioned facility RVU by adding 75% of the difference between the facility RVU and nonfacility RVU to the facility RVU.

(2) Effective for dates of service on or after July 1, 2009, DMAS shall calculate the transitioned facility RVU by adding 50% of the difference between the facility RVU and nonfacility RVU to the facility RVU.

(3) Effective for dates of service on or after July 1, 2010, DMAS shall calculate the transitioned facility RVU by adding 25% of the difference between the facility RVU and nonfacility RVU to the facility RVU.

(4) Effective for dates of service on or after July 1, 2011, DMAS shall use the unadjusted Medicare facility RVU.

2. DMAS shall calculate the RBRVS-based fees using conversion factors (CFs) published from time to time by CMS. DMAS shall adjust CMS' CFs by additional factors so that no change in expenditure will result solely from the implementation of the RBRVS-based fee schedule. DMAS may revise the additional factors when CMS updates its RVUs or CFs so that no change in expenditure will result solely from such updates. Except for this adjustment, DMAS' CFs shall be the same as those published from time to time by CMS. The calculation of the additional factors shall be based on the assumption that no change in services provided will occur as a result of these changes to the fee schedule. The determination of the additional factors required above shall be accomplished by means of the following calculation:

a. The estimated amount of DMAS expenditures if DMAS were to use Medicare's RVUs and CFs without

modification, is equal to the sum, across all relevant procedure codes, of the RVU value published by the CMS, multiplied by the applicable conversion factor published by the CMS, multiplied by the number of occurrences of the procedure code in DMAS patient claims in the most recent period of time (at least six months).

b. The estimated amount of DMAS expenditures, if DMAS were not to calculate new fees based on the new CMS RVUs and CFs, is equal to the sum, across all relevant procedure codes, of the existing DMAS fee multiplied by the number of occurrences of the procedures code in DMAS patient claims in the period of time used in subdivision 2 a of this subsection.

c. The relevant additional factor is equal to the ratio of the expenditure estimate (based on DMAS fees in subdivision 2 b of this subsection) to the expenditure estimate based on unmodified CMS values in subdivision 2 a of this subsection.

d. DMAS shall calculate a separate additional factor for:

(1) Emergency room services (defined as the American Medical Association's (AMA) publication of the Current Procedural Terminology (CPT) codes 99281, 99282, 99283, 99284, and 992851 in effect at the time the service is provided);

(2) Obstetrical/gynecological services (defined as maternity care and delivery procedures, female genital system procedures, obstetrical/gynecological-related radiological procedures, and mammography procedures, as defined by the American Medical Association's (AMA) publication of the Current Procedural Terminology (CPT) manual in effect at the time the service is provided);

(3) Pediatric preventive services (defined as preventive E&M procedures, excluding those listed in subdivision 2 d (1) of this subsection, as defined by the AMA's publication of the CPT manual, in effect at the time the service is provided, for recipients under age 21);

(4) Pediatric primary services (defined as evaluation and management (E&M) procedures, excluding those listed in subdivisions 2 d (1) and 2 d (3) of this subsection, as defined by the AMA's publication of the CPT manual, in effect at the time the service is provided, for recipients under age 21);

(5) Adult primary and preventive services (defined as E&M procedures, excluding those listed in subdivision 2 d (1) of this subsection, as defined by the AMA's publication of the CPT manual, in effect at the time the service is provided, for recipients age 21 and over); and

(6) All other procedures set through the RBRVS process combined.

3. For those services or procedures for which there are no established RVUs, DMAS shall approximate a reasonable relative value payment level by looking to similar existing relative value fees. If DMAS is unable to establish a relative value payment level for any service or procedure, the fee shall not be based on a RBRVS, but shall instead be based on the previous fee-for-service methodology.

4. Fees shall not vary by geographic locality.

5. Effective for dates of service on or after July 1, 2007, fees for emergency room services (defined in subdivision 2 d (1) of this subsection) shall be increased by 5.0% relative to the fees that would otherwise be in effect.

C. Effective for dates of service on or after May 1, 2006, fees for obstetrical/gynecological services (defined in subdivision B 2 d (2) of this section) shall be increased by 2.5% relative to the fees in effect on July 1, 2005.

D. Effective for dates of service on or after May 1, 2006, fees for pediatric services (defined in subdivisions B 2 d (3) and (4) of this section) shall be increased by 5.0% relative to the fees in effect on July 1, 2005. Effective for dates of service on or after July 1, 2006, fees for pediatric services (defined in subdivisions B 2 d (3) and (4) of this section) shall be increased by 5.0% relative to the fees in effect on May 1, 2006. Effective for dates of service on or after July 1, 2007, fees for pediatric primary services (defined in subdivision B 2 d (4) of this section) shall be increased by 10% relative to the fees that would otherwise be in effect.

E. Effective for dates of service on or after July 1, 2007, fees for pediatric preventive services (defined in subdivision B 2 d (3) of this section) shall be increased by 10% relative to the fees that would otherwise be in effect.

F. Effective for dates of service on or after May 1, 2006, fees for adult primary and preventive services (defined in subdivision B 2 d (4) of this section) shall be increased by 5.0% relative to the fees in effect on July 1, 2005. Effective for dates of service on or after July 1, 2007, fees for adult primary and preventive services (defined in subdivision B 2 d (5) of this section) shall be increased by 5.0% relative to the fees that would otherwise be in effect.

G. Effective for dates of service on or after July 1, 2007, fees for all other procedures set through the RBRVS process combined (defined in subdivision B 2 d (6) of this section) shall be increased by 5.0% relative to the fees that would otherwise be in effect.

VA.R. Doc. No. R09-1331; Filed May 14, 2009, 3:56 p.m.

Final Regulation

Title of Regulation: **12VAC30-120. Waivered Services (amending 12VAC30-120-70, 12VAC30-120-90, 12VAC30-120-140, 12VAC30-120-211, 12VAC30-120-213, 12VAC30-120-225, 12VAC30-120-229, 12VAC30-120-237, 12VAC30-120-247, 12VAC30-120-700, 12VAC30-120-710, 12VAC30-120-754, 12VAC30-120-758, 12VAC30-120-762, 12VAC30-120-770, 12VAC30-120-900, 12VAC30-120-910, 12VAC30-120-920, 12VAC30-120-970, 12VAC30-120-1500, 12VAC30-120-1550; adding 12VAC30-120-2000, 12VAC30-120-2010).**

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

Effective Date: July 9, 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:

The regulations establish a Medicaid waiver program known as "Money Follows the Person." Nationally, this program is designed to create a system of long-term services and supports that enables available funds to "follow the person" by supporting the transition of individuals from institutional long-term care settings into community-based care settings.

DMAS made only two technical, nonsubstantive changes in the final regulations that were not in the proposed regulations. In 12VAC30-120-247 A 3, a reference to "an employment assistant as defined in 12VAC30-120-211" is replaced with the term "a job coach." And in 12VAC30-120-900, the definition of "assistive technology" is clarified.

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

Part II
Home and Community-Based Services for Technology Assisted Individuals

12VAC30-120-70. Definitions.

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

"Activities of daily living (ADL)" means personal care tasks, i.e., bathing, dressing, toileting, transferring, bowel/bladder control, and eating/feeding. A person's degree of independence in performing these activities is a part of determining appropriate level of care and services.

"Adult" means an individual who either is 21 years of age or is past 21 years of age.

"Assistive technology" means specialized medical equipment and supplies including those devices, controls, or appliances specified in the plan of care but not available under the State Plan for Medical Assistance that enable individuals to increase their abilities to perform activities of daily living, or to perceive, control, or communicate with the environment in which they live, or that are necessary to the proper functioning of the specialized equipment.

"Child" means an individual who has not yet reached his 21st birthday.

"Congregate living arrangement" means one in which two or more recipients live in the same household and may share receipt of health care services from the same provider or providers.

"Congregate private duty nursing" means nursing provided to two or more recipients in a group setting.

"DMAS" means the Department of Medical Assistance Services.

"Environmental modifications" means physical adaptations to a house, or place of residence, which shall be necessary to ensure the individual's health or safety, or enable functioning with greater independence when the adaptation is not being used to bring a substandard dwelling up to minimum habitation standards and is of direct medical or remedial benefit to the individual. Such modifications must exceed reasonable accommodation requirements of the Americans with Disabilities Act (42 USC § 1201 et seq.).

~~"Health care coordinator" means the registered nurse who is responsible for ensuring that the assessment, care planning, monitoring, and review activities as required by DMAS are accomplished. This individual may be either an employee of DMAS or a DMAS contractor.~~

"Health care coordination" means a comprehensive needs assessment, determination of cost effectiveness, and the coordination of the service efforts of multiple providers in order to avoid duplication of services and to ensure the individual's access to and receipt of needed services.

"Health care coordinator" means the registered nurse who is responsible for ensuring that the assessment, care planning, monitoring, and review activities as required by DMAS are accomplished. This individual may be either an employee of DMAS or a DMAS contractor.

"Instrumental activities of daily living (IADL)" means social tasks, i.e., meal preparation, shopping, housekeeping, laundry, money management. A person's degree of independence in performing these activities is a part of determining appropriate level of care and services. The provision of IADLs is limited to the individual receiving

services and not to family members or other persons in the household. Meal preparation is planning, preparing, cooking and serving food. Shopping is getting to and from the store, obtaining/paying for groceries and carrying them home. Housekeeping is dusting, washing dishes, making beds, vacuuming, cleaning floors, and cleaning kitchen/bathroom. Laundry is washing/drying clothes. Money management is paying bills, writing checks, handling cash transactions, and making change.

"Medical equipment and supplies" means those articles prescribed by the attending physician, generally recognized by the medical community as serving a diagnostic or therapeutic purpose and as being a medically necessary element of the home care plan. Items covered are medically necessary equipment and supplies needed to assist the individual in the home environment, without regard to whether those items are covered by the Plan.

"Objective Scoring Criteria" means the evaluative tool to be used to determine the appropriateness for an individual's admission to these services.

"Personal assistance" means care provided by an aide or respiratory therapist trained in the provision of assistance with ADLs or IADLs.

"Personal emergency response systems" or "PERS" means an electronic device and monitoring service that enable certain individuals at high risk of institutionalization to secure help in an emergency. PERS services are limited to those individuals who live alone or are alone for significant parts of the day and who have no regular caregiver for extended periods of time, and who would otherwise require extensive routine supervision. 12VAC30-120-970 provides the service description, criteria, service units and limitations, and provider requirements for this service.

"Plan of care" means the written plan of services and supplies certified by the attending physician needed by the individual to ensure optimal health and safety for an extended period of time.

"Primary caregiver" means ~~either a family member or other person who takes primary responsibility for providing assistance to the recipient or recipients for care they are unable to provide for himself or themselves~~ the primary person who consistently assumes the role of providing direct care and support of the individual to live successfully in the community without compensation for such care.

"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.

"Providers" means those individuals or facilities registered, licensed, or certified, or both, as appropriate, and enrolled by DMAS to render services to Medicaid recipients eligible for services.

"Respite care services" means temporary skilled nursing services designed to relieve the family of the care of the technology assisted individual for a short period or periods of time (a maximum of 15 days per year or 360 hours per 12-month period). In a congregate living arrangement, this same limit shall apply per household. Respite care shall be provided in the home of the individual's family or caretaker.

~~"Routine respiratory therapy" means services that can be provided on a regularly scheduled basis. Therapy interventions may include: (i) monitoring of oxygen in blood; (ii) evaluation of pulmonary functioning; and (iii) maintenance of respiratory equipment.~~

"State Plan for Medical Assistance" or "the 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.

"Technology assisted" means any individual defined as chronically ill or severely impaired who needs both a medical device to compensate for the loss of a vital body function and substantial and ongoing skilled nursing care to avert death or further disability and whose illness or disability would, in the absence of services approved under this waiver, require admission to or prolonged stay in a hospital, nursing facility, or other medical long-term care facility.

"Transition services" means set-up expenses for individuals who are transitioning from an institution or licensed or certified provider-operated living arrangement to a living arrangement in a private residence where the person is directly responsible for his own living expenses. 12VAC30-120-2010 provides the service description, criteria, service units and limitations, and provider requirements for this service.

12VAC30-120-90. Covered services and provider requirements.

A. Private duty nursing service shall be covered for individuals enrolled in the technology assisted waiver services. This service shall be provided through either a home health agency licensed or certified by the Virginia Department of Health for Medicaid participation and with which DMAS has a contract for private duty nursing or a day care center licensed by the Virginia Department of Social Services which employs registered nurses and is enrolled by DMAS to provide congregate private duty nursing. At a minimum, the private duty nurse shall either be a licensed practical nurse or a registered nurse with a current and valid license issued by the Virginia State Board of Nursing.

1. For individuals under 21 whether living separately or congregately, during the first 30 days after the individual's admission to the waiver service, private duty nursing is covered for 24 hours per day if needed and appropriate to assist the family in adjustment to the care associated with

technology assistance. After 30 days, private duty nursing shall be reimbursed for a maximum of 16 hours per 24-hour period per household. The department may grant individual exceptions, not to exceed 30 total days per annum, to these maximum limits based on documented emergency needs of the individual and the case, which continue to meet requirements for cost effectiveness of community services. Such consideration of documented emergency needs shall not include applicable additional emergency costs.

2. For individuals over the age of 21 years whether living separately or congregately, private duty nursing shall be reimbursed for a maximum of 16 hours within a 24-hour period per household provided that the cost-effectiveness standard is not exceeded for the individual's care.

3. In no instance, shall DMAS approve an ongoing plan of care or ongoing multiple plans of care per household which result in approval of more than 16 hours of private duty nursing in a 24-hour period per household.

4. Individuals who no longer meet the patient qualifications for either children or adults cited in 12VAC30-120-80 may be eligible for private duty nursing for the number of hours per 24-hour period previously approved in the plan of care not to exceed two weeks from the date the attending physician certifies the cessation of daily technology assistance.

5. The hours of private duty nursing approved for coverage shall be limited by either medical necessity or cost effectiveness or both.

6. Congregate private duty nursing shall be limited to a maximum ratio of one private duty nurse to two waiver recipients. When three or more waiver recipients share a home, ratios will be determined by the combined needs of the residents.

B. Provided that the cost-effectiveness standard shall not be exceeded, respite care service shall be covered for a maximum of 360 hours within a ~~12-month period~~ calendar year per household for individuals who are qualified for technology assisted waiver services and who have a primary caregiver, other than the provider, who requires relief from the burden of caregiving. This service shall be provided by skilled nursing staff (registered nurse or licensed practical nurse licensed to practice in the Commonwealth) under the direct supervision of a home health agency licensed or certified by the Virginia Department of Health for Medicaid participation and with which DMAS has a contract to provide private duty nursing.

C. Provided that the cost-effectiveness standard shall not be exceeded, durable medical equipment and supplies shall be provided for individuals qualified for technology services. All durable medical equipment and supplies, including nutritional supplements, which are covered under the State Plan and those medical equipment and supplies, including such items which may be defined as assistive technology and environmental modifications which are not covered under the State Plan but are medically necessary and cost effective for the individual's maintenance in the community, shall be covered. This service shall be provided by persons qualified to render it. Durable medical equipment and supplies shall be necessary to maintain the individual in the home environment.

1. Medical equipment and supplies shall be prescribed by the attending physician and included in the plan of care, and must be generally recognized as serving a diagnostic or therapeutic purpose and being medically necessary for the home care of the individual.

2. Vendors of durable medical equipment and supplies related to the technology upon which the individual is dependent shall have a contract with DMAS to provide services.

3. In addition to providing the ventilator or other respiratory-deviced support and associated equipment and supplies, the vendor providing the ventilator shall ensure the following:

a. 24 hour on-call for emergency services;

b. Technicians to make regularly scheduled maintenance visits at least every 30 days and more often if called;

c. Replacement or repair of equipment and supplies as required; and

d. Respiratory therapist registered or certified with the National Board for Respiratory Care (NBRC) on call 24 hours per day and stationed within two hours of the individual's home to facilitate immediate response. The respiratory therapist shall be available for routine respiratory therapy as well as emergency care. In the event that the Department of Health Professions implements through state law a regulation requiring registration, certification or licensure for respiratory therapists to practice in the Commonwealth, DMAS shall require all respiratory therapists providing services to this technology assisted population to be duly registered, licensed or certified.

D. Provided that the cost-effectiveness standard shall not be exceeded, personal assistance services shall be covered for individuals over the age of 21 who require some assistance with activities of daily living and instrumental activities of daily living but do not require and are able to do without skilled interventions during portions of their day or are able to self perform a portion of their ADLs or IADLs or direct their skilled care needs during the period when personal assistance would be provided. Personal assistance services shall be rendered by a provider who has a DMAS provider agreement to provide personal care, home health care, and private duty

nursing. At a minimum, the staff providing personal assistance must have been certified through coursework as either personal care aides, home health aides, homemakers, personal care attendants, or registered or certified respiratory therapists.

E. Assistive technology services shall be covered for individuals enrolled in the technology assisted waiver. 12VAC30-120-762 provides the service description, criteria, service units and limitations, and provider requirements for this service.

F. Environmental modifications services shall be covered for individuals enrolled in the technology assisted waiver. 12VAC30-120-758 provides the service description, criteria, service units and limitations, and provider requirements for this service.

G. Transition services shall be covered for individuals enrolled in the technology assisted waiver. 12VAC30-120-2010 provides the service description, criteria, service units and limitations, and provider requirements for this service.

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.

"Assistive technology" means specialized medical equipment and supplies including those devices, controls, or appliances specified in the plan of care but not available under the State Plan for Medical Assistance that enable individuals to increase their abilities to perform activities of daily living, or to perceive, control, or communicate with the environment in which they live, or that are necessary to the proper functioning of the specialized equipment. 12VAC30-120-762 provides the service description, criteria, service units and limitations, and provider requirements for this service. This service shall be available only to those AIDS waiver enrollees who are also enrolled in the Money Follows the Person demonstration program.

"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.

"Environmental modifications" means physical adaptations to a house, place of residence, primary vehicle or work site, when the work site modification exceeds reasonable accommodation requirements of the Americans with Disabilities Act (42 USC § 1201 et seq.), necessary to ensure the individuals' health and safety or enable functioning with greater independence when the adaptation is not being used to bring a substandard dwelling up to minimum habitation standards and is of direct medical or remedial benefit to individuals. 12VAC30-120-758 provides the service description, criteria, service units and limitations, and provider requirements for this service. This service shall be available only to those AIDS waiver enrollees who are also enrolled in the Money Follows the Person demonstration 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(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 emergency response systems" or "PERS" means an electronic device and monitoring service that enable certain individuals at high risk of institutionalization to secure help in an emergency. PERS services are limited to those individuals who live alone or are alone for significant parts of the day and who have no regular caregiver for extended periods of time, and who would otherwise require extensive routine supervision. 12VAC30-120-970 provides the service description, criteria, service units and limitations, and provider requirements for this service.

~~"Personal assistance 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.

"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 § 32.1-162.7 of the Code of Virginia and 12VAC5-381-360, as appropriate.

"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.

"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.

"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.

"Program" means the Virginia Medicaid program as administered by 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.

Consumer-directed respite care services may only be offered to individuals who have an unpaid primary caregiver who requires temporary relief to avoid institutionalization of the individual. Respite services are designed to focus on the need of the unpaid caregiver for temporary relief and to help prevent the breakdown of the unpaid caregiver due to the physical burden and emotional stress of providing continuous support and care to the individual.

"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.

"Transition services" means set-up expenses for individuals who are transitioning from an institution or licensed or certified provider-operated living arrangement to a living arrangement in a private residence where the person is directly responsible for his own living expenses. 12VAC30-120-2010 provides the service description, criteria, service units and limitations, and provider requirements for this service.

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

Part IV
Mental Retardation Waiver

Article 1
Definitions and General Requirements

12VAC30-120-211. Definitions.

"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 a part of determining appropriate level of care and service needs.

"Appeal" means the process used to challenge adverse actions regarding services, benefits and reimbursement provided by Medicaid pursuant to 12VAC30-110 and 12VAC30-20-500 through 12VAC30-20-560.

"Assistive technology" or "AT" means specialized medical equipment and supplies to include devices, controls, or appliances, specified in the consumer service plan but not available under the State Plan for Medical Assistance, which enable individuals to increase their abilities to perform activities of daily living, or to perceive, control, or communicate with the environment in which they live. This service also includes items necessary for life support, ancillary supplies and equipment necessary to the proper functioning of such items, and durable and nondurable medical equipment not available under the Medicaid State Plan.

"Behavioral health authority" or "BHA" means the local agency, established by a city or county under Chapter 1 (§ 37.2-100) of Title 37.2 of the Code of Virginia that plans, provides, and evaluates mental health, mental retardation, and substance abuse services in the locality that it serves.

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

"Case management" means the assessing and planning of services; linking the individual to services and supports identified in the consumer service plan; assisting the individual directly for the purpose of locating, developing or obtaining needed services and resources; coordinating services and service planning with other agencies and providers involved with the individual; enhancing community integration; making collateral contacts to promote the implementation of the consumer service plan and community integration; monitoring to assess ongoing progress and ensuring services are delivered; and education and counseling that guides the individual and develops a supportive relationship that promotes the consumer service plan.

"Case manager" means the individual on behalf of the community services board or behavioral health authority possessing a combination of mental retardation work experience and relevant education that indicates that the individual possesses the knowledge, skills and abilities as established by the Department of Medical Assistance Services in 12VAC30-50-450.

"Community services board" or "CSB" means the local agency, established by a city or county or combination of counties or cities under Chapter 5 (§ 37.2-500 et seq.) of Title 37.2 of the Code of Virginia, that plans, provides, and evaluates mental health, mental retardation, and substance abuse services in the jurisdiction or jurisdictions it serves.

"Companion" means, for the purpose of these regulations, a person who provides companion services.

"Companion services" means nonmedical care, support, and socialization, provided to an adult (age 18 and over). The provision of companion services does not entail hands-on care. It is provided in accordance with a therapeutic goal in the consumer service plan and is not purely diversional in nature.

"Comprehensive assessment" means the gathering of relevant social, psychological, medical and level of care information by the case manager and is used as a basis for the development of the consumer service plan.

"Consumer-directed model" means services for which the individual and the individual's family/caregiver, as appropriate, 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 the individual's family/caregiver, as appropriate, by ensuring the development and monitoring of the Consumer-Directed Services Individual Service Plan, providing employee management training, and completing ongoing review activities as required by DMAS for consumer-directed companion, personal assistance, and respite services.

"Consumer service plan" or "CSP" means documents addressing needs in all life areas of individuals who receive mental retardation waiver services, and is comprised of individual service plans as dictated by the individual's health care and support needs. The individual service plans are incorporated in the CSP by the case manager.

"Crisis stabilization" means direct intervention to persons with mental retardation who are experiencing serious psychiatric or behavioral challenges that jeopardize their current community living situation, by providing temporary intensive services and supports that avert emergency psychiatric hospitalization or institutional placement or prevent other out-of-home placement. This service shall be designed to stabilize the individual and strengthen the current living situation so the individual can be supported in the community during and beyond the crisis period.

"DMAS" means the Department of Medical Assistance Services.

"DMAS staff" means persons employed by the Department of Medical Assistance Services.

"DMHMRSAS" means the Department of Mental Health, Mental Retardation and Substance Abuse Services.

"DMHMRSAS staff" means persons employed by the Department of Mental Health, Mental Retardation and Substance Abuse Services.

"DRS" means the Department of Rehabilitative Services.

"DSS" means the Department of Social Services.

"Day support" means training, assistance, and specialized supervision in the acquisition, retention, or improvement of self-help, socialization, and adaptive skills, which typically take place outside the home in which the individual resides. Day support services shall focus on enabling the individual to attain or maintain his maximum functional level.

"Developmental risk" means the presence before, during or after an individual's birth of conditions typically identified as related to the occurrence of a developmental disability and for which no specific developmental disability is identifiable through existing diagnostic and evaluative criteria.

"Direct marketing" means either (i) conducting directly or indirectly door-to-door, telephonic or other "cold call" marketing of services at residences and provider sites; (ii) mailing directly; (iii) paying "finders' fees"; (iv) offering financial incentives, rewards, gifts or special opportunities to eligible individuals and the individual's family/caregivers, as appropriate, as inducements to use the providers' services; (v) continuous, periodic marketing activities to the same prospective individual and the individual's family/caregiver, as appropriate, for example, monthly, quarterly, or annual giveaways as inducements to use the providers' services; or (vi) engaging in marketing activities that offer potential customers rebates or discounts in conjunction with the use of the providers' services or other benefits as a means of influencing the individual's and the individual's family/caregiver's, as appropriate, use of the providers' services.

"Enroll" means that the individual has been determined by the case manager to meet the eligibility requirements for the MR Waiver and DMHMRSAS has verified the availability of a MR Waiver slot for that individual, and DSS has determined the individual's Medicaid eligibility for home and community-based services.

"Entrepreneurial model" means a small business employing eight or fewer individuals who have disabilities on a shift and usually involves interactions with the public and with coworkers without disabilities.

"Environmental modifications" means physical adaptations to a house, place of residence, primary vehicle or work site (when the work site modification exceeds reasonable accommodation requirements of the Americans with Disabilities Act) that are necessary to ensure the individual's health and safety or enable functioning with greater independence when the adaptation is not being used to bring a substandard dwelling up to minimum habitation standards and is of direct medical or remedial benefit to the individual.

"EPSDT" means the Early Periodic Screening, Diagnosis and Treatment program administered by DMAS for children under the age of 21 according to federal guidelines that prescribe preventive and treatment services for Medicaid-eligible children as defined in 12VAC30-50-130.

"Fiscal agent" means an agency or organization within DMAS or contracted by DMAS to handle employment, payroll, and tax responsibilities on behalf of individuals who are receiving consumer-directed personal assistance, respite, and companion services.

"Health Planning Region" or "HPR" means the federally designated geographical area within which health care needs assessment and planning takes place, and within which health care resource development is reviewed.

"Health, welfare, and safety standard" means that an individual's right to receive a waiver service is dependent on a finding that the individual needs the service, based on appropriate assessment criteria and a written individual service plan and that services can safely be provided in the community.

"Home and community-based waiver services" or "waiver services" means the range of community support services approved by the Centers for Medicare and Medicaid Services (CMS) pursuant to § 1915(c) of the Social Security Act to be offered to persons with mental retardation and children younger than age six who are at developmental risk who would otherwise require the level of care provided in an

Intermediate Care Facility for the Mentally Retarded (ICF/MR.)

"ICF/MR" means a facility or distinct part of a facility certified by the Virginia Department of Health, as meeting the federal certification regulations for an Intermediate Care Facility for the Mentally Retarded and persons with related conditions. These facilities must address the total needs of the residents, which include physical, intellectual, social, emotional, and habilitation, and must provide active treatment.

"Individual" means the person receiving the services or evaluations established in these regulations.

"Individual service plan" or "ISP" means the service plan related solely to the specific waiver service. Multiple ISPs help to comprise the overall consumer service plan.

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

"ISAR" means the Individual Service Authorization Request and is the DMAS form used by providers to request prior authorization for MR waiver services.

"Mental retardation" ~~or "MR"~~ means ~~mental retardation~~ a disability as defined by the American Association on ~~Mental Retardation (AAMR)~~ Intellectual and Developmental Disabilities (AAIDD).

"Participating provider" means an entity that meets the standards and requirements set forth by DMAS and DMHMRSAS, and has a current, signed provider participation agreement with DMAS.

"Pend" means delaying the consideration of an individual's request for services until all required information is received by DMHMRSAS.

"Personal assistance services" means assistance with activities of daily living, instrumental activities of daily living, access to the community, self-administration of medication, or other medical needs, and the monitoring of health status and physical condition.

"Personal assistant" means a person who provides personal assistance services.

"Personal emergency response system (PERS)" is an electronic device that enables certain individuals at high risk of institutionalization to secure help in an emergency. PERS services are limited to those individuals who live alone or are alone for significant parts of the day and who have no regular caregiver for extended periods of time, and who would otherwise require extensive routine supervision.

"Preauthorized" means that an individual service has been approved by DMHMRSAS prior to commencement of the service by the service provider for initiation and reimbursement of services.

"Prevocational services" means services aimed at preparing an individual for paid or unpaid employment. The services do not include activities that are specifically job-task oriented but focus on concepts such as accepting supervision, attendance, task completion, problem solving and safety. Compensation, if provided, is less than 50% of the minimum wage.

"Primary caregiver" means the primary person who consistently assumes the role of providing direct care and support of the individual to live successfully in the community without compensation for providing such care.

"Qualified mental retardation professional" or "QMRP" means a professional possessing: (i) at least one year of documented experience working directly with individuals who have mental retardation or developmental disabilities; (ii) a bachelor's degree in a human services field including, but not limited to, sociology, social work, special education, rehabilitation counseling, or psychology; and (iii) the required Virginia or national license, registration, or certification in accordance with his profession, if applicable.

"Residential support services" means support provided in the individual's home by a DMHMRSAS-licensed residential provider or a DSS-approved provider of adult foster care services. This service is one in which training, assistance, and supervision is routinely provided to enable individuals to maintain or improve their health, to develop skills in activities of daily living and safety in the use of community resources, to adapt their behavior to community and home-like environments, to develop relationships, and participate as citizens in the community.

"Respite services" means services provided to individuals who are unable to care for themselves, furnished on a short-term basis because of the absence or need for relief of those unpaid persons normally providing the care.

"Services facilitator" means the DMAS-enrolled provider who is responsible for supporting the individual and the individual's family/caregiver, as appropriate, by ensuring the development and monitoring of the Consumer-Directed Services Individual Service Plan, providing employee management training, and completing ongoing review activities as required by DMAS for services with an option of a consumer-directed model. These services include companion, personal assistance, and respite services.

"Skilled nursing services" means services that are ordered by a physician and required to prevent institutionalization, that are not otherwise available under the State Plan for Medical Assistance and that are provided by a licensed registered professional nurse, or by a licensed practical nurse under the supervision of a licensed registered professional

nurse, in each case who is licensed to practice in the Commonwealth.

"Slot" means an opening or vacancy of waiver services for an individual.

"State Plan for Medical Assistance" or "Plan" means the Commonwealth's legal document approved by CMS identifying the covered groups, covered services and their limitations, and provider reimbursement methodologies as provided for under Title XIX of the Social Security Act.

"Supported employment" means work in settings in which persons without disabilities are typically employed. It includes training in specific skills related to paid employment and the provision of ongoing or intermittent assistance and specialized supervision to enable an individual with mental retardation to maintain paid employment.

"Support plan" means the report of recommendations resulting from a therapeutic consultation.

"Therapeutic consultation" means activities to assist the individual and the individual's family/caregiver, as appropriate, staff of residential support, day support, and any other providers in implementing an individual service plan.

"Transition services" means set-up expenses for individuals who are transitioning from an institution or licensed or certified provider-operated living arrangement to a living arrangement in a private residence where the person is directly responsible for his own living expenses. 12VAC30-120-2010 provides the service description, criteria, service units and limitations, and provider requirements for this service.

12VAC30-120-213. General coverage and requirements for MR waiver services.

A. Waiver service populations. Home and community-based waiver services shall be available through a § 1915(c) of the Social Security Act waiver for the following individuals who have been determined to require the level of care provided in an ICF/MR.

1. Individuals with mental retardation; or

2. Individuals younger than the age of six who are at developmental risk. At the age of six years, these individuals must have a diagnosis of mental retardation to continue to receive home and community-based waiver services specifically under this program. Mental Retardation (MR) Waiver recipients who attain the age of six years of age, who are determined to not have a diagnosis of mental retardation, and who meet all IFDDS Waiver eligibility criteria, shall be eligible for transfer to the IFDDS Waiver effective up to their seventh birthday. Psychological evaluations (or standardized developmental assessment for children under six years of age) confirming diagnoses must be completed less than one year prior to transferring to the IFDDS Waiver. These recipients transferring from the MR Waiver will automatically be assigned a slot in the IFDDS Waiver, subject to the approval of the slot by CMS. The case manager will submit the current Level of Functioning Survey, CSP and psychological evaluation (or standardized developmental assessment for children under six years of age) to DMAS for review. Upon determination by DMAS that the individual is appropriate for transfer to the IFDDS Waiver, the case manager will provide the family with a list of IFDDS Waiver case managers. The case manager will work with the selected IFDDS Waiver case manager to determine an appropriate transfer date and submit a DMAS-122 to the local DSS. The MR Waiver slot will be held by the CSB until the child has successfully transitioned to the IFDDS Waiver. Once the child has successfully transitioned, the CSB will reallocate the slot.

B. Covered services.

1. Covered services shall include: residential support services, day support, supported employment, personal assistance (both consumer-directed and agency-directed), respite services (both consumer-directed and agency-directed), assistive technology, environmental modifications, skilled nursing services, therapeutic consultation, crisis stabilization, prevocational services, personal emergency response systems (PERS), ~~and~~ companion services (both consumer-directed and agency-directed~~-~~), and transition services.

2. These services shall be appropriate and necessary to maintain the individual in the community. Federal waiver requirements provide that the average per capita fiscal year expenditures under the waiver must not exceed the average per capita expenditures for the level of care provided in ~~Intermediate Care Facilities for the Mentally Retarded~~ an ICF/MR under the State Plan that would have been provided had the waiver not been granted.

3. Waiver services shall not be furnished to individuals who are inpatients of a hospital, nursing facility, ICF/MR, or inpatient rehabilitation facility. Individuals with mental retardation who are inpatients of these facilities may receive case management services as described in 12VAC30-50-450. The case manager may recommend waiver services that would promote exiting from the institutional placement; however, these services shall not be provided until the individual has exited the institution.

4. Under this § 1915(c) waiver, DMAS waives § 1902(a)(10)(B) of the Social Security Act related to comparability.

C. Requests for increased services. All requests for increased waiver services by MR Waiver recipients will be reviewed under the health, welfare, and safety standard. This standard assures that an individual's right to receive a waiver

service is dependent on a finding that the individual needs the service, based on appropriate assessment criteria and a written ISP and that services can safely be provided in the community.

D. Appeals. Individual appeals shall be considered pursuant to 12VAC30-110-10 through 12VAC30-110-380. Provider appeals shall be considered pursuant to 12VAC30-10-1000 and 12VAC30-20-500 through 12VAC30-20-560.

E. Urgent criteria. The CSB/BHA will determine, from among the individuals included in the urgent category, who should be served first, based on the needs of the individual at the time a slot becomes available and not on any predetermined numerical or chronological order.

1. The urgent category will be assigned when the individual is in need of services because he is determined to meet one of the criteria established in subdivision 2 of this subsection and services are needed within 30 days. Assignment to the urgent category may be requested by the individual, his legally responsible relative, or primary caregiver. The urgent category may be assigned only when the individual, the individual's spouse, or the parent of an individual who is a minor child would accept the requested service if it were offered. Only after all individuals in the Commonwealth who meet the urgent criteria have been served can individuals in the nonurgent category be served. Individuals in the nonurgent category are those who meet the diagnostic and functional criteria for the waiver, including the need for services within 30 days, but who do not meet the urgent criteria. In the event that a CSB/BHA has a vacant slot and does not have an individual who meets the urgent criteria, the slot can be held by the CSB/BHA for 90 days from the date it is identified as vacant, in case someone in an urgent situation is identified. If no one meeting the urgent criteria is identified within 90 days, the slot will be made available for allocation to another CSB/BHA in the Health Planning Region (HPR). If there is no urgent need at the time that the HPR is to make a regional reallocation of a waiver slot, the HPR shall notify DMHMRSAS. DMHMRSAS shall have the authority to reallocate said slot to another HPR or CSB/BHA where there is unmet urgent need. Said authority must be exercised, if at all, within 30 days from receiving such notice.

2. Satisfaction of one or more of the following criteria shall indicate that the individual should be placed on the urgent need of waiver services list:

a. Both primary caregivers are 55 years of age or older, or if there is one primary caregiver, that primary caregiver is 55 years of age or older;

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

c. There is a clear risk of abuse, neglect, or exploitation;

d. A primary caregiver has a chronic or long-term physical or psychiatric condition or conditions which significantly limits the abilities of the primary caregiver or caregivers to care for the individual with mental retardation;

e. Individual is aging out of publicly funded residential placement or otherwise becoming homeless (exclusive of children who are graduating from high school); or

f. The individual with mental retardation lives with the primary caregiver and there is a risk to the health or safety of the individual, primary caregiver, or other individual living in the home due to either of the following conditions:

(1) The individual's behavior or behaviors present a risk to himself or others which cannot be effectively managed by the primary caregiver even with generic or specialized support arranged or provided by the CSB/BHA; or

(2) There are physical care needs (such as lifting or bathing) or medical needs that cannot be managed by the primary caregiver even with generic or specialized supports arranged or provided by the CSB/BHA.

F. Reevaluation of service need and utilization review. Case managers shall complete reviews and updates of the CSP and level of care as specified in 12VAC30-120-215 D. Providers shall meet the documentation requirements as specified in 12VAC30-120-217 B.

12VAC30-120-225. Consumer-directed model of service delivery.

A. Criteria.

1. The MR Waiver has three services, companion, personal assistance, and respite, ~~which~~ that may be provided through a consumer-directed model.

2. Individuals who choose the consumer-directed model must have the capability to hire ~~and~~, train, and fire their own personal ~~assistants~~ assistant or ~~companions~~ companion and supervise the assistant's or companion's performance. If an individual is unable to direct his own care or is under 18 years of age, a family/caregiver may serve as the employer on behalf of the individual.

3. The individual, or if the individual is unable, then family/caregiver, shall be the employer in this service, and therefore shall be responsible for hiring, training, supervising, and firing assistants and companions. Specific employer duties include checking of references of personal assistants/companions, determining that personal assistants/companions meet basic qualifications, training

assistants/companions, supervising the assistant's/companion's performance, and submitting timesheets to the fiscal agent on a consistent and timely basis. The individual and the individual's family/caregiver, as appropriate, must have a back-up plan in case the assistant/companion does not show up for work as expected or terminates employment without prior notice.

4. Individuals choosing consumer-directed models of service delivery must receive support from a CD services facilitator. This is not a separate waiver service, but is required in conjunction with consumer-directed personal assistance, respite, or companion services. The CD services facilitator will be responsible for assessing the individual's particular needs for a requested CD service, assisting in the development of the ISP, providing training to the individual and the individual's family/caregiver, as appropriate, on his responsibilities as an employer, and providing ongoing support of the consumer-directed models of 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 employing the assistant/companion. If an individual enrolled in consumer-directed services has a lapse in services facilitator for more than 90 consecutive days, the case manager must notify DMHMRSAS and the consumer-directed services will be discontinued.

5. DMAS shall provide for fiscal agent services for consumer-directed personal assistance services, consumer-directed companion services, and consumer-directed respite services. The fiscal agent will be reimbursed by DMAS to perform certain tasks as an agent for the individual/employer who is receiving consumer-directed services. The fiscal agent will handle the responsibilities of employment taxes for the individual. The fiscal agent will seek and obtain all necessary authorizations and approvals of the Internal Revenue Services in order to fulfill all of these duties.

B. Provider qualifications. In addition to meeting the general conditions and requirements for home and community-based services participating providers as specified in 12VAC30-120-217 and 12VAC30-120-219, the CD services facilitator must meet the following qualifications:

1. To be enrolled as a Medicaid CD services facilitator and maintain provider status, the CD services facilitator shall have sufficient resources to perform the required activities. In addition, the CD services facilitator must have the ability to maintain and retain business and professional records sufficient to document fully and accurately the nature, scope, and details of the services provided.

2. It is preferred that the CD services facilitator possess a minimum of an undergraduate degree in a human services field or be a registered nurse currently licensed to practice in the Commonwealth. In addition, it is preferable that the CD services facilitator have two years of satisfactory experience in a human service field working with persons with mental retardation. The facilitator must possess a combination of work experience and relevant education that indicates possession of the following knowledge, skills, and abilities. Such knowledge, skills, and abilities must be documented on the provider's application form, found in supporting documentation, or be observed during a job interview. Observations during the interview must be documented. The knowledge, skills, and abilities include:

a. Knowledge of:

(1) Types of functional limitations and health problems that may occur in persons with mental retardation, or persons with other disabilities, as well as strategies to reduce limitations and health problems;

(2) Physical assistance that may be required by people with mental retardation, such as transferring, bathing techniques, bowel and bladder care, and the approximate time those activities normally take;

(3) Equipment and environmental modifications that may be required by people with mental retardation that reduce the need for human help and improve safety;

(4) Various long-term care program requirements, including nursing home and ICF/MR placement criteria, Medicaid waiver services, and other federal, state, and local resources that provide personal assistance, respite, and companion services;

(5) MR waiver requirements, as well as the administrative duties for which the services facilitator will be responsible;

(6) Conducting assessments (including environmental, psychosocial, health, and functional factors) and their uses in service planning;

(7) Interviewing techniques;

(8) The individual's right to make decisions about, direct the provisions of, and control his consumer-directed personal assistance, companion and respite services, including hiring, training, managing, approving time sheets, and firing an assistant/companion;

(9) The principles of human behavior and interpersonal relationships; and

(10) General principles of record documentation.

b. Skills in:

(1) Negotiating with individuals and the individual's family/caregivers, as appropriate, and service providers;

(2) Assessing, supporting, observing, recording, and reporting behaviors;

(3) Identifying, developing, or providing services to individuals with mental retardation; and

(4) Identifying services within the established services system to meet the individual's needs.

c. Abilities to:

(1) Report findings of the assessment or onsite visit, either in writing or an alternative format for individuals who have visual impairments;

(2) Demonstrate a positive regard for individuals and their families;

(3) Be persistent and remain objective;

(4) Work independently, performing position duties under general supervision;

(5) Communicate effectively, orally and in writing; and

(6) Develop a rapport and communicate with persons of diverse cultural backgrounds.

3. If the CD services facilitator is not a RN, the CD services facilitator must inform the primary health care provider that services are being provided and request skilled nursing or other consultation as needed.

4. Initiation of services and service monitoring.

a. For consumer-directed services, the CD services facilitator must make an initial comprehensive home visit to collaborate with the individual and the individual's family/caregiver, as appropriate, to identify the needs, assist in the development of the ISP with the individual and the individual's family/caregiver, as appropriate, and provide employee management training. The initial comprehensive home visit is done only once upon the individual's entry into the consumer-directed model of service regardless of the number or type of consumer-directed services that an individual chooses to receive. If an individual changes CD services facilitators, the new CD services facilitator must complete a reassessment visit in lieu of a comprehensive visit.

b. After the initial visit, the CD services facilitator will continue to monitor the companion, or personal assistant ISP quarterly and on an as-needed basis. The CD services facilitator will review the utilization of consumer-directed respite services, either every six months or upon the use of 300 respite services hours, whichever comes first.

c. A face-to-face meeting with the individual must be conducted at least every six months to reassess the individual's needs and to ensure appropriateness of any CD services received by the individual.

5. During visits with the individual, the CD services facilitator must observe, evaluate, and consult with the individual and the individual's family/caregiver, as appropriate, and document the adequacy and appropriateness of consumer-directed services with regard to the individual's current functioning and cognitive status, medical needs, and social needs.

6. The CD services facilitator must be available to the individual by telephone.

7. The CD services facilitator must submit a criminal record check pertaining to the assistant/companion on behalf of the individual and report findings of the criminal record check to the individual and the individual's family/caregiver, as appropriate, and the program's fiscal agent. If the individual is a minor, the assistant/companion must also be screened through the DSS Child Protective Services Central Registry. Assistants/companions will not be reimbursed for services provided to the individual effective the date that the criminal record check confirms an assistant/companion has been found to have been convicted of a crime as described in § 37.2-416 of the Code of Virginia or if the assistant/companion has a confirmed record on the DSS Child Protective Services Central Registry. The criminal record check and DSS Child Protective Services Central Registry finding must be requested by the CD services facilitator within 15 calendar days of employment. The services facilitator must maintain evidence that a criminal record check was obtained and must make such evidence available for DMAS review.

8. The CD services facilitator shall review timesheets during the face-to-face visits or more often as needed to ensure that the number of ISP-approved hours is not exceeded. If discrepancies are identified, the CD services facilitator must discuss these with the individual to resolve discrepancies and must notify the fiscal agent.

9. The CD services facilitator must maintain a list of persons who are available to provide consumer-directed personal assistance, consumer-directed companion, or consumer-directed respite services.

10. The CD services facilitator must maintain records of each individual as described in 12VAC30-120-217, 12VAC30-120-223, and 12VAC30-120-233.

11. Upon the individual's request, the CD services facilitator shall provide the individual and the individual's family/caregiver, as appropriate, with a list of persons who can provide temporary assistance until the assistant/companion returns or the individual is able to select and hire a new personal assistant/companion. If an individual is consistently unable to hire and retain the employment of an assistant/companion to provide consumer-directed personal assistance, companion, or respite services, the CD services facilitator will make arrangements with the case manager to have the services transferred to an agency-directed services provider or to

discuss with the individual and the individual's family/caregiver, as appropriate, other service options.

12VAC30-120-229. Day support services.

A. Service description. Day support services shall include a variety of training, assistance, support, and specialized supervision for the acquisition, retention, or improvement of self-help, socialization, and adaptive skills. These services are typically offered in a nonresidential setting that allows peer interactions and community and social integration.

B. Criteria. For day support services, individuals must demonstrate the need for functional training, assistance, and specialized supervision offered primarily in settings other than the individual's own residence that allows an opportunity for being productive and contributing members of communities.

C. Types of day support. The amount and type of day support included in the individual's service plan is determined according to the services required for that individual. There are two types of day support: center-based, which is provided primarily at one location/building, or noncenter-based, which is provided primarily in community settings. Both types of day support may be provided at either intensive or regular levels.

D. Levels of day support. There are two levels of day support, intensive and regular. To be authorized at the intensive level, the individual must meet at least one of the following criteria: (i) requires physical assistance to meet the basic personal care needs (toileting, feeding, etc); (ii) has extensive disability-related difficulties and requires additional, ongoing support to fully participate in programming and to accomplish his service goals; or (iii) requires extensive constant supervision to reduce or eliminate behaviors that preclude full participation in the program. In this case, written behavioral objectives are required to address behaviors such as, but not limited to, withdrawal, self-injury, aggression, or self-stimulation.

E. Service units and service limitations. Day support services are billed ~~in units. Units shall be defined as:~~ according to the DMAS fee schedule.

~~1. One unit is 1 to 3.99 hours of service a day.~~

~~2. Two units are 4 to 6.99 hours of service a day.~~

~~3. Three units are 7 or more hours of service a day.~~

Day support cannot be regularly or temporarily provided in an individual's home or other residential setting (e.g., due to inclement weather or individual illness) without prior written approval from DMHMRSAS. Noncenter-based day support services must be separate and distinguishable from either residential support services or personal assistance services. There must be separate supporting documentation for each service and each must be clearly differentiated in documentation and corresponding billing. The supporting documentation must provide an estimate of the amount of day support required by the individual. Service providers are reimbursed only for the amount and level of day support services included in the individual's approved ISP based on the setting, intensity, and duration of the service to be delivered. This service shall be limited to 780 units, or its equivalent under the DMAS fee schedule, per CSP year. If this service is used in combination with prevocational and/or group supported employment services, the combined total units for these services cannot exceed 780 units, or its equivalent under the DMAS fee schedule, per CSP year.

F. Provider requirements. In addition to meeting the general conditions and requirements for home and community-based participating providers as specified in 12VAC30-120-217 and 12VAC30-120-219, day support providers need to meet additional requirements.

1. The provider of day support services must be licensed by DMHMRSAS as a provider of day support services.

2. In addition to licensing requirements, day support staff must also have training in the characteristics of mental retardation and appropriate interventions, training strategies, and support methods for persons with mental retardation and functional limitations. All providers of day support services must pass an objective, standardized test of skills, knowledge, and abilities approved by DMHMRSAS and administered according to DMHMRSAS' defined procedures.

3. Required documentation in the individual's record. The provider must maintain records of each individual receiving services. At a minimum, these records must contain the following:

a. A functional assessment conducted by the provider to evaluate each individual in the day support environment and community settings.

b. An ISP that contains, at a minimum, the following elements:

(1) The individual's strengths, desired outcomes, required or desired supports and training needs;

(2) The individual's goals and measurable objectives to meet the above identified outcomes;

(3) Services to be rendered and the frequency of services to accomplish the above goals and objectives;

(4) A timetable for the accomplishment of the individual's goals and objectives as appropriate;

(5) The estimated duration of the individual's needs for services; and

(6) The provider staff responsible for the overall coordination and integration of the services specified in the ISP.

c. Documentation confirming the individual's attendance and amount of time in services and specific information regarding the individual's response to various settings and supports as agreed to in the ISP objectives. An attendance log or similar document must be maintained that indicates the date, type of services rendered, and the number of hours and units, or their equivalent under the DMAS fee schedule, provided.

d. Documentation indicating whether the services were center-based or noncenter-based.

e. Documentation regarding transportation. In instances where day support staff are required to ride with the individual to and from day support, the day support staff time can be billed as day support, provided that the billing for this time does not exceed 25% of the total time spent in the day support activity for that day. Documentation must be maintained to verify that billing for day support staff coverage during transportation does not exceed 25% of the total time spent in the day support for that day.

f. If intensive day support services are requested, documentation indicating the specific supports and the reasons they are needed. For ongoing intensive day support services, there must be clear documentation of the ongoing needs and associated staff supports.

g. Documentation indicating that the ISP goals, objectives, and activities have been reviewed by the provider quarterly, annually, and more often as needed. The results of the review must be submitted to the case manager. For the annual review and in cases where the ISP is modified, the ISP must be reviewed with the individual and the individual's family/caregiver, as appropriate.

h. Copy of the most recently completed DMAS-122 form. The provider must clearly document efforts to obtain the completed DMAS-122 form from the case manager.

12VAC30-120-237. Prevocational services.

A. Service description. Prevocational services are services aimed at preparing an individual for paid or unpaid employment, but are not job-task oriented. Prevocational services are provided to individuals who are not expected to be able to join the general work force without supports or to participate in a transitional sheltered workshop within one year of beginning waiver services, (excluding supported employment programs). Activities included in this service are not primarily directed at teaching specific job skills but at underlying habilitative goals such as accepting supervision, attendance, task completion, problem solving, and safety.

B. Criteria. In order to qualify for prevocational services, the individual shall have a demonstrated need for support in skills that are aimed toward preparation of paid employment that may be offered in a variety of community settings.

C. Service units and service limitations. Billing is ~~for one unit of service~~ in accordance with the DMAS fee schedule.

~~1. Units shall be defined as:~~

~~a. One unit is 1 to 3.99 hours of service a day.~~

~~b. Two units are 4 to 6.99 hours of service a day.~~

~~c. Three units are 7 or more hours of service a day.~~

1. This service is limited to 780 units, or its equivalent under the DMAS fee schedule, per CSP year. If this service is used in combination with day support and /or group-supported employment services, the combined total units for these services cannot exceed 780 units, or its equivalent under the DMAS fee schedule, per CSP year.

2. Prevocational services can be provided in center- or noncenter-based settings. Center-based means services are provided primarily at one location/building and noncenter-based means services are provided primarily in community settings. Both center-based or noncenter-based prevocational services may be provided at either regular or intensive levels.

3. Prevocational services can be provided at either a regular or intensive level. For prevocational services to be authorized at the intensive level, the individual must meet at least one of the following criteria: (i) require physical assistance to meet the basic personal care needs (toileting, feeding, etc); (ii) have extensive disability-related difficulties and require additional, ongoing support to fully participate in programming and to accomplish service goals; or (iii) require extensive constant supervision to reduce or eliminate behaviors that preclude full participation in the program. In this case, written behavioral objectives are required to address behaviors such as, but not limited to, withdrawal, self-injury, aggression, or self-stimulation.

4. There must be documentation regarding whether prevocational services are available in vocational rehabilitation agencies through § 110 of the Rehabilitation Act of 1973 or through the Individuals with Disabilities Education Act (IDEA). If the individual is not eligible for services through the IDEA, documentation is required only for lack of DRS funding. When services are provided through these sources, the ISP shall not authorize them as a waiver expenditure.

5. Prevocational services can only be provided when the individual's compensation is less than 50% of the minimum wage.

D. Provider requirements. In addition to meeting the general conditions and requirements for home and community-based services participating providers as specified in 12VAC30-120-217 and 12VAC30-120-219, prevocational providers must also meet the following qualifications:

1. The provider of prevocational services must be a vendor of extended employment services, long-term employment services, or supported employment services for DRS, or be licensed by DMHMRSAS as a provider of day support services.

2. Providers must ensure and document that persons providing prevocational services have training in the characteristics of mental retardation and appropriate interventions, training strategies, and support methods for persons with mental retardation and functional limitations. All providers of prevocational services must pass an objective, standardized test of skills, knowledge, and abilities approved by DMHMRSAS and administered according to DMHMRSAS' defined procedures.

3. Required documentation in the individual's record. The provider must maintain a record regarding each individual receiving prevocational services. At a minimum, the records must contain the following:

a. A functional assessment conducted by the provider to evaluate each individual in the prevocational environment and community settings.

b. An ISP, which contains, at a minimum, the following elements:

(1) The individual's strengths, desired outcomes, required or desired supports, and training needs;

(2) The individual's goals and measurable objectives to meet the above identified outcomes;

(3) Services to be rendered and the frequency of services to accomplish the above goals and objectives;

(4) A timetable for the accomplishment of the individual's goals and objectives;

(5) The estimated duration of the individual's needs for services; and

(6) The provider staff responsible for the overall coordination and integration of the services specified in the ISP.

c. Documentation indicating that the ISP goals, objectives, and activities have been reviewed by the provider quarterly, annually, and more often as needed, modified as appropriate, and that the results of these reviews have been submitted to the case manager. For the annual review and in cases where the ISP is modified, the ISP must be reviewed with the individual and the individual's family/caregiver, as appropriate.

d. Documentation confirming the individual's attendance, amount of time spent in services, and type of services rendered, and specific information regarding the individual's response to various settings and supports as agreed to in the ISP objectives. An attendance log or similar document must be maintained that indicates the date, type of services rendered, and the number of hours and units, or their equivalent under the DMAS fee schedule, provided.

e. Documentation indicating whether the services were center-based or noncenter-based.

f. Documentation regarding transportation. In instances where prevocational staff are required to ride with the individual to and from prevocational services, the prevocational staff time can be billed for prevocational services, provided that billing for this time does not exceed 25% of the total time spent in prevocational services for that day. Documentation must be maintained to verify that billing for prevocational staff coverage during transportation does not exceed 25% of the total time spent in the prevocational services for that day.

g. If intensive prevocational services are requested, documentation indicating the specific supports and the reasons they are needed. For ongoing intensive prevocational services, there must be clear documentation of the ongoing needs and associated staff supports.

h. Documentation indicating whether prevocational services are available in vocational rehabilitation agencies through § 110 of the Rehabilitation Act of 1973 or through the Individuals with Disabilities Education Act (IDEA).

i. A copy of the most recently completed DMAS-122. The provider must clearly document efforts to obtain the completed DMAS-122 form from the case manager.

12VAC30-120-247. Supported employment services.

A. Service description.

1. Supported employment services are provided in work settings where persons without disabilities are employed. It is especially designed for individuals with developmental disabilities, including individuals with mental retardation, who face severe impediments to employment due to the nature and complexity of their disabilities, irrespective of age or vocational potential.

2. Supported employment services are available to individuals for whom competitive employment at or above the minimum wage is unlikely without ongoing supports

and who because of their disability need ongoing support to perform in a work setting.

3. Supported employment can be provided in one of two models. Individual supported employment shall be defined as intermittent support, usually provided one-on-one by [a job coach ~~an employment assistant as defined in 12VAC30-120-211~~] to an individual in a supported employment position. Group supported employment shall be defined as continuous support provided by staff to eight or fewer individuals with disabilities in an enclave, work crew, bench work, or entrepreneurial model. The individual's assessment and CSP must clearly reflect the individual's need for training and supports.

B. Criteria.

1. Only job development tasks that specifically include the individual are allowable job search activities under the MR waiver supported employment and only after determining this service is not available from DRS.

2. In order to qualify for these services, the individual shall have demonstrated that competitive employment at or above the minimum wage is unlikely without ongoing supports, and that because of his disability, he needs ongoing support to perform in a work setting.

3. A functional assessment must be conducted to evaluate the individual in his work environment and related community settings.

4. The ISP must document the amount of supported employment required by the individual. Service providers are reimbursed only for the amount and type of supported employment included in the individual's ISP based on the intensity and duration of the service delivered.

C. Service units and service limitations.

1. Supported employment for individual job placement is provided in one hour units. This service is limited to 40 hours per week.

2. Group models of supported employment (enclaves, work crews, bench work and entrepreneurial model of supported employment) will be billed ~~at the unit rate. For group models of supported employment, units shall be defined as:~~ according to the DMAS fee schedule.

~~a. One unit is 1 to 3.99 hours of service a day.~~

~~b. Two units are 4 to 6.99 hours of service a day.~~

~~c. Three units are 7 or more hours of service a day.~~

This service is limited to 780 units, or its equivalent under the DMAS fee schedule, per CSP year. If this service is used in combination with prevocational and day support services, the combined total units for these services cannot exceed 780 units, or its equivalent under the DMAS fee schedule, per CSP year.

3. For the individual job placement model, reimbursement of supported employment will be limited to actual documented interventions or collateral contacts by the provider, not the amount of time the individual is in the supported employment situation.

D. Provider requirements. In addition to meeting the general conditions and requirements for home and community-based participating providers as specified in 12VAC30-120-217 and 12VAC30-120-219, supported employment provider qualifications include:

1. ~~Supported~~ Group and agency-directed individual supported employment shall be provided only by agencies that are DRS vendors of supported employment services;

2. Required documentation in the individual's record. The provider must maintain a record regarding each individual receiving supported employment services. At a minimum, the records must contain the following:

a. A functional assessment conducted by the provider to evaluate each individual in the supported employment environment and related community settings.

b. Documentation indicating individual ineligibility for supported employment services through DRS or IDEA. If the individual is not eligible through IDEA, documentation is required only for the lack of DRS funding;

c. An ISP that contains, at a minimum, the following elements:

(1) The individual's strengths, desired outcomes, required/desired supports and training needs;

(2) The individual's goals and, for a training goal, a sequence of measurable objectives to meet the above identified outcomes;

(3) Services to be rendered and the frequency of services to accomplish the above goals and objectives;

(4) A timetable for the accomplishment of the individual's goals and objectives;

(5) The estimated duration of the individual's needs for services; and

(6) Provider staff responsible for the overall coordination and integration of the services specified in the plan.

d. The ISP goals, objectives, and activities must be reviewed by the provider quarterly, annually, and more often as needed, modified as appropriate, and the results of these reviews submitted to the case manager. For the annual review and in cases where the ISP is modified, the ISP must be reviewed with the individual and the individual's family/caregiver, as appropriate.

e. In instances where supported employment staff are required to ride with the individual to and from supported employment activities, the supported employment staff time can be billed for supported employment provided that the billing for this time does not exceed 25% of the total time spent in supported employment for that day. Documentation must be maintained to verify that billing for supported employment staff coverage during transportation does not exceed 25% of the total time spent in supported employment for that day.

f. There must be a copy of the completed DMAS-122 in the record. Providers must clearly document efforts to obtain the DMAS-122 form from the case manager.

Part VIII
Individual and Family Developmental Disabilities Support Waiver

Article 1
General Requirements

12VAC30-120-700. Definitions.

"Activities of daily living (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 a part of determining appropriate level of care and services.

"Appeal" means the process used to challenge adverse actions regarding services, benefits, and reimbursement provided by Medicaid pursuant to 12VAC30-110, Eligibility and Appeals, and 12VAC30-20-500 through 12VAC30-20-560.

"Assistive technology" means specialized medical equipment and supplies including those devices, controls, or appliances specified in the plan of care but not available under the State Plan for Medical Assistance that enable individuals to increase their abilities to perform activities of daily living, or to perceive, control, or communicate with the environment in which they live, or that are necessary to the proper functioning of the specialized equipment.

"Behavioral health authority" or "BHA" means the local agency, established by a city or county or a combination of counties or cities or cities and counties under Chapter 6 (§ 37.2-600 et seq.) of Title 37.2 of the Code of Virginia, that plans, provides, and evaluates mental health, mental retardation, and substance abuse services in the jurisdiction or jurisdictions it serves.

"CARF" means the Rehabilitation Accreditation Commission, formerly known as the Commission on Accreditation of Rehabilitation Facilities.

"Case management" means services as defined in 12VAC30-50-490.

"Case manager" means the provider of case management services as defined in 12VAC30-50-490.

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

"Community-based waiver services" or "waiver services" means a variety of home and community-based services paid for by DMAS as authorized under a § 1915(c) waiver designed to offer individuals an alternative to institutionalization. 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 ICF/MR placement.

"Community services board" or "CSB" means the local agency established by a city or county or combination of counties or cities, or cities and counties, under Chapter 5 (§ 37.2-500 et seq.) of Title 37.2 of the Code of Virginia, that plans, provides, and evaluates mental health, mental retardation, and substance abuse services in the jurisdiction or jurisdictions it serves.

"Companion" means, for the purpose of these regulations, a person who provides companion services.

"Companion services" means nonmedical care, supervision and socialization provided to an adult (age 18 and older). The provision of companion services does not entail hands-on care. It is provided in accordance with a therapeutic goal in the plan of care and is not purely diversional in nature.

"Consumer-directed employee" means, for purposes of these regulations, a person who provides consumer-directed services, personal care, companion services, and/or respite care, who is also exempt from workers' compensation.

"Consumer-directed services" means personal care, companion services, and/or respite care services where the individual or his family/caregiver, as appropriate, is responsible for hiring, training, supervising, and firing of the employee or employees.

"Consumer-directed (CD) services facilitator" means the provider enrolled with DMAS who is responsible for management training and review activities as required by DMAS for consumer-directed services.

"Crisis stabilization" means direct intervention for persons with related conditions who are experiencing serious psychiatric or behavioral challenges, or both, that jeopardize their current community living situation. This service must provide temporary intensive services and supports that avert emergency psychiatric hospitalization or institutional placement or prevent other out-of-home placement. This service shall be designed to stabilize individuals and strengthen the current living situations so that individuals

may be maintained in the community during and beyond the crisis period.

"Current functional status" means an individual's degree of dependency in performing activities of daily living.

"DMAS" means the Department of Medical Assistance Services.

"DMAS staff" means DMAS employees who perform utilization review, preauthorize service type and intensity, provide technical assistance, and review of individual level of care criteria.

"DMHMRSAS" means the Department of Mental Health, Mental Retardation and Substance Abuse Services.

"DRS" means the Department of Rehabilitative Services.

"DSS" means the Department of Social Services.

"Day support" means training in intellectual, sensory, motor, and affective social development including awareness skills, sensory stimulation, use of appropriate behaviors and social skills, learning and problem solving, communication and self care, physical development, services and support activities. These services take place outside of the individual's home/residence.

"Direct marketing" means either (i) conducting directly or indirectly door-to-door, telephonic, or other "cold call" marketing of services at residences and provider sites; (ii) mailing directly; (iii) paying "finders' fees"; (iv) offering financial incentives, rewards, gifts, or special opportunities to eligible individuals or family/caregivers as inducements to use the providers' services; (v) continuous, periodic marketing activities to the same prospective individual or his family/caregiver, as appropriate, for example, monthly, quarterly, or annual giveaways as inducements to use the providers' services; or (vi) engaging in marketing activities that offer potential customers rebates or discounts in conjunction with the use of the providers' services or other benefits as a means of influencing the individual's or his family/caregiver's, as appropriate, use of the providers' services.

"Enroll" means that the individual has been determined by the IFDDS screening team to meet the eligibility requirements for the waiver, DMAS has approved the individual's plan of care and has assigned an available slot to the individual, and DSS has determined the individual's Medicaid eligibility for home and community-based services.

"Entrepreneurial model" means a small business employing eight or fewer individuals with disabilities on a shift and may involve interactions with the public and coworkers with disabilities.

"Environmental modifications" means physical adaptations to a house, place of residence, primary vehicle or work site, when the work site modification exceeds reasonable accommodation requirements of the Americans with Disabilities Act, necessary to ensure individuals' health and safety or enable functioning with greater independence when the adaptation is not being used to bring a substandard dwelling up to minimum habitation standards and is of direct medical or remedial benefit to individuals.

"EPSDT" means the Early Periodic Screening, Diagnosis and Treatment program administered by DMAS for children under the age of 21 according to federal guidelines that prescribe specific preventive and treatment services for Medicaid-eligible children as defined in 12VAC30-50-130.

"Face-to-face visit" means the case manager or service provider must meet with the individual in person and that the individual should be engaged in the visit to the maximum extent possible.

"Family/caregiver training" means training and counseling services provided to families or caregivers of individuals receiving services in the IFDDS Waiver.

"Fiscal agent" means an entity handling employment, payroll, and tax responsibilities on behalf of individuals who are receiving consumer-directed services.

"Home" means, for purposes of the IFDDS Waiver, an apartment or single family dwelling in which no more than four individuals who require services live with the exception of siblings living in the same dwelling with family. This does not include an assisted living facility or group home.

"Home and community-based waiver services" means a variety of home and community-based services reimbursed by DMAS as authorized under a § 1915(c) waiver designed to offer individuals an alternative to institutionalization. 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 ICF/MR placement.

"ICF/MR" means a facility or distinct part of a facility certified as meeting the federal certification regulations for an Intermediate Care Facility for the Mentally Retarded and persons with related conditions. These facilities must address the residents' total needs including physical, intellectual, social, emotional, and habilitation. An ICF/MR must provide active treatment, as that term is defined in 42 CFR 483.440(a).

"IFDDS screening team" means the persons employed by the entity under contract with DMAS who are responsible for performing level of care screenings for the IFDDS Waiver.

"IFDDS Waiver" means the Individual and Family Developmental Disabilities Support Waiver.

"In-home residential support services" means support provided primarily in the individual's home, which includes training, assistance, and specialized supervision to enable the

individual to maintain or improve his health; assisting in performing individual care tasks; training in activities of daily living; training and use of community resources; providing life skills training; and adapting behavior to community and home-like environments.

"Instrumental activities of daily living (IADL)" means meal preparation, shopping, housekeeping, laundry, and money management.

"Mental retardation" means a disability as defined by the American Association on ~~Mental Retardation (AAMR)~~ Intellectual and Developmental Disabilities (AAIDD).

"MR Waiver" means the mental retardation waiver.

"Participating provider" means an entity that meets the standards and requirements set forth by DMAS and has a current, signed provider participation agreement with DMAS.

"Pend" means delaying the consideration of an individual's request for authorization of services until all required information is received by DMAS.

"Person-centered planning" means a process, directed by the individual or his family/caregiver, as appropriate, intended to identify the strengths, capacities, preferences, needs and desired outcomes of the individual.

"Personal care provider" means a participating provider that renders services to prevent or reduce inappropriate institutional care by providing eligible individuals with personal care aides to provide personal care services.

"Personal care services" means long-term maintenance or support services necessary to enable individuals to remain in or return to the community rather than enter an Intermediate Care Facility for the Mentally Retarded. Personal care services include assistance with activities of daily living, instrumental activities of daily living, access to the community, medication or other medical needs, and monitoring health status and physical condition. This does not include skilled nursing services with the exception of skilled nursing tasks that may be delegated in accordance with 18VAC90-20-420 through 18VAC90-20-460.

"Personal emergency response system (PERS)" is an electronic device that enables certain individuals to secure help in an emergency. PERS services are limited to those individuals who live alone or are alone for significant parts of the day and who have no regular caregiver for extended periods of time, and who would otherwise require extensive routine supervision.

"Plan of care" means a document developed by the individual or his family/caregiver, as appropriate, and the individual's case manager addressing all needs of individuals of home and community-based waiver services, in all life areas. Supporting documentation developed by waiver service providers is to be incorporated in the plan of care by the case manager. Factors to be considered when these plans are developed must include, but are not limited to, individuals' ages, levels of functioning, and preferences.

"Preauthorized" means the preauthorization agent has approved a service for initiation and reimbursement ~~prior to the commencement~~ of the service by the service provider.

"Primary caregiver" means the ~~main~~ primary person who consistently assumes the role of providing direct care and support of the individual to live successfully in the community without compensation for such care.

"Qualified developmental disabilities professional" or "QDDP" means a professional who (i) possesses at least one year of documented experience working directly with individuals who have related conditions; (ii) is one of the following: a doctor of medicine or osteopathy, a registered nurse, a provider holding at least a bachelor's degree in a human service field including, but not limited to, sociology, social work, special education, rehabilitation engineering, counseling or psychology, or a provider who has documented equivalent qualifications; and (iii) possesses the required Virginia or national license, registration, or certification in accordance with his profession, if applicable.

"Related conditions" means those persons who have autism or who have a severe chronic disability that meets all of the following conditions identified in 42 CFR 435.1009:

1. It is attributable to:

   a. Cerebral palsy or epilepsy; or

   b. Any other condition, other than mental illness, found to be closely related to mental retardation because this condition results in impairment of general intellectual functioning or adaptive behavior similar to that of persons with mental retardation, 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.

4. It results in substantial functional limitations in three or more of the following areas of major life activity:

   a. Self-care.

   b. Understanding and use of language.

   c. Learning.

   d. Mobility.

   e. Self-direction.

   f. Capacity for independent living.

"Respite care" means services provided for unpaid caregivers of eligible individuals who are unable to care for themselves and are provided on an episodic or routine basis

because of the absence of or need for relief of those unpaid persons who routinely provide the care.

"Respite care provider" means a participating provider that renders services designed to prevent or reduce inappropriate institutional care by providing respite care services for unpaid caregivers of eligible individuals.

"Screening" means the process conducted by the IFDDS screening team to evaluate the medical, nursing, and social needs of individuals referred for screening and to determine eligibility for an ICF/MR level of care.

"Skilled nursing services" means nursing services (i) listed in the plan of care that do not meet home health criteria, (ii) required to prevent institutionalization, (iii) not otherwise available under the State Plan for Medical Assistance, (iv) provided within the scope of the state's Nursing Act (§ 54.1-3000 et seq. of the Code of Virginia) and Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia), and (v) provided by a registered professional nurse or by a licensed practical nurse under the supervision of a registered nurse who is licensed to practice in the state. Skilled nursing services are to be used to provide training, consultation, nurse delegation as appropriate and oversight of direct care staff as appropriate.

"Slot" means an opening or vacancy of waiver services for an individual.

"Specialized supervision" means staff presence necessary for ongoing or intermittent intervention to ensure an individual's health and safety.

"State Plan for Medical Assistance" or "the 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.

"Supporting documentation" means the specific plan of care developed by the individual and waiver service provider related solely to the specific tasks required of that service provider. Supporting documentation helps to comprise the overall plan of care for the individual, developed by the case manager and the individual.

"Supported employment" means work in settings in which persons without disabilities are typically employed. It includes training in specific skills related to paid employment and provision of ongoing or intermittent assistance and specialized supervision to enable an individual to maintain paid employment.

"Therapeutic consultation" means consultation provided by members of psychology, social work, rehabilitation engineering, behavioral analysis, speech therapy, occupational therapy, psychiatry, psychiatric clinical nursing, therapeutic recreation, or physical therapy or behavior consultation to assist individuals, parents, family members, in-home residential support, day support and any other providers of support services in implementing a plan of care.

"Transition services" means set-up expenses for individuals who are transitioning from an institution or licensed or certified provider-operated living arrangement to a living arrangement in a private residence where the person is directly responsible for his or her own living expenses. 12VAC30-120-2010 provides the service description, criteria, service units and limitations, and provider requirements for this service.

"VDH" means the Virginia Department of Health.

12VAC30-120-710. General coverage and requirements for all home and community-based waiver services.

A. Waiver service populations. Home and community-based services shall be available through a § 1915(c) waiver. Coverage shall be provided under the waiver for individuals six years of age and older with related conditions as defined in 12VAC30-120-700, including autism, who have been determined to require the level of care provided in an ICF/MR. The individual must not have a diagnosis of mental retardation as defined by the American Association on ~~Mental Retardation (AAMR)~~ Intellectual and Developmental Disabilities (AAIDD). Mental Retardation (MR) Waiver recipients who are six years of age on or after October 1, 2002, who are determined to not have a diagnosis of mental retardation, and who meet all IFDDS Waiver eligibility criteria, shall be eligible for and shall transfer to the IFDDS Waiver effective with their sixth birthday. Psychological evaluations confirming diagnoses must be completed less than one year prior to the child's sixth birthday. These recipients transferring from the MR Waiver will automatically be assigned a slot in the IFDDS Waiver. Such slot shall be in addition to those slots available through the screening process described in 12VAC30-120-720 B and C.

B. Covered services.

1. Covered services shall include in-home residential supports, day support, prevocational services, supported employment, personal care (both agency-directed and consumer-directed), respite care (both agency-directed and consumer-directed), assistive technology, environmental modifications, skilled nursing services, therapeutic consultation, crisis stabilization, personal emergency response systems (PERS), family/caregiver training, ~~and~~ companion services (both agency-directed and consumer-directed), and transition services.

2. These services shall be appropriate and medically necessary to maintain these individuals in the community. Federal waiver requirements provide that the average per capita fiscal year expenditures under the waiver must not exceed the average per capita expenditures for the level of care provided in ICFs/MR under the State Plan that would have been made had the waiver not been granted.

3. Under this § 1915(c) waiver, DMAS waives subdivision (a)(10)(B) of § 1902 of the Social Security Act related to comparability.

C. Eligibility criteria for emergency access to the waiver.

1. Subject to available funding and a finding of eligibility under 12VAC30-120-720, individuals must meet at least one of the emergency criteria of this subdivision to be eligible for immediate access to waiver services without consideration to the length of time an individual has been waiting to access services. In the absence of waiver services, the individual would not be able to remain in his home. The criteria are as follows:

a. The primary caregiver has a serious illness, has been hospitalized, or has died;

b. The individual has been determined by the DSS to have been abused or neglected and is in need of immediate waiver services;

c. The individual demonstrates behaviors that present risk to personal or public safety;

d. The individual presents extreme physical, emotional, or financial burden at home, and the family or caregiver is unable to continue to provide care; or

e. The individual lives in an institutional setting and has a viable discharge plan in place.

2. When emergency slots become available:

a. All individuals who have been found eligible for the IFDDS Waiver but have not been enrolled shall be notified by either DMAS or the individual's case manager.

b. Individuals and their family/caregivers shall be given 30 calendar days to request emergency consideration.

c. An interdisciplinary team of DMAS professionals shall evaluate the requests for emergency consideration within 10 calendar days from the 30-calendar day deadline using the emergency criteria to determine who will be assigned an emergency slot. If DMAS receives more requests than the number of available emergency slots, then the interdisciplinary team will make a decision on slot allocation based on need as documented in the request for emergency consideration. A waiting list of emergency cases will not be kept.

D. Appeals. Individual appeals shall be considered pursuant to 12VAC30-110-10 through 12VAC30-110-380. Provider appeals shall be considered pursuant to 12VAC30-10-1000 and 12VAC30-20-500 through 12VAC30-20-599.

12VAC30-120-754. Supported employment services.

A. Service description.

1. Supported employment services shall include training in specific skills related to paid employment and provision of ongoing or intermittent assistance or specialized training to enable an individual to maintain paid employment. Each supporting documentation must confirm whether supported employment services are available to the individual in vocational rehabilitation agencies through the Rehabilitation Act of 1973 or in special education services through 20 USC § 1401 of the Individuals with Disabilities Education Act (IDEA). Providers of these DRS and IDEA services cannot be reimbursed by Medicaid with the IFDDS Waiver funds. Waiver service providers are reimbursed only for the amount and type of habilitation services included in the individual's approved plan of care based on the intensity and duration of the service delivered. Reimbursement shall be limited to actual interventions by the provider of supported employment, not for the amount of time the recipient is in the supported employment environment.

2. Supported employment may be provided in one of two models. Individual supported employment is defined as intermittent support, usually provided one on one by a job coach for an individual in a supported employment position. Group supported employment is defined as continuous support provided by staff for eight or fewer individuals with disabilities in an enclave, work crew, or bench work/entrepreneurial model. The individual's assessment and plan of care must clearly reflect the individual's need for training and supports.

B. Criteria for receipt of services.

1. Only job development tasks that specifically include the individual are allowable job search activities under the IFDDS Waiver supported employment and only after determining this service is not available from DRS or IDEA.

2. In order to qualify for these services, the individual shall have a demonstrated need for training, specialized supervision, or assistance in paid employment and for whom competitive employment at or above the minimum wage is unlikely without this support and who, because of the disability, needs ongoing support, including supervision, training and transportation to perform in a work setting.

3. A functional assessment must be conducted to evaluate each individual in his work environment and related community settings.

4. The supporting documentation must document the amount of supported employment required by the individual. Service providers are reimbursed only for the amount and type of supported employment included in the plan of care based on the intensity and duration of the service delivered.

C. Service units and service limitations.

1. Supported employment for individual job placement is provided in one-hour units. This service is limited to 40 hours per week.

2. Group models of supported employment (enclaves, work crews, bench work, and entrepreneurial model of supported employment) will be billed ~~at the unit rate~~ according to the DMAS fee schedule.

~~a. One unit is 1 to 3.99 hours of service a day.~~

~~b. Two units are 4 to 6.99 or more hours of service a day.~~

~~c. Three units are 7 or more hours of service a day.~~

3. Supported employment services are limited to 780 units per plan of care year. If used in combination with prevocational and day support services, the combined total units for these services cannot exceed 780 units, or its equivalent under the DMAS fee schedule, per plan of care year.

4. For the individual job placement model, reimbursement ~~of supported employment~~ will be limited to actual documented interventions or collateral contacts by the provider, not the amount of time the individual is in the supported employment situation.

D. Provider requirements. In addition to meeting the general conditions and requirements for home and community-based care participating providers as specified in 12VAC30-120-730 and 12VAC30-120-740, supported employment providers must meet the following requirements:

1. Supported employment services shall be provided by agencies that are programs certified by ~~CARF~~ the Commission on Accreditation of Rehabilitation Facilities (CARF) to provide supported employment services or are DRS vendors of supported employment services.

2. Individual ineligibility for supported employment services through DRS or IDEA must be documented in the individual's record, as applicable. If the individual is ~~eligible~~ ineligible to receive services through ~~the Individuals with Disabilities Education Act~~ IDEA, documentation is required only for lack of DRS funding. Acceptable documentation would include a copy of a letter from DRS or the local school system or a record of a ~~phone~~ telephone call (name, date, person contacted) documented in the case manager's case notes, Consumer Profile/Social assessment or on the supported employment supporting documentation. Unless the individual's circumstances change, the original verification may be forwarded into the current record or repeated on the supporting documentation or revised Social Assessment on an annual basis.

3. Supporting documentation and ongoing documentation consistent with licensing regulations, if a DMHMRSAS licensed program.

4. For non-DMHMRSAS programs certified as supported employment programs, there must be supporting documentation that contains, at a minimum, the following elements:

a. The individual's strengths, desired outcomes, required/desired supports and training needs;

b. The individual's goals and, for a training goal, a sequence of measurable objectives to meet the above identified outcomes;

c. Services to be rendered and the frequency of services to accomplish the above goals and objectives;

d. All entities that will provide the services specified in the statement of services;

e. A timetable for the accomplishment of the individual's goals and objectives;

f. The estimated duration of the individual's needs for services; and

g. Entities responsible for the overall coordination and integration of the services specified in the plan of care.

5. Documentation must confirm the individual's attendance, the amount of time the individual spent in services, and must provide specific information regarding the individual's response to various settings and supports as agreed to in the supporting documentation objectives. Assessment results should be available in at least a daily note or weekly summary.

6. The provider must review the supporting documentation with the individual, and this written review submitted to the case manager, at least semi-annually, with goals, objectives and activities modified as appropriate. For the annual review and in cases where the plan of care is modified, the plan of care must be reviewed with the individual or his family/caregiver, as appropriate.

7. In instances where supported employment staff are required to ride with the individual to and from supported employment activities, the supported employment staff time may be billed for supported employment provided that the billing for this time does not exceed 25% of the total time spent in supported employment for that day. Documentation must be maintained to verify that billing supported employment staff coverage during transportation does not exceed 25% of the total time spent in supported employment for that day.

8. There must be a copy of the completed DMAS-122 form in the record. Providers must clearly document efforts to obtain the DMAS-122 form from the case manager.

12VAC30-120-758. Environmental modifications.

A. Service description. Environmental modifications shall be defined as those physical adaptations to the individual's

primary home or primary vehicle used by the individual, documented in the individual's plan of care, that are necessary to ensure the health, welfare, and safety of the individual, or that enable the individual to function with greater independence in the primary home and, without which, the individual would require institutionalization. Such adaptations may include the installation of ramps and grab-bars, widening of doorways, modification of bathroom facilities, or installation of specialized electrical and plumbing systems that are necessary to accommodate the medical equipment and supplies that are necessary for the welfare of the individual. Excluded are those adaptations or improvements to the home that are of general utility and are not of direct medical or remedial benefit to the individual, such as carpeting, roof repairs, central air conditioning, etc. Adaptations that add to the total square footage of the home shall be excluded from this benefit, except when necessary to complete an adaptation, as determined by DMAS or its designated agent. All services shall be provided in the individual's primary home in accordance with applicable state or local building codes. All modifications must be prior authorized by the prior authorization agent. Modifications may be made to a vehicle if it is the primary vehicle being used by the individual. This service does not include the purchase of vehicles.

B. Criteria. In order to qualify for these services, the individual must have a demonstrated need for equipment or modifications of a remedial or medical benefit offered in an individual's primary home, primary vehicle used by the individual, community activity setting, or day program to specifically improve the individual's personal functioning. This service shall encompass those items not otherwise covered in the State Plan for Medical Assistance or through another program. Environmental modifications shall be covered in the least expensive, most cost-effective manner. For enrollees in the Acquired Immunodeficiency Syndrome (AIDS) waiver (12VAC30-120-140 through 12VAC30-120-201) or the Elderly or Disabled with Consumer Direction (EDCD) waiver (12VAC30-120-900 through 12VAC30-120-980), environmental modification services shall be available only to those AIDS and EDCD enrollees who are also enrolled in the Money Follows the Person demonstration.

C. Service units and service limitations. Environmental modifications shall be available to individuals who are receiving case management services ~~in addition to at least one other waiver service~~. To receive environmental modifications in the EDCD waiver, the individual must be receiving at least one other waiver service. To receive environmental modifications in the IFDDS waiver, the individual must be receiving case management services and at least one other waiver service. A maximum limit of $5,000 may be reimbursed per plan of care or calendar year, as appropriate to the waiver in which the individual is enrolled. Costs for environmental modifications shall not be carried over from year to year. All environmental modifications must be prior authorized by the prior authorization agent prior to billing. Modifications shall not be used to bring a substandard dwelling up to minimum habitation standards. Also excluded are modifications that are reasonable accommodation requirements of the Americans with Disabilities Act, the Virginians with Disabilities Act, and the Rehabilitation Act.

Case managers or transition coordinators must, upon completion of each modification, meet face-to-face with the individual and his family/caregiver, as appropriate, to ensure that the modification is completed satisfactorily and is able to be used by the individual.

D. Provider requirements. In addition to meeting the general conditions and requirements for home and community-based waiver services participating providers as specified in 12VAC30-120-160, 12VAC30-120-730 ~~and~~, 12VAC30-120-740, and 12VAC30-120-930, as appropriate, environmental modifications must be provided in accordance with all applicable state or local building codes by contractors who have a provider agreement with DMAS. Providers may not be spouses or parents of the individual. Modifications must be completed within the plan of care or the calendar year in which the modification was authorized, as appropriate to the waiver in which the individual is enrolled.

12VAC30-120-762. Assistive technology.

A. Service description. Assistive technology (AT) is available to recipients who are receiving at least one other waiver service and may be provided in a residential or nonresidential setting. ~~Assistive technology (AT)~~ AT is the specialized medical equipment and supplies, including those devices, controls, or appliances, specified in the plan of care, but not available under the State Plan for Medical Assistance, that enable individuals to increase their abilities to perform activities of daily living, or to perceive, control, or communicate with the environment in which they live. This service also includes items necessary for life support, ancillary supplies, and equipment necessary to the proper functioning of such items.

B. Criteria. In order to qualify for these services, the individual must have a demonstrated need for equipment or modification for remedial or direct medical benefit primarily in an individual's primary home, primary vehicle used by the individual, community activity setting, or day program to specifically serve to improve the individual's personal functioning. This shall encompass those items not otherwise covered under the State Plan for Medical Assistance. Assistive technology shall be covered in the least expensive, most cost-effective manner. For enrollees in the Acquired Immunodeficiency Syndrome (AIDS) waiver (12VAC30-120-140 through 12VAC30-120-201) or the Elderly or Disabled with Consumer Direction (EDCD) waiver (12VAC30-120-900 through 12VAC30-120-980), assistive technology services shall be available only to those AIDS and

EDCD enrollees who are also enrolled in the Money Follows the Person demonstration.

C. Service units and service limitations. ~~Assistive technology (AT)~~ AT is available to individuals receiving at least one other waiver service and may be provided in the individual's home or community setting. A maximum limit of $5,000 may be reimbursed per plan of care year or the calendar year, as appropriate to the waiver in which the individual is enrolled or calendar year, as appropriate to the waiver being received. Costs for assistive technology cannot be carried over from year to year and must be preauthorized each plan of care year. AT will not be approved for purposes of convenience of the caregiver/provider or restraint of the individual. An independent, professional consultation must be obtained from qualified professionals who are knowledgeable of that item for each AT request prior to approval by the prior authorization agent, and may include training on such AT by the qualified professional. All ~~assistive technology~~ AT must be prior authorized by the prior authorization agent prior to billing. Also excluded are modifications that are reasonable accommodation requirements of the Americans with Disabilities Act, the Virginians with Disabilities Act, and the Rehabilitation Act.

D. Provider requirements. In addition to meeting the general conditions and requirements for home and community-based care participating providers as specified in 12VAC30-120-160, 12VAC30-120-730 ~~and~~, 12VAC30-120-740, ~~assistive technology~~ and 12VAC30-120-930, AT shall be provided by providers having a current provider participation agreement with DMAS as durable medical equipment and supply providers. Independent, professional consultants include speech/language therapists, physical therapists, occupational therapists, physicians, behavioral therapists, certified rehabilitation specialists, or rehabilitation engineers. Providers that supply ~~assistive technology~~ AT for an individual may not perform assessment/consultation, write specifications, or inspect the ~~assistive technology~~ AT for that individual. Providers of services may not be spouses or parents of the individual. AT must be delivered within the plan of care year, or within a year from the start date of the authorization, as appropriate to the waiver, in which the individual is enrolled.

12VAC30-120-770. Consumer-directed model of service delivery.

A. Criteria.

1. The IFDDS Waiver has three services, companion, personal care, and respite services, that may be provided through a consumer-directed model.

2. Individuals who are eligible for consumer-directed services must have the capability to hire ~~and~~, train, and fire their consumer-directed employees and supervise the employee's work performance. If an individual is unable to direct his own care or is under 18 years of age, a family/caregiver may serve as the employer on behalf of the individual.

3. Responsibilities as employer. The individual, or if the individual is unable, then a family caregiver, is the employer in this service and is responsible for hiring, training, supervising, and firing employees. Specific duties include checking references of employees, determining that employees meet basic qualifications, training employees, supervising the employees' performance, and submitting timesheets to the fiscal agent on a consistent and timely basis. The individual or his family/caregiver, as appropriate, must have an emergency back-up plan in case the employee does not show up for work.

4. DMAS shall contract for the services of a fiscal agent for consumer-directed personal care, companion, and respite care services. The fiscal agent will be paid by DMAS to perform certain tasks as an agent for the individual/employer who is receiving consumer-directed services. The fiscal agent will handle responsibilities for the individual for employment taxes. The fiscal agent will seek and obtain all necessary authorizations and approvals of the Internal Revenue Services in order to fulfill all of these duties.

5. Individuals choosing consumer-directed services must receive support from a CD services facilitator. Services facilitators assist the individual or his family/caregiver, as appropriate, as they become employers for consumer-directed services. This function includes providing the individual or his family/caregiver, as appropriate, with management training, review and explanation of the Employee Management Manual, and routine visits to monitor the employment process. The CD services facilitator assists the individual/employer with employer issues as they arise. The services facilitator meeting the stated qualifications may also complete the assessments, reassessments, and related supporting documentation necessary for consumer-directed services if the individual or his family/caregiver, as appropriate, chooses for the CD services facilitator to perform these tasks rather than the case manager. Services facilitation services are provided on an as-needed basis as determined by the individual, family/caregiver, and CD services facilitator. This must be documented in the supporting documentation for consumer-directed services and the services facilitation provider bills accordingly. If an individual enrolled in consumer-directed services has a lapse in consumer-directed services for more than 60 consecutive calendar days, the case manager must notify DMAS so that consumer-directed services may be discontinued and the option given to change to agency-directed services.

B. Provider qualifications. In addition to meeting the general conditions and requirements for home and community-based

care participating providers as specified in 12VAC30-120-730 and 12VAC30-120-740, services facilitators providers must meet the following qualifications:

1. To be enrolled as a Medicaid CD services facilitation provider and maintain provider status, the CD services facilitation provider must operate from a business office and have sufficient qualified staff who will function as CD services facilitators to perform the service facilitation and support activities as required. It is preferred that the employee of the CD services facilitation provider possess a minimum of an undergraduate degree in a human services field or be a registered nurse currently licensed to practice in the Commonwealth. In addition, it is preferable that the CD services facilitator has two years of satisfactory experience in the human services field working with individuals with related conditions.

2. The CD services facilitator must possess a combination of work experience and relevant education which indicates possession of the following knowledge, skills, and abilities. Such knowledge, skills and abilities must be documented on the application form, found in supporting documentation, or be observed during the job interview. Observations during the interview must be documented. The knowledge, skills, and abilities include:

a. Knowledge of:

(1) Various long-term care program requirements, including nursing home, ICF/MR, and assisted living facility placement criteria, Medicaid waiver services, and other federal, state, and local resources that provide personal care services;

(2) DMAS consumer-directed services requirements, and the administrative duties for which the individual will be responsible;

(3) Interviewing techniques;

(4) The individual's right to make decisions about, direct the provisions of, and control his consumer-directed services, including hiring, training, managing, approving time sheets, and firing an employee;

(5) The principles of human behavior and interpersonal relationships; and

(6) General principles of record documentation.

(7) For CD services facilitators who also conduct assessments and reassessments, the following is also required. Knowledge of:

(a) Types of functional limitations and health problems that are common to different disability types and the aging process as well as strategies to reduce limitations and health problems;

(b) Physical assistance typically required by people with developmental disabilities, such as transferring, bathing techniques, bowel and bladder care, and the approximate time those activities normally take;

(c) Equipment and environmental modifications commonly used and required by people with developmental disabilities that reduces the need for human help and improves safety;

(d) Conducting assessments (including environmental, psychosocial, health, and functional factors) and their uses in care planning.

b. Skills in:

(1) Negotiating with individuals or their family/caregivers, as appropriate, and service providers;

(2) Observing, recording, and reporting behaviors;

(3) Identifying, developing, or providing services to persons with developmental disabilities; and

(4) Identifying services within the established services system to meet the individual's needs.

c. Abilities to:

(1) Report findings of the assessment or onsite visit, either in writing or an alternative format for persons who have visual impairments;

(2) Demonstrate a positive regard for individuals and their families;

(3) Be persistent and remain objective;

(4) Work independently, performing position duties under general supervision;

(5) Communicate effectively, orally and in writing;

(6) Develop a rapport and communicate with different types of persons from diverse cultural backgrounds; and

(7) Interview.

3. If the CD services facilitator is not an RN, the CD services facilitator must inform the primary health care provider that services are being provided and request skilled nursing or other consultation as needed.

4. Initiation of services and service monitoring.

a. If the services facilitator has responsibility for individual assessments and reassessments, these must be conducted as specified in 12VAC30-120-766 and 12VAC30-120-776.

b. Management training.

(1) The CD services facilitation provider must make an initial visit with the individual or his family/caregiver, as appropriate, to provide management training. The initial

management training is done only once upon the individual's entry into the service. If an individual served under the waiver changes CD services facilitation providers, the new CD services facilitator must bill for a regular management training in lieu of initial management training.

(2) After the initial visit, two routine visits must occur within 60 days of the initiation of care or the initial visit to monitor the employment process.

(3) For personal care services, the CD services facilitation provider will continue to monitor on an as needed basis, not to exceed a maximum of one routine visit every 30 calendar days but no less than the minimum of one routine visit every 90 calendar days per individual. After the initial visit, the CD services facilitator will periodically review the utilization of companion services at a minimum of every six months and for respite services, either every six months or upon the use of 300 respite care hours, whichever comes first.

5. The CD services facilitator must be available to the individual or his family/caregiver, as appropriate, by telephone during normal business hours, have voice mail capability, and return phone calls within 24 hours or have an approved back-up CD services facilitator.

6. The CD services fiscal contractor for DMAS must submit a criminal record check within 15 calendar days of employment pertaining to the consumer-directed employees on behalf of the individual or family/caregiver and report findings of the criminal record check to the individual or his family/caregiver, as appropriate.

7. The CD services facilitator shall verify bi-weekly timesheets signed by the individual or his family caregiver, as appropriate, and the employee to ensure that the number of plan of care approved hours are not exceeded. If discrepancies are identified, the CD services facilitator must contact the individual to resolve discrepancies and must notify the fiscal agent. If an individual is consistently being identified as having discrepancies in his timesheets, the CD services facilitator must contact the case manager to resolve the situation.

8. Consumer-directed employee registry. The CD services facilitator must maintain a consumer-directed employee registry, updated on an ongoing basis.

9. Required documentation in individuals' records. CD services facilitators responsible for individual assessment and reassessment must maintain records as described in 12VAC30-120-766 and 12VAC30-120-776. For CD services facilitators conducting management training, the following documentation is required in the individual's record:

a. All copies of the plan of care, all supporting documentation related to consumer-directed services, and all DMAS-122 forms.

b. CD services facilitator's notes recorded and dated at the time of service delivery.

c. All correspondence to the individual, others concerning the individual, and to DMAS.

d. All training provided to the consumer-directed employees on behalf of the individual or his family/caregiver, as appropriate.

e. All management training provided to the individuals or his family/caregivers, as appropriate, including the responsibility for the accuracy of the timesheets.

f. All documents signed by the individual or his family/caregiver, as appropriate, that acknowledge the responsibilities of the services.

Part IX

Elderly or Disabled with Consumer Direction Waiver

12VAC30-120-900. Definitions.

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

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

"Adult day health care center" or "ADHC" means a DMAS-enrolled provider that offers a community-based day program providing a variety of health, therapeutic, and social services designed to meet the specialized needs of those elderly and disabled individuals at risk of placement in a nursing facility. The ADHC must be licensed by DSS as an ADHC.

"Adult day health care services" means services designed to prevent institutionalization by providing participants with health, maintenance, and coordination of rehabilitation services in a congregate daytime setting.

"Agency-directed services" means services provided by a personal care agency.

"Americans with Disabilities Act" or "ADA" means the United States Code pursuant to 42 USC § 12101 et seq.

"Appeal" means the process used to challenge adverse actions regarding services, benefits, and reimbursement provided by Medicaid pursuant to 12VAC30-110 and 12VAC30-20-500 through 12VAC30-20-560.

"Assistive technology" means specialized medical equipment and supplies including those devices, controls, or appliances specified in the plan of care but not available

under the State Plan for Medical Assistance that enable individuals to increase their abilities to perform activities of daily living, or to perceive, control, or communicate with the environment in which they live, or that are necessary to the proper functioning of the specialized equipment. [12VAC30-120-762 provides the service description, criteria, service units and limitations, and provider requirements for this service.] This service shall be available only to those EDCD waiver enrollees who are participants in the Money Follows the Person demonstration.

"Barrier crime" means those crimes as defined at § 32.1-162.9:1 of the Code of Virginia.

"CMS" means the Centers for Medicare and Medicaid Services, which is the unit of the U.S. Department of Health and Human Services that administers the Medicare and Medicaid programs.

"Cognitive impairment" means a severe deficit in mental capability that affects an individual's areas of functioning such as thought processes, problem solving, judgment, memory, or comprehension 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 personal care aide.

"Consumer-directed (CD) services facilitator" or "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 Services Plan of Care, providing employee management training, and completing ongoing review activities as required by DMAS for consumer-directed personal care and respite services.

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

"Direct marketing" means either (i) conducting either directly or indirectly door-to-door, telephonic, or other "cold call" marketing of services at residences and provider sites; (ii) using direct mailing; (iii) paying "finders fees"; (iv) offering financial incentives, rewards, gifts, or special opportunities to eligible individuals or family/caregivers as inducements to use the providers' services; (v) providing continuous, periodic marketing activities to the same prospective individual or family/caregiver, for example, monthly, quarterly, or annual giveaways as inducements to use the providers' services; or (vi) engaging in marketing activities that offer potential customers rebates or discounts in conjunction with the use of the providers' services or other benefits as a means of influencing the individual's or family/caregiver's use of the providers' services.

"DMAS" means the Department of Medical Assistance Services.

"DMAS staff" means persons employed by the Department of Medical Assistance Services.

"DRS" means the Department of Rehabilitative Services.

"DSS" means the Department of Social Services.

"Elderly or Disabled with Consumer Direction Waiver" or "EDCD waiver" means the CMS-approved waiver that covers a range of community support services offered to individuals who are elderly or disabled who would otherwise require a nursing facility level of care.

"Environmental modifications" means physical adaptations to a house, place of residence, primary vehicle or work site, when the work site modification exceeds reasonable accommodation requirements of the Americans with Disabilities Act (42 USC § 1201 et seq.), necessary to ensure the individuals' health and safety or enable functioning with greater independence when the adaptation is not being used to bring a substandard dwelling up to minimum habitation standards and is of direct medical or remedial benefit to individuals. 12VAC30-120-758 provides the service description, criteria, service units and limitations, and provider requirements for this service. This service shall be available only to those EDCD waiver enrollees who are participants in the Money Follows the Person demonstration.

"Fiscal agent" means an agency or division within DMAS or contracted by DMAS to handle employment, payroll, and tax responsibilities on behalf of individuals who are receiving consumer-directed personal care services and respite services.

"Home and community-based waiver services" or "waiver services" means the range of community support services approved by the CMS pursuant to § 1915(c) of the Social Security Act to be offered to persons who are elderly or disabled who would otherwise require the level of care provided in a nursing facility. DMAS or the designated preauthorization contractor shall only give preauthorization for medically necessary Medicaid reimbursed home and community care.

"Individual" means the person receiving the services established in these regulations.

"Instrumental activities of daily living" or "IADLs" means tasks such as meal preparation, shopping, housekeeping and laundry. An individual's degree of independence in performing these activities is a part of determining appropriate level of care and service needs.

"Medication monitoring" means an electronic device, which is only available in conjunction with Personal Emergency Response Systems, that enables certain individuals at high risk of institutionalization to be reminded to take their medications at the correct dosages and times.

"Participating provider" means an entity that meets the standards and requirements set forth by DMAS and has a current, signed provider participation agreement with DMAS.

"Personal care agency" means a participating provider that provides personal care services.

"Personal care aide" means a person who provides 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 a nursing facility. Personal care services are provided to individuals in the areas of 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. Where the individual requires assistance with activities of daily living, and where specified in the plan of care, such supportive services may include assistance with instrumental activities of daily living. Services may 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.

"Personal emergency response system (PERS)" means an electronic device and monitoring service that enable certain individuals at high risk of institutionalization to secure help in an emergency. PERS services are limited to those individuals who live alone or are alone for significant parts of the day and who have no regular caregiver for extended periods of time, and who would otherwise require extensive routine supervision.

"PERS provider" means a certified home health or a personal care agency, a durable medical equipment provider, a hospital, or a PERS manufacturer that has the ability to provide PERS equipment, direct services (i.e., installation, equipment maintenance, and services calls), and PERS monitoring. PERS providers may also provide medication monitoring.

"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 while remaining in the community.

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

"Preadmission Screening Committee/Team" means the entity contracted with DMAS that is responsible for performing preadmission screening pursuant to § 32.1-330 of the Code of Virginia.

"Primary caregiver" means the primary person who consistently assumes the rule of providing direct care and support of the individual to live successfully in the community without compensation for providing such care.

"Respite care agency" or "respite care facility" means a participating provider that renders respite services.

"Respite services" means those short-term personal care services provided to individuals who are unable to care for themselves because of the absence of or need for the relief of those unpaid caregivers who normally provide the care.

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

"Transition coordinator" means the DMAS-enrolled provider who is responsible for supporting the individual and family/caregiver, as appropriate, with the activities associated with transitioning from an institution to the community. 12VAC30-120-2000 provides the service description, criteria, service units and limitations, and provider requirements for this service.

"Transition services" means set-up expenses for individuals who are transitioning from an institution or licensed or certified provider-operated living arrangement to a living arrangement in a private residence where the person is directly responsible for his own living expenses. 12VAC30-120-2010 provides the service description, criteria, service units and limitations, and provider requirements for this service.

"Uniform Assessment Instrument" or "UAI" means the standardized multidimensional questionnaire that is completed by the Preadmission Screening Team that assesses an individual's physical health, mental health, and social and functional abilities to determine if the individual meets the nursing facility level of care.

12VAC30-120-910. General coverage and requirements for Elderly or Disabled with Consumer Direction Waiver services.

A. EDCD Waiver services populations. Home and community-based waiver services shall be available through a § 1915(c) of the Social Security Act waiver for the following Medicaid-eligible individuals who have been determined to be eligible for waiver services and to require the level of care provided in a nursing facility:

1. Individuals who are elderly as defined by § 1614 of the Social Security Act; or

2. Individuals who are disabled as defined by § 1614 of the Social Security Act.

B. Covered services.

1. Covered services shall include: adult day health care, personal care (both consumer-directed and agency-directed), respite services (~~both~~ (consumer-directed, agency-directed, and facility-based), ~~and~~ PERS, assistive technology, environmental modifications, transition coordinator and transition services. Assistive technology and environmental modification services shall be available only to those EDCD waiver enrollees who are participants in the Money Follows the Person demonstration.

2. These services shall be medically appropriate and medically necessary to maintain the individual in the community and prevent institutionalization.

3. A recipient of EDCD Waiver services may receive personal care (agency- and consumer-directed), respite care (agency- and consumer-directed), adult day health care, transition services, transition coordination, assistive technology, environmental modifications, and PERS services in conjunction with hospice services, regardless of whether the hospice provider receives reimbursement from Medicare or Medicaid for the services covered under the hospice benefit. Services under this waiver will not be available to hospice recipients unless the hospice can document the provision of at least 21 hours per week of homemaker/home health aide services and that the recipient needs personal care-type services that exceed this amount. Assistive technology and environmental modification services shall be available only to those EDCD waiver enrollees who are participants in the Money Follows the Person demonstration.

4. Under this § 1915(c) waiver, DMAS waives §§ 1902(a)(10)(B) and (C) of the Social Security Act related to comparability of services.

12VAC30-120-920. Individual eligibility requirements.

A. The Commonwealth has elected to cover low-income families with children as described in § 1931 of the Social Security Act; aged, blind, or disabled individuals who are eligible under 42 CFR 435.121; optional categorically needy individuals who are aged and disabled who have incomes at 80% of the federal poverty level; the special home and community-based waiver group under 42 CFR 435.217; and the medically needy groups specified in 42 CFR 435.320, 435.322, 435.324, and 435.330.

1. Under this waiver, the coverage groups authorized under § 1902(a)(10)(A)(ii)(VI) of the Social Security Act will be considered as if they were institutionalized for the purpose of applying institutional deeming rules. All recipients under the waiver must meet the financial and nonfinancial Medicaid eligibility criteria and meet the institutional level of care criteria. The deeming rules are applied to waiver eligible individuals as if the individual were residing in an institution or would require that level of care.

2. Virginia shall reduce its payment for home and community-based services provided to an individual who is eligible for Medicaid services under 42 CFR 435.217 by that amount of the individual's total income (including amounts disregarded in determining eligibility) that remains after allowable deductions for personal maintenance needs, deductions for other dependents, and medical needs have been made, according to the guidelines in 42 CFR 435.735 and § 1915(c)(3) of the Social Security Act as amended by the Consolidated Omnibus Budget Reconciliation Act of 1986. DMAS will reduce its payment for home and community-based waiver services by the amount that remains after the following deductions:

a. For individuals to whom § 1924(d) applies (Virginia waives the requirement for comparability pursuant to § 1902(a)(10)(B)), deduct the following in the respective order:

(1) An amount for the maintenance needs of the individual that is equal to 165% of the SSI income limit for one individual. Working individuals have a greater need due to expenses of employment; therefore, an additional amount of income shall be deducted. Earned income shall be deducted within the following limits: (i) for individuals employed 20 hours or more per week, earned income shall be disregarded up to a maximum of both earned and unearned income up to 300% of SSI and (ii) for individuals employed at least eight but less than 20 hours per week, earned income shall be disregarded up to a maximum of both earned and unearned income up to 200% of SSI. However, in no case, shall the total amount of income (both earned and unearned) that is disregarded for maintenance exceed 300% of SSI. If the individual requires a guardian or conservator who charges a fee, the fee, not to exceed an amount greater than 5.0% of the individual's total monthly income, is added to the maintenance needs allowance. However, in no case shall the total amount of the maintenance needs allowance (basic allowance plus earned income allowance plus guardianship fees) for the individual exceed 300% of SSI. (The guardianship fee is not to exceed 5.0% of the individual's total monthly income.);

(2) For an individual with only a spouse at home, the community spousal income allowance determined in accordance with § 1924(d) of the Social Security Act;

(3) For an individual with a family at home, an additional amount for the maintenance needs of the family determined in accordance with § 1924(d) of the Social Security Act; and

(4) Amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party, including Medicare and other health insurance premiums, deductibles, or coinsurance charges and necessary medical or remedial care recognized under the state law but not covered under the State Plan.

b. For individuals to whom § 1924(d) of the Social Security Act does not apply, deduct the following in the respective order:

(1) An amount for the maintenance needs of the individual that is equal to 165% of the SSI income limit for one individual. Working individuals have a greater need due to expenses of employment; therefore, an additional amount of income shall be deducted. Earned income shall be deducted within the following limits: (i) for individuals employed 20 hours or more, earned income shall be disregarded up to a maximum of 300% of SSI and (ii) for individuals employed at least eight but less than 20 hours, earned income shall be disregarded up to a maximum of 200% of SSI. However, in no case, shall the total amount of income (both earned and unearned) that is disregarded for maintenance exceed 300% of SSI. If the individual requires a guardian or conservator who charges a fee, the fee, not to exceed an amount greater than 5.0% of the individual's total monthly income, is added to the maintenance needs allowance. However, in no case shall the total amount of the maintenance needs allowance (basic allowance plus earned income allowance plus guardianship fees) for the individual exceed 300% of SSI. (The guardianship fee is not to exceed 5.0% of the individual's total monthly income.);

(2) For an individual with a family at home, an additional amount for the maintenance needs of the family that shall be equal to the medically needy income standard for a family of the same size; and

(3) Amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party including Medicare and other health insurance premiums, deductibles, or coinsurance charges and necessary medical or remedial care recognized under state law but not covered under the State Plan.

B. Assessment and authorization of home and community-based services.

1. To ensure that Virginia's home and community-based waiver programs serve only Medicaid eligible individuals who would otherwise be placed in a nursing facility, home and community-based waiver services shall be considered only for individuals who are eligible for admission to a nursing facility. Home and community-based waiver services shall be the critical service to enable the individual to remain at home and in the community rather than being placed in a nursing facility.

2. The individual's eligibility for home and community-based services shall be determined by the Preadmission Screening Team after completion of a thorough assessment of the individual's needs and available support. If an individual meets nursing facility criteria, the Preadmission Screening Team shall provide the individual and family/caregiver with the choice of Elderly or Disabled with Consumer Direction Waiver services or nursing facility placement.

3. The Preadmission Screening Team shall explore alternative settings or services to provide the care needed by the individual. When Medicaid-funded home and community-based care services are determined to be the critical services necessary to delay or avoid nursing facility placement, the Preadmission Screening Team shall initiate referrals for services.

4. Medicaid will not pay for any home and community-based care services delivered prior to the individual establishing Medicaid eligibility and prior to the date of the preadmission screening by the Preadmission Screening Team and the physician signature on the Medicaid Funded Long-Term Care Services Authorization Form (DMAS-96).

5. Before Medicaid will assume payment responsibility of home and community-based services, preauthorization must be obtained from the designated preauthorization contractor on all services requiring preauthorization. Providers must submit all required information to the designated preauthorization contractor within 10 business days of initiating care or within 10 business days of receiving verification of Medicaid eligibility from the local DSS. If the provider submits all required information to the designated preauthorization contractor within 10 business days of initiating care, services may be authorized beginning from the date the provider initiated services but not preceding the date of the physician's signature on the Medicaid Funded Long-Term Care Services Authorization Form (DMAS-96). If the provider does not submit all required information to the designated preauthorization contractor within 10 business days of initiating care, the services may be authorized beginning with the date all required information was received by the designated preauthorization contractor, but in no event preceding the date of the Preadmission Screening Team physician's signature on the DMAS-96 form.

6. Once services for the individual have been authorized by the designated preauthorization contractor, the provider/services facilitator will submit a Patient Information Form (DMAS-122), along with a written confirmation of level of care eligibility from the designated preauthorization contractor, to the local DSS to determine

financial eligibility for the waiver program and any patient pay responsibilities. After the provider/services facilitator has received written notification of Medicaid eligibility by DSS and written enrollment from the designated preauthorization contractor, the provider/services facilitator shall inform the individual or family/caregiver so that services may be initiated.

7. The provider/services facilitator with the most billable hours must request an updated DMAS-122 form from the local DSS annually and forward a copy of the updated DMAS-122 form to all service providers when obtained.

8. Home and community-based care services shall not be offered or provided to any individual who resides in a nursing facility, an intermediate care facility for the mentally retarded, a hospital, an assisted living facility licensed by DSS ~~or an Adult Foster Care provider certified by DSS,~~ that serves five or more individuals, or a group home licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services with the exception of transition coordination and transition services. Additionally, home and community-based care services shall not be provided to any individual who resides outside of the physical boundaries of the Commonwealth, with the exception of brief periods of time as approved by DMAS or the designated preauthorization contractor. Brief periods of time may include, but are not necessarily restricted to, vacation or illness.

9. Certain home and community-based services shall not be available to individuals residing in an assisted living facility licensed by DSS that serves four individuals. These services are: respite, PERS, environmental modifications and transition services. Personal care services are limited to five hours per day of ADL care.

C. Appeals. Recipient appeals shall be considered pursuant to 12VAC30-110-10 through 12VAC30-110-380. Provider appeals shall be considered pursuant to 12VAC30-10-1000 and 12VAC30-20-500 through 12VAC30-20-560.

12VAC30-120-970. Personal emergency response system (PERS).

A. Service description. PERS is a service that monitors individual safety in the home and provides access to emergency assistance for medical or environmental emergencies through the provision of a two-way voice communication system that dials a 24-hour response or monitoring center upon activation and via the individual's home telephone line. PERS may also include medication monitoring devices.

B. Standards for PERS equipment. All PERS equipment must be approved by the Federal Communications Commission and meet the Underwriters' Laboratories, Inc. (UL) safety standard Number 1635 for digital alarm communicator system units and Number 1637 for home health care signaling equipment. The UL listing mark on the equipment will be accepted as evidence of the equipment's compliance with such standard. The PERS device must be automatically reset by the response center after each activation, ensuring that subsequent signals can be transmitted without requiring manual reset by the recipient.

C. Criteria. PERS services are limited to those individuals ages 14 and older who live alone or are alone for significant parts of the day and who have no regular caregiver for extended periods of time and who would otherwise require extensive routine supervision. PERS may only be provided in conjunction with personal care (agency- or consumer-directed), respite (agency- or consumer-directed), or adult day health care. An individual may not receive PERS if he has a cognitive impairment as defined in 12VAC30-120-900.

1. PERS can be authorized when there is no one else, other than the individual, in the home who is competent and continuously available to call for help in an emergency. If the individual's caregiver has a business in the home, such as, but not limited to, a day care center, PERS will only be approved if the individual is evaluated as being dependent in the categories of "Behavior Pattern" and "Orientation" on the Uniform Assessment Instrument (UAI).

2. Medication monitoring units must be physician ordered. In order to receive medication monitoring services, an individual must also receive PERS services. The physician orders must be maintained in the individual's file.

D. Services units and services limitations.

1. A unit of service shall include administrative costs, time, labor, and supplies associated with the installation, maintenance, adjustments, and monitoring of the PERS. A unit of service equals the one-month rental of PERS, the price of which is set by DMAS. The one-time installation of the unit includes installation, account activation, and individual and caregiver instruction. The one-time installation fee shall also include the cost of the removal of the PERS equipment.

2. PERS service must be capable of being activated by a remote wireless device and be connected to the individual's telephone line. The PERS console unit must provide hands-free voice-to-voice communication with the response center. The activating device must be waterproof, automatically transmit to the response center an activator low battery alert signal prior to the battery losing power, and be able to be worn by the individual.

3. In cases where medication monitoring units must be filled by the provider, the person filling the unit must be a registered nurse, a licensed practical nurse, or a licensed pharmacist. The units can be refilled every 14 days. There must be documentation of this in the individual's record.

E. Provider requirements. In addition to meeting the general conditions and requirements for home and community-based waiver participating providers as specified in 12VAC30-120-80, 12VAC30-120-160, and 12VAC30-120-930, PERS providers must also meet the following qualifications and requirements:

1. A PERS provider must be either a personal care agency, a durable medical equipment provider, a hospital, a licensed home health provider, or a PERS manufacturer. All such providers shall have the ability to provide PERS equipment, direct services (i.e., installation, equipment maintenance, and service calls), and PERS monitoring;

2. The PERS provider must provide an emergency response center with fully trained operators who are capable of (i) receiving signals for help from an individual's PERS equipment 24 hours a day, 365 or 366 days per year as appropriate; (ii) determining whether an emergency exists; and (iii) notifying an emergency response organization or an emergency responder that the PERS individual needs emergency help;

3. A PERS provider must comply with all applicable Virginia statutes, all applicable regulations of DMAS, and all other governmental agencies having jurisdiction over the services to be performed;

4. The PERS provider has the primary responsibility to furnish, install, maintain, test, and service the PERS equipment, as required, to keep it fully operational. The provider shall replace or repair the PERS device within 24 hours of the individual's notification of a malfunction of the console unit, activating devices, or medication monitoring unit and shall provide temporary equipment while the original equipment is being repaired;

5. The PERS provider must properly install all PERS equipment into a PERS individual's functioning telephone line within seven days of the request unless there is appropriate documentation of why this timeframe cannot be met. The PERS provider must furnish all supplies necessary to ensure that the system is installed and working properly. The PERS provider must test the PERS device monthly, or more frequently if needed, to ensure that the device is fully operational;

6. The PERS installation shall include local seize line circuitry, which guarantees that the unit will have priority over the telephone connected to the console unit should the telephone be off the hook or in use when the unit is activated;

7. A PERS provider must maintain a data record for each PERS individual at no additional cost to DMAS or the individual. The record must document all of the following:

a. Delivery date and installation date of the PERS;

b. Individual/caregiver signature verifying receipt of the PERS device;

c. Verification by a test that the PERS device is operational, monthly or more frequently as needed;

d. Updated and current individual responder and contact information, as provided by the individual or the individual's caregiver; and

e. A case log documenting the individual's utilization of the system, all contacts, and all communications with the individual, caregiver, and responders;

8. The PERS provider must have backup monitoring capacity in case the primary system cannot handle incoming emergency signals;

9. All PERS equipment must be approved by the Federal Communications Commission and meet the Underwriters' Laboratories, Inc. (UL) Safety Standard Number 1635 for digital alarm communicator system units and Safety Standard Number 1637 for home health care signaling equipment. The UL listing mark on the equipment will be accepted as evidence of the equipment's compliance with such standard. The PERS device must be automatically reset by the response center after each activation, ensuring that subsequent signals can be transmitted without requiring a manual reset by the individual;

10. A PERS provider must furnish education, data, and ongoing assistance to DMAS and the designated preauthorization contractor to familiarize staff with the services, allow for ongoing evaluation and refinement of the program, and instruct the individual, caregiver, and responders in the use of the PERS services;

11. The emergency response activator must be activated either by breath, by touch, or by some other means, and must be usable by individuals who are visually or hearing impaired or physically disabled. The emergency response communicator must be capable of operating without external power during a power failure at the individual's home for a minimum period of 24 hours and automatically transmit a low battery alert signal to the response center if the backup battery is low. The emergency response console unit must also be able to self-disconnect and redial the backup monitoring site without the individual resetting the system in the event it cannot get its signal accepted at the response center;

12. PERS providers must be capable of continuously monitoring and responding to emergencies under all conditions, including power failures and mechanical malfunctions. It is the PERS provider's responsibility to ensure that the monitoring agency and the monitoring agency's equipment meets the following requirements. The PERS provider must be capable of simultaneously responding to multiple signals for help from individuals'

PERS equipment. The PERS provider's equipment must include the following:

a. A primary receiver and a backup receiver, which must be independent and interchangeable;

b. A backup information retrieval system;

c. A clock printer, which must print out the time and date of the emergency signal, the PERS individual's identification code, and the emergency code that indicates whether the signal is active, passive, or a responder test;

d. A backup power supply;

e. A separate telephone service;

f. A toll-free number to be used by the PERS equipment in order to contact the primary or backup response center; and

g. A telephone line monitor, which must give visual and audible signals when the incoming telephone line is disconnected for more than 10 seconds;

13. The PERS provider must maintain detailed technical and operation manuals that describe PERS elements, including the installation, functioning, and testing of PERS equipment; emergency response protocols; and recordkeeping and reporting procedures;

14. The PERS provider shall document and furnish within 30 days of the action taken a written report for each emergency signal that results in action being taken on behalf of the individual. This excludes test signals or activations made in error. This written report shall be furnished to the personal care provider, the respite care provider, the CD services facilitation provider, the transition coordinator, case manager, as appropriate to the waiver in which the individual is enrolled or, in cases where the individual only receives ADHC services, to the ADHC provider;

15. The PERS provider is prohibited from performing any type of direct marketing activities to Medicaid individuals; and

16. The PERS provider must obtain and keep on file a copy of the most recently completed Patient Information form (DMAS-122). Until the PERS provider obtains a copy of the DMAS-122 form, the PERS provider must clearly document efforts to obtain the completed DMAS-122 form from the personal care provider, respite care provider, the CD services facilitation provider, the transition coordinator, the case manager, or the ADHC provider, as appropriate to the waiver in which the individual is enrolled.

Part X
Day Support Waiver for Individuals with Mental Retardation

12VAC30-120-1500. Definitions.

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

"Appeal" means the process used to challenge adverse actions regarding services, benefits, and reimbursement provided by Medicaid pursuant to 12VAC30-110 and 12VAC30-20-500 through 12VAC30-20-560.

"Behavioral health authority" or "BHA" means the local agency, established by a city or county under Chapter 6 (§ 37.2-600 et seq.) of Title 37.2 of the Code of Virginia, that plans, provides, and evaluates mental health, mental retardation, and substance abuse services in the locality that it serves.

"Case management" means the assessing and planning of services; linking the individual to services and supports identified in the consumer service plan; assisting the individual directly for the purpose of locating, developing or obtaining needed services and resources; coordinating services and service planning with other agencies and providers involved with the individual; enhancing community integration; making collateral contacts to promote the implementation of the consumer service plan and community integration; monitoring to assess ongoing progress and ensuring services are delivered; and education and counseling that guides the individual and develops a supportive relationship that promotes the consumer service plan.

"Case manager" means the individual who performs case management services on behalf of the community services board or behavioral health authority, and who possesses a combination of mental retardation work experience and relevant education that indicates that the individual possesses the knowledge, skills and abilities as established by the Department of Medical Assistance Services in 12VAC30-50-450.

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

"Community services board" or "CSB" means the local agency, established by a city or county or combination of counties or cities under Chapter 5 (§ 37.2-500 et seq.) of Title 37.2 of the Code of Virginia, that plans, provides, and evaluates mental health, mental retardation, and substance abuse services in the jurisdiction or jurisdictions it serves.

"Comprehensive assessment" means the gathering of relevant social, psychological, medical, and level of care information by the case manager and is used as a basis for the development of the consumer service plan.

"Consumer service plan" or "CSP" means documents addressing needs in all life areas of individuals who receive Day Support Waiver services, and is comprised of individual service plans as dictated by the individual's health care and support needs. The case manager incorporates the individual service plans in the CSP.

"Date of need" means the date of the initial eligibility determination assigned to reflect that the individual is diagnostically and functionally eligible for the waiver and is willing to begin services within 30 days. The date of need is not changed unless the person is subsequently found ineligible or withdraws their request for services.

"Day support services" means training, assistance, and specialized supervision in the acquisition, retention, or improvement of self-help, socialization, and adaptive skills, which typically take place outside the home in which the individual resides. Day support services shall focus on enabling the individual to attain or maintain his maximum functional level.

"Day Support Waiver for Individuals with Mental Retardation" or "Day Support Waiver" means the program that provides day support, prevocational services, and supported employment to individuals on the Mental Retardation Waiver waiting list who have been assigned a Day Support Waiver slot.

"DMAS" means the Department of Medical Assistance Services.

"DMAS staff" means persons employed by the Department of Medical Assistance Services.

"DMHMRSAS" means the Department of Mental Health, Mental Retardation and Substance Abuse Services.

"DMHMRSAS staff" means persons employed by the Department of Mental Health, Mental Retardation and Substance Abuse Services.

"DRS" means the Department of Rehabilitative Services.

"DSS" means the Department of Social Services.

"Enroll" means that the individual has been determined by the case manager to meet the eligibility requirements for the Day Support Waiver and DMHMRSAS has verified the availability of a Day Support Waiver slot for that individual, and DSS has determined the individual's Medicaid eligibility for home and community-based services.

"EPSDT" means the Early Periodic Screening, Diagnosis and Treatment program administered by DMAS for children under the age of 21 according to federal guidelines that prescribe preventive and treatment services for Medicaid-eligible children as defined in 12VAC30-50-130.

"Home and community-based waiver services" or "waiver services" means the range of community support services approved by the Centers for Medicare and Medicaid Services (CMS) pursuant to § 1915(c) of the Social Security Act to be offered to persons with mental retardation who would otherwise require the level of care provided in an Intermediate Care Facility for the Mentally Retarded (ICF/MR).

"Individual" means the person receiving the services or evaluations established in these regulations.

"Individual service plan" or "ISP" means the service plan related solely to the specific waiver service. Multiple ISPs help to comprise the overall consumer service plan.

"Intermediate Care Facility for the Mentally Retarded" or "ICF/MR" means a facility or distinct part of a facility certified by the Virginia Department of Health as meeting the federal certification regulations for an intermediate care facility for the mentally retarded and persons with related conditions. These facilities must address the total needs of the residents, which include physical, intellectual, social, emotional, and habilitation, and must provide active treatment.

"Mental retardation" or "MR" means ~~mental retardation~~ a disability as defined by the American Association on ~~Mental Retardation (AAMR)~~ Intellectual and Developmental Disabilities (AAIDD).

"Participating provider" means an entity that meets the standards and requirements set forth by DMAS and DMHMRSAS, and has a current, signed provider participation agreement with DMAS.

"Preauthorized" means that an individual service has been approved by DMHMRSAS prior to commencement of the service by the service provider for initiation and reimbursement of services.

"Prevocational services" means services aimed at preparing an individual for paid or unpaid employment, but are not job-task oriented. Prevocational services are provided to individuals who are not expected to be able to join the general work force without supports or to participate in a transitional sheltered workshop within one year of beginning waiver services (excluding supported employment programs). The services do not include activities that are specifically job-task oriented but focus on concepts such as accepting supervision, attendance, task completion, problem solving and safety. Compensation, if provided, is less than 50% of the minimum wage.

"Slot" means an opening or vacancy of waiver services for an individual.

"State Plan for Medical Assistance" or "Plan" means the Commonwealth's legal document approved by CMS identifying the covered groups, covered services and their limitations, and provider reimbursement methodologies as provided for under Title XIX of the Social Security Act.

"Supported employment" means work in settings in which persons without disabilities are typically employed. It includes training in specific skills related to paid employment and the provision of ongoing or intermittent assistance and specialized supervision to enable an individual with mental retardation to maintain paid employment.

12VAC30-120-1550. Services: day support services, prevocational services and supported employment services.

A. Service descriptions.

1. Day support means training, assistance, and specialized supervision in the acquisition, retention, or improvement of self-help, socialization, and adaptive skills, which typically take place outside the home in which the individual resides. Day support services shall focus on enabling the individual to attain or maintain his maximum functional level.

2. Prevocational services means services aimed at preparing an individual for paid or unpaid employment, but are not job-task oriented. Prevocational services are provided to individuals who are not expected to be able to join the general work force without supports or to participate in a transitional sheltered workshop within one year of beginning waiver services (excluding supported employment programs). The services do not include activities that are specifically job-task oriented but focus on concepts such as accepting supervision, attendance, task completion, problem solving and safety. Compensation, if provided, is less than 50% of the minimum wage.

3. Supported employment services are provided in work settings where persons without disabilities are employed. It is especially designed for individuals with developmental disabilities, including individuals with mental retardation, who face severe impediments to employment due to the nature and complexity of their disabilities, irrespective of age or vocational potential.

a. Supported employment services are available to individuals for whom competitive employment at or above the minimum wage is unlikely without ongoing supports and who because of their disability need ongoing support to perform in a work setting.

b. Supported employment can be provided in one of two models. Individual supported employment shall be defined as intermittent support, usually provided one-on-one by a job coach to an individual in a supported employment position. Group-supported employment shall be defined as continuous support provided by staff to eight or fewer individuals with disabilities in an enclave, work crew, bench work, or entrepreneurial model. The individual's assessment and CSP must clearly reflect the individual's need for training and supports.

B. Criteria.

1. For day support services, individuals must demonstrate the need for functional training, assistance, and specialized supervision offered primarily in settings other than the individual's own residence that allow an opportunity for being productive and contributing members of communities.

2. For prevocational services, the individual must demonstrate the need for support in skills that are aimed toward preparation of paid employment that may be offered in a variety of community settings.

3. For supported employment, the individual shall have demonstrated that competitive employment at or above the minimum wage is unlikely without ongoing supports, and that because of his disability, he needs ongoing support to perform in a work setting.

a. Only job development tasks that specifically include the individual are allowable job search activities under the Day Support waiver supported employment and only after determining this service is not available from DRS.

b. A functional assessment must be conducted to evaluate the individual in his work environment and related community settings.

C. Service types. The amount and type of day support and prevocational services included in the individual's service plan is determined according to the services required for that individual. There are two types of services: center-based, which is provided primarily at one location/building, and noncenter-based, which is provided primarily in community settings. Both types of services may be provided at either intensive or regular levels. For supported employment, the ISP must document the amount of supported employment required by the individual. Service providers are reimbursed only for the amount and type of supported employment included in the individual's ISP.

D. Intensive level criteria. For day support and prevocational services to be authorized at the intensive level, the individual must meet at least one of the following criteria: (i) require physical assistance to meet the basic personal care needs (toileting, feeding, etc); (ii) have extensive disability-related difficulties and require additional, ongoing support to fully participate in programming and to accomplish his service goals; or (iii) require extensive constant supervision to reduce or eliminate behaviors that preclude full participation in the program. In this case, written behavioral objectives are required to address behaviors such as, but not limited to, withdrawal, self-injury, aggression, or self-stimulation.

E. Service units. Day support, prevocational and group models of supported employment (enclaves, work crews, bench work and entrepreneurial model of supported

employment) are billed in ~~units. Units shall be defined as:~~ accordance with the DMAS fee schedule.

~~1. One unit is 1 to 3.99 hours of service a day.~~

~~2. Two units are 4 to 6.99 hours of service a day.~~

~~3. Three units are 7 or more hours of service a day.~~

~~4. Supported employment for individual job placement is provided in one hour units.~~

F. Service limitations.

1. There must be separate supporting documentation for each service and each must be clearly differentiated in documentation and corresponding billing.

2. The supporting documentation must provide an estimate of the amount of services required by the individual. Service providers are reimbursed only for the amount and type of services included in the individual's approved ISP based on the setting, intensity, and duration of the service to be delivered.

3. Day support, prevocational and group models of supported employment services shall be limited to a total of 780 units per CSP year, or its equivalent under the DMAS fee schedule. If an individual receives a combination of day support, prevocational and/or supported employment services, the combined total shall not exceed 780 units per CSP year, or its equivalent under the DMAS fee schedule.

4. The individual job placement model of supported employment is limited to 40 hours per week.

5. For day support services:

a. Day support cannot be regularly or temporarily provided in an individual's home or other residential setting (e.g., due to inclement weather or individual illness) without prior written approval from DMHMRSAS.

b. Noncenter-based day support services must be separate and distinguishable from other services.

6. For the individual job placement model, reimbursement of supported employment will be limited to actual documented interventions or collateral contacts by the provider, not the amount of time the individual is in the supported employment situation.

G. Provider requirements. In addition to meeting the general conditions and requirements for home and community-based participating providers as specified in 12VAC30-120-217 and 12VAC30-120-219, service providers must meet the following requirements:

1. The provider of day support services must be licensed by DMHMRSAS as a provider of day support services. The provider of prevocational services must be a vendor of extended employment services, long-term employment services, or supported employment services for DRS, or be licensed by DMHMRSAS as a provider of day support services.

2. Supported employment shall be provided only by agencies that are DRS vendors of supported employment services;

3. In addition to any licensing requirements, persons providing day support or prevocational services are required to participate in training in the characteristics of mental retardation and appropriate interventions, training strategies, and support methods for persons with mental retardation and functional limitations prior to providing direct services. All providers of services must pass an objective, standardized test of skills, knowledge, and abilities approved by DMHMRSAS and administered according to DMHMRSAS' defined procedures.

4. Required documentation in the individual's record. The provider agency must maintain records of each individual receiving services. At a minimum these records must contain the following:

a. A functional assessment conducted by the provider to evaluate each individual in the service environment and community settings.

b. An ISP that contains, at a minimum, the following elements:

(1) The individual's strengths, desired outcomes, required or desired supports and training needs;

(2) The individual's goals and, a sequence of measurable objectives to meet the above identified outcomes;

(3) Services to be rendered and the frequency of services to accomplish the above goals and objectives;

(4) A timetable for the accomplishment of the individual's goals and objectives as appropriate;

(5) The estimated duration of the individual's needs for services; and

(6) The provider staff responsible for the overall coordination and integration of the services specified in the ISP.

~~d.~~ c. Documentation confirming the individual's attendance and amount of time in services, type of services rendered, and specific information regarding the individual's response to various settings and supports as agreed to in the ISP objectives. An attendance log or similar document must be maintained that indicates the date, type of services rendered, and the number of hours and units provided.

~~e.~~ d. Documentation indicating whether day support or prevocational services were center-based or noncenter-based.

~~f.~~ e. In instances where staff are required to ride with the individual to and from the service in order to provide needed supports as specified in the ISP, the staff time can be billed as day support, prevocational or supported employment services, provided that the billing for this time does not exceed 25% of the total time spent in the day support, prevocational or supported employment activity for that day. Documentation must be maintained to verify that billing for staff coverage during transportation does not exceed 25% of the total time spent in the service for that day.

~~g.~~ f. If intensive day support or prevocational services are requested, there shall be documentation indicating the specific supports and the reasons they are needed. For ongoing intensive services, there must be clear documentation of the ongoing needs and associated staff supports.

~~h.~~ g. The ISP goals, objectives, and activities must be reviewed by the provider quarterly~~,~~ and annually, ~~and~~ or more often as needed and the results of the review submitted to the case manager. For the annual review and in cases where the ISP is modified, the ISP must be reviewed with the individual or family/caregiver.

~~i.~~ h. Copy of the most recently completed DMAS-122 form. The provider must clearly document efforts to obtain the completed DMAS-122 form from the case manager.

~~j.~~ i. For prevocational or supported employment services, documentation regarding whether prevocational or supported employment services are available through § 110 of the Rehabilitation Act of 1973 or through the Individuals with Disabilities Education Act (IDEA). If the individual is not eligible for services through the IDEA, documentation is required only for lack of DRS funding. When services are provided through these sources, the ISP shall not authorize such services as a waiver expenditure.

~~k.~~ j. Prevocational services can only be provided when the individual's compensation is less than 50% of the minimum wage.

12VAC30-120-2000. Transition coordinator.

A. Service description.

1. Transition coordination means the DMAS-enrolled provider who is responsible for supporting the individual and family/caregiver, as appropriate, with the activities associated with transitioning from an institution to the community pursuant to the Elderly or Disabled with Consumer Direction waiver.

2. Transition coordination services include, but are not limited to, the development of a transition plan; the provision of information about services that may be needed, in accordance with the timeframe specified by federal law, prior to the discharge date, during and after transition; the coordination of community-based services with the case manager if case management is available; linkage to services needed prior to transition such as housing, peer counseling, budget management training, and transportation; and the provision of ongoing support for up to 12 months after discharge date.

B. Criteria.

1. In order to qualify for these services, the individual shall have a demonstrated need for transition coordination of any of these services. Documented need shall indicate that the service plan cannot be implemented effectively and efficiently without such coordination from this service. Transition coordination services must be prior authorized by DMAS or its designated agent.

2. The individual's service plan shall clearly reflect the individual's needs for transition coordination provided to the individual, family/caregivers, and providers in order to implement the service plan effectively. The service plan includes, at a minimum: (i) a summary or reference to the assessment; (ii) goals and measurable objectives for addressing each identified need; (iii) the services, supports, and frequency of service to accomplish the goals and objectives; (iv) target dates for accomplishment of goals and objectives; (v) estimated duration of service; (vi) the role of other agencies if the plan is a shared responsibility; and (vii) the staff responsible for coordination and integration of services, including the staff of other agencies if the plan is a shared responsibility.

C. Service units and limitations. The unit of service shall be specified by the DMAS fee schedule. The services shall be explicitly detailed in the supporting documentation. Travel time is an in-kind expense within this service and is not billable as a separate item. Transition coordination may not be billed solely for purposes of monitoring. Transition coordination shall be available to individuals who are transitioning from institutional care to the community. Transition coordination service providers shall be reimbursed according to the amount and type of service authorized in the service plan based on a monthly fee for service.

D. Provider requirements. In addition to meeting the general conditions and requirements for home- and community-based care participating providers as specified in 12VAC30-120-217 and 12VAC30-120-219, transition coordinators shall meet the following qualifications:

1. Transition coordinators shall be employed by one of the following: a local government agency; a private, nonprofit organization qualified under 26 USC § 501(c)(3); or a

fiscal management service with experience in providing this service.

2. A qualified transition coordinator shall possess, at a minimum, a bachelor's degree in human services or health care and relevant experience that indicates the individual possesses the following knowledge, skills, and abilities. These shall be documented on the transition coordinator's job application form or supporting documentation, or observable in the job or promotion interview. The transition coordinator shall be at least 21 years of age.

3. Transition coordinators shall have knowledge of aging, independent living, the impact of disabilities and transition planning; individual assessments (including psychosocial, health, and functional factors) and their uses in service planning, interviewing techniques, individuals' rights, local human and health service delivery systems, including support services and public benefits eligibility requirements, principles of human behavior and interpersonal relationships, interpersonal communication principles and techniques, general principles of file documentation, the service planning process, and the major components of a service plan.

4. Transition coordinators shall have skills in negotiating with individuals and service providers; observing, and reporting behaviors; identifying and documenting an individual's needs for resources, services and other assistance; identifying services within the established services system to meet the individual's needs; coordinating the provision of services by diverse public and private providers; analyzing and planning for the service needs of the individual; and assessing individuals using DMAS' authorized assessment forms.

5. Transition coordinators shall have the ability to demonstrate a positive regard for individuals and their families or designated guardian; be persistent and remain objective; work as a team member, maintaining effective interagency and intraagency working relationships; work independently, performing position duties under general supervision; communicate effectively, both verbally and in writing; develop a rapport; communicate with different types of persons from diverse cultural backgrounds; and interview.

12VAC30-120-2010. Transition services.

A. Service description. "Transition services" means set-up expenses for individuals who are transitioning from an institution or licensed or certified provider-operated living arrangement to a living arrangement in a private residence, which may include an adult foster home, where the person is directly responsible for his own living expenses. 12VAC30-120-2010 provides the service description, criteria, service units and limitations, and provider requirements for this service.

The individual's transition from an institution to the community shall have a transition coordinator in order to receive EDCD Waiver services or a case manager or health care coordinator if he shall be receiving services through either the HIV/AIDS, IFDDS, MR or Technology Assisted Waivers.

B. Criteria for receipt of services. In order to be provided, transition services shall be prior authorized by DMAS or its designated agent. These services include rent or utility deposits, basic furniture and appliances, health and safety assurances, and other reasonable expenses incurred as part of a transition. For the purposes of transition services, an institution means an ICF/MR, a nursing facility, or a specialized care facility/hospital as defined at 42 CFR 435.1009. Transition services do not apply to an acute care admission to a hospital.

C. Service units and limitations.

1. Services are available for one transition per individual and must be expended within nine months from the date of authorization. The total cost of these services shall not exceed $5,000, per person lifetime limit coverage of transition costs to residents of nursing facilities, specialized care facility/hospitals, or ICF/MR, who are Medicaid recipients and are able to return to the community. The $5,000 maximum allowance must be expended within nine months from the date of authorization for transition services. It shall not be available to the individual after that period of time. The DMAS designated fiscal agent shall manage the accounting of the transition service. The transition coordinator for the EDCD Waiver or the case manager or health care coordinator, as appropriate to the waiver, shall ensure that the funding spent is reasonable and does not exceed the $5,000 maximum limit.

2. Allowable costs include, but are not limited to:

a. Security deposits that are required to obtain a lease on an apartment or home;

b. Essential household furnishings required to occupy and use a community domicile, including furniture, window coverings, food preparation items, and bed/bath linens;

c. Set-up fees or deposits for utility or services access, including telephone, electricity, heating and water;

d. Services necessary for the individual's health, safety, and welfare such as pest eradication and one-time cleaning prior to occupancy;

e. Moving expenses;

f. Fees to obtain a copy of a birth certificate or an identification card or driver's license; and

g. Activities to assess need, arrange for, and procure needed resources.

3. The services are furnished only to the extent that they are reasonable and necessary as determined through the service plan development process, are clearly identified in the service plan and the person is unable to meet such expense, or when the services cannot be obtained from another source. The expenses do not include monthly rental or mortgage expenses, food, regular utility charges, or household items that are intended for purely diversional/recreational purposes. This service does not include services or items that are covered under other waiver services such as chore, homemaker, environmental modifications and adaptations, or specialized supplies and equipment.

D. Provider requirements. Providers must be enrolled as a Medicaid Provider for Transition Coordination or Case Management and work with the DMAS designated agent to receive reimbursement for the purchase of appropriate transition goods or services on behalf of the individual.

NOTICE: The forms used in administering the above regulation are not being published; however, the name of each form is listed below. The forms are available for public inspection by contacting the agency contact for this regulation, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS (12VAC30-120)

Virginia Uniform Assessment Instrument (UAI) (1994).

Consent to Exchange Information, DMAS-20 (rev. 4/03).

Provider Aide/LPN Record Personal/Respite Care, DMAS-90 (rev. 12/02).

LPN Skilled Respite Record, DMAS-90A (eff. 7/05).

Personal Assistant/Companion Timesheet, DMAS-91 (rev. 8/03).

Questionnaire to Assess an Applicant's Ability to Independently Manage Personal Attendant Services in the CD-PAS Waiver or DD Waiver, DMAS-95 Addendum (eff. 8/00).

Medicaid Funded Long-Term Care Service Authorization Form, DMAS-96 (rev. 10/06).

Screening Team Plan of Care for Medicaid-Funded Long Term Care, DMAS-97 (rev. 12/02).

Provider Agency Plan of Care, DMAS-97A (rev. 9/02).

Consumer Directed Services Plan of Care, DMAS-97B (rev. 1/98).

Community-Based Care Recipient Assessment Report, DMAS-99 (rev. 4/03).

Consumer-Directed Personal Attendant Services Recipient Assessment Report, DMAS-99B (rev. 8/03).

MI/MR Level I Supplement for EDCD Waiver Applicants, DMAS-101A (rev. 10/04).

Assessment of Active Treatment Needs for Individuals with MI, MR, or RC Who Request Services under the Elder or Disabled with Consumer-Direction Waivers, DMAS-101B (rev. 10/04).

AIDS Waiver Evaluation Form for Enteral Nutrition, DMAS-116 (6/03).

Patient Information Form, DMAS-122 (rev. ~~12/98)~~ 11/07).

Technology Assisted Waiver/EPSDT Nursing Services Provider Skills Checklist for Individuals Caring for Tracheostomized and/or Ventilator Assisted Children and Adults, DMAS-259.

Home Health Certification and Plan of Care, CMS-485 (rev. 2/94).

IFDDS Waiver Level of Care Eligibility Form (eff. 5/07).

DOCUMENTS INCORPORATED BY REFERENCE (12VAC30-120)

Mental Retardation: Definition, Classification, and Systems of Supports, 10th Edition, 2002, American Association on Mental Retardation.

Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DMS-IV-TR), 2000, American Psychiatric Association.

Underwriter's Laboratories Safety Standard 1635, Standard for Digital Alarm Communicator System Units, Third Edition, January 31, 1996, with revisions through August 15, 2005.

Underwriter's Laboratories Safety Standard 1637, Standard for Home Health Care Signaling Equipment, Fourth Edition, December 29, 2006.

VA.R. Doc. No. R08-1107; Filed May 19, 2009, 3:57 p.m.

TITLE 16. LABOR AND EMPLOYMENT

DEPARTMENT OF LABOR AND INDUSTRY

Final Regulation

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

Title of Regulation: **16VAC15-21. Maximum Garnishment Amounts (amending 16VAC15-21-30).**

Statutory Authority: § 34-29 of the Code of Virginia.

Effective Date: July 24, 2009.

Agency Contact: Wendy Inge, Director, Division of Labor and Employment Law, Department of Labor and Industry, Powers-Taylor Building, 13 South Thirteenth Street, Richmond, VA 23219, telephone (804) 786-3224, FAX (804) 371-2324, TTY (804) 786-2376, or email wendy.inge@doli.virginia.gov.

Summary:

In 2007 Congress passed HR2206, U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, which includes a provision that raises the federal minimum wage rate to $7.25 per hour as of July 24, 2009. The amendments reflect this change in the minimum wage.

16VAC15-21-30. Calculation of maximum garnishment amounts for an ordinary debt.

A. Weekly earnings.

1. If the amount of weekly disposable earnings equals 40 times the federal minimum wage rate (F.M.W.R.) or less, nothing may be withheld for garnishment.

2. If the weekly disposable earnings exceed 40 times the federal minimum wage rate (F.M.W.R.), the maximum amount that can be withheld for garnishment shall be either 25% of the weekly disposable earnings or the amount by which the weekly disposable earnings exceed 40 times the F.M.W.R., whichever is less, so long as the amount withheld does not reduce the weekly disposable earnings below 40 times the F.M.W.R. Based on a federal minimum wage rate of ~~$6.55~~ $7.25 per hour, 40 times the F.M.W.R. is ~~$262~~ $290. Thus, for example, as of July 24, ~~2008~~ 2009, if the weekly disposable earnings are less than or equal to ~~$262~~ $290, nothing may be withheld for garnishment. An increase in the F.M.W.R. will increase the amount of weekly disposable earnings that would be shielded from garnishment.

B. Biweekly earnings. The maximum amount which may be withheld for garnishment from biweekly earnings shall be calculated in the same manner as described for weekly earnings in subsection A of this section, except that the corresponding weekly amounts in subdivisions A 1 and A 2 of this section shall be multiplied by 2.

C. Semimonthly earnings. The maximum amount which may be withheld for garnishment from semimonthly earnings shall be calculated in the same manner as described for weekly earnings in subsection A of this section, except that the corresponding weekly amounts in subdivisions A 1 and A 2 of this section shall be multiplied by 2.16665.

D. Monthly earnings. The maximum amount of monthly disposable earnings which may be withheld for garnishment shall be calculated in the same manner as weekly earnings in subsection A of this section, except that the corresponding weekly amounts in subdivisions A 1 and A 2 of this section shall be multiplied by 4.33330.

E. Earnings for a period of more than one month. The maximum amount which may be withheld in garnishment for work periods in excess of one month shall be calculated in the same manner as described for weekly earnings in subsection A of this section, except that the corresponding weekly amounts in subdivisions A 1 and A 2 of this section shall be multiplied by the number of weeks worked. The number of weeks worked shall be calculated by dividing the total number of days in the period worked by 7, calculated to 4 decimal places.

VA.R. Doc. No. R09-1971; Filed May 18, 2009, 10:39 a.m.

SAFETY AND HEALTH CODES BOARD

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

Final Regulation

Titles of Regulations: **16VAC25-90. Federal Identical General Industry Standards (amending 16VAC25-90-1910.95, 16VAC25-90-1910.134, 16VAC25-90-1910.156, 16VAC25-90-1910.1001, 16VAC25-90-1910.1003, 16VAC25-90-1910.1017, 16VAC25-90-1910.1018, 16VAC25-90-1910.1025, 16VAC25-90-1910.1026, 16VAC25-90-1910.1027, 16VAC25-90-1910.1028, 16VAC25-90-1910.1029, 16VAC25-90-1910.1030, 16VAC25-90-1910.1043, 16VAC25-90-1910.1044, 16VAC25-90-1910.1045, 16VAC25-90-1910.1047, 16VAC25-90-1910.1048, 16VAC25-90-1910.1050, 16VAC25-90-1910.1051, 16VAC25-90-1910.1052; adding 16VAC25-90-1910.9).**

16VAC25-100. Federal Identical Shipyard Employment Standards (amending 16VAC25-90-1915.1001, 16VAC25-90-1915.1026; adding 16VAC25-100-1915.9).

16VAC25-120. Federal Identical Marine Terminals Standards (adding 16VAC25-120-1917.5).

16VAC25-130. Federal Identical Longshoring Standards for Hazard Communications (adding 16VAC25-130-1918.5).

16VAC25-175. Federal Identical Construction Industry Standards (amending 16VAC25-175-1926.60, 16VAC25-175-1926.62, 16VAC25-175-1926.761, 16VAC25-175-1926.1101, 16VAC25-175-1926.1126, 16VAC25-175-1926.1127; adding 16VAC25-175-1926.20).

Statutory Authority: § 40.1-22 of the Code of Virginia.

Effective Date: July 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.

Summary:

Federal OSHA revised the language of the initial respirator paragraphs, adopted in the 1998 respiratory protection rule, in its general industry, maritime and construction standards (29 CFR Parts 1910, 1915, 1917, 1918 and 1926 of the Code of Federal Regulations) to add language clarifying that the personal protective equipment (PPE) and training requirements in safety and health standards in these parts impose a compliance duty to each and every employee covered by the standards and that noncompliance may expose the employer to liability on a per-employee basis.

The amendments revised the language of those initial training paragraphs that required the employer to institute or provide a training program to explicitly state that the employer must train each employee. This revision added a new section to the introductory subparts of each part to clarify that standards requiring the employer to provide PPE, including respirators, or to provide training to employees, impose a separate compliance duty to each employee covered by the requirement and that each instance of an employee who does not receive the required PPE or training may be considered a separate violation.

Following the December 12, 2008, publication of the final rule for the Clarification of Employer Duty to Provide Personal Protective Equipment and Train Each Employee (73 FR 75568), federal OSHA discovered an error in the amendatory language of that final rule. The correction, located in 29 CFR 1926.1101 on page 75589, in the first column, Subpart Z, item 44, consisted of substituting "(h)(2)(i)" for "(h)(2)". The corrected language now reads as follows: "In section 1926.1101, paragraphs (h)(1) introductory text, (h)(2)(i), and (k)(9)(i) are revised to read as follows" (74 FR 858).

The amendments added no new compliance obligations.

Note on Incorporation by Reference:

Pursuant to § 2.2-4103 of the Code of Virginia, 29 CFR Part 1910, General Industry Standards; 29 CFR Part 1915, Shipyard Employment Standards; 29 CFR Part 1917, Marine Terminals Standards; 29 CFR Part 1918, Longshoring Standards for Hazard Communications; 29 CFR Part 1926, Construction Industry Standards, are declared documents generally available to the public and appropriate for incorporation by reference. For this reason the document will not be printed in the Virginia Register of Regulations. A copy of the document is available for inspection at the Department of Labor and Industry, 13 South 13th Street, Richmond, Virginia 23219, and in the office of the Registrar of Regulations, General Assembly Building, 9th and Broad Streets, Richmond, Virginia 23219.

Statement of Final Agency Action:

On April 16, 2009, the Safety and Health Codes Board adopted federal OSHA's final rule on the Clarification of Employer Duty to Provide Personal Protective Equipment (PPE) and Train Each Employee, as published in 73 FR 75568 on December 12, 2008, with an effective date of July 15, 2009.

Federal Terms and State Equivalents:

When the regulations, as set forth in the Clarification to the final rule on Employer Duty to Provide Personal Protective Equipment and Train Each Employee, are applied to the Commissioner of the Department of Labor and Industry or to Virginia employers, the following federal terms shall be considered to read as follows:

Federal Terms	VOSH Equivalent
29 CFR	VOSH Standard
Assistant Secretary	Commissioner of Labor and Industry
Agency	Department
January 11, 2009	July 15, 2009

VA.R. Doc. No. R09-1944; Filed May 12, 2009, 10:16 a.m.

Final Regulation

Title of Regulation: **16VAC25-90. Federal Identical General Industry Standards (amending 16VAC25-90-1910.303, 16VAC25-90-1910.304).**

Statutory Authority: § 40.1-22 of the Code of Virginia.

Effective Date: July 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.

Summary:

On February 14, 2007, federal OSHA published a revision of its electrical installation standard for general industry, 29 CFR Part 1910, subpart S, which the Safety and Health Codes Board subsequently adopted at its June 26, 2007, meeting. In this current action, federal OSHA corrected two typographical errors that were also corrected in Table S-3 of 29 CFR 1910.303 of the final rule. Federal OSHA corrected "2.81" and "9.01," the first entries under the column heads "m" and "ft," to read "2.8" and "9.0," respectively.

Following the promulgation of the final rule in 2007, federal OSHA received numerous questions from the public concerning the application of 29 CFR 1910.304(b)(3)(ii), questions stemming from the structure of the text of the provision, questions concerning whether the standard recognizes all forms of ground-fault protection devices, and questions about whether the standard requires Ground Fault Circuit Interrupters (GFCI) to be used with branch circuits supplying temporary lighting.

Federal OSHA determined that 29 CFR 1910.304(b)(3)(ii) was intended to apply to temporary wiring installations used during the performance of construction-like activities, including certain maintenance, remodeling, or repair activities, involving buildings, structures or equipment.

In response to questions about temporary wiring, federal OSHA stated that, for purposes of 29 CFR 1910.304(b)(3)(ii), it considers as "temporary wiring" the use of more than one extension cord (connected in series or otherwise) to be a permanent outlet, or the temporary connection of more than one piece of utilization equipment to an extension cord set that is connected to a permanent receptacle outlet. Federal OSHA notes that this temporary wiring would only be covered by 29 CFR 1910.304(b)(3)(ii) if it is used during "construction-like activities."

Additionally, federal OSHA decided that 29 CFR 1910.304(b)(3)(ii) applies only to branch circuits, which are "the circuit conductors between the final overcurrent device (circuit breaker or fuse) protecting the circuit and the outlets".

It also determined that 29 CFR 1910.304(b)(3)(ii)(A) requires ground-fault circuit interrupters (GFCI) for personnel protection and as electric equipment that must be approved by nationally recognized testing laboratories (NRTL).

Lastly, federal OSHA determined that the standard requires GFCI protection for temporary circuits supplying lighting only when those circuits also supply receptacles.

Note on Incorporation by Reference:

Pursuant to § 2.2-4103 of the Code of Virginia, 29 CFR Part 1910, General Industry Standards, is declared a document generally available to the public and appropriate for incorporation by reference. For this reason the document will not be printed in the Virginia Register of Regulations. A copy of the document is available for inspection at the Department of Labor and Industry, 13 South 13th Street, Richmond, Virginia 23219, and in the office of the Registrar of Regulations, General Assembly Building, 9th and Broad Streets, Richmond, Virginia 23219.

Statement of Final Agency Action:

On April 16, 2009, the Safety and Health Codes Board adopted the Clarifications and Correcting Amendments to federal OSHA's final rule on the Electrical Standard, Subpart S of 29 CFR Part 1910, 29 CFR 1910.303 and 1910.304, as published in 73 FR 64202 on October 29, 2008, with an effective date of July 15, 2009.

Federal Terms and State Equivalents:

When the regulations, as set forth in the clarifications and correcting amendments to the final rule for the Electrical Standard, Subpart S of Part 1910, 29 CFR 1910.303 and 1910.304, are applied to the Commissioner of the Department of Labor and Industry or to Virginia employers, the following federal terms shall be considered to read as follows:

Federal Terms	VOSH Equivalent
29 CFR	VOSH Standard
Assistant Secretary	Commissioner of Labor and Industry
Agency	Department
October 29, 2008	July 15, 2009

VA.R. Doc. No. R09-1930; Filed May 12, 2009, 10:16 a.m.

Final Regulation

Titles of Regulations: **16VAC25-120. Federal Identical Marine Terminals Standards (amending 16VAC25-120-1917.71).**

16VAC25-130. Federal Identical Longshoring Standards for Hazard Communications (amending 16VAC25-130-1918.85).

Statutory Authority: § 40.1-22 of the Code of Virginia.

Effective Date: July 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.

Summary:

Federal OSHA revised the Marine Terminals Standard and related sections of the Longshoring Standard by issuing new provisions in the Marine Terminals Standard (29 CFR Part 1917) to regulate the use of Vertical Tandem Lifts (VTLs). The Longshoring Standard (29 CFR Part 1918) incorporates those requirements by reference. The new requirements are related to the practice of a container crane lifting two intermodal containers together, one on top of the other, connected by semiautomatic twistlocks (SATLs). This practice is known as a vertical tandem lift. SATLs were designed to connect and secure intermodal containers that are stowed on the deck of a vessel. The final standard permits VTLs of no more than two empty containers provided certain safeguards are followed.

The amendments include (i) additional provisions limiting the type of crane that may be used in VTLs, requiring a prelift, prohibiting handling containers below deck as a VTL, limiting VTL operations in windy conditions, and prohibiting VTLs of platform containers; (ii) new requirements for employee training and the safe ground transport of vertically coupled containers; and (iii) specifications on the strength of interbox connectors used in VTLs.

Note on Incorporation by Reference:

Pursuant to § 2.2-4103 of the Code of Virginia, 29 CFR Part 1917, Marine Terminals Standards, and 29 CFR Part 1918, Longshoring Standards for Hazard Communications, are declared documents generally available to the public and appropriate for incorporation by reference. For this reason the document will not be printed in the Virginia Register of Regulations. A copy of the document is available for inspection at the Department of Labor and Industry, 13 South 13th Street, Richmond, Virginia 23219, and in the office of the Registrar of Regulations, General Assembly Building, 9th and Broad Streets, Richmond, Virginia 23219.

Statement of Final Agency Action:

On April 16, 2009, the Safety and Health Codes Board adopted federal OSHA's revisions to its final rule on Longshoring and Marine Terminals; Vertical Tandem Lifts, 29 CFR 1917.71 and 1918.85, Public Sector Only, as it appeared in 73 FR 75245 on December 12, 2008, with an effective date of July 15, 2009.

Federal Terms and State Equivalents:

When the regulations, as set forth in the final rule for Longshoring and Marine Terminals; Vertical Tandem Lifts, 29 CFR 1917.71 and 1918.85, Public Sector Only, are applied to the Commissioner of the Department of Labor and Industry or to Virginia employers, the following federal terms shall be considered to read as follows:

Federal Terms	VOSH Equivalent
29 CFR	VOSH Standard
Assistant Secretary	Commissioner of Labor and Industry
Agency	Department
April 9, 2009	July 15, 2009

VA.R. Doc. No. R09-1943; Filed May 12, 2009, 10:15 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF ACCOUNTANCY

Emergency Regulation

Title of Regulation: **18VAC5-21. Board of Accountancy Regulations (amending 18VAC5-21-30).**

Statutory Authority: §§ 54.1-4402 and 54.1-4403 of the Code of Virginia.

Effective Dates: May 14, 2009, through May 13, 2010.

Agency Contact: Mike D. Roger, Acting Executive Director, Board of Accountancy, 9960 Mayland Drive, Perimeter Center, Suite 402, Richmond, VA 23233, telephone (804) 367-0290, FAX (804) 527-4409, or email mike.rogers@boa.virginia.gov.

Preamble:

The regulation is needed to avoid a significant reduction in the board's revenues and to remove an impediment to doing business in Virginia. The board believes the change would not harm the public and would help persons start their accounting careers sooner.

Although the CPA examination is a uniform, national examination, it is administered through the individual states for a fee set by the state. Each state has requirements for how much education is required for licensure and how much of that education must be obtained prior to taking the CPA examination through the state. The education required for licensure in Virginia is the same as the education required for licensure in substantially all other states. However, Virginia's requirement that all of the education required for licensure must be obtained prior to taking the CPA examination through Virginia is more restrictive than the requirement of most of the other states. The relatively recent computerization of the CPA examination has made taking the examination through another state easier.

The Virginia Board of Accountancy (board) is promulgating an emergency regulation to reduce the

amount of education required for licensure that must be obtained prior to taking the CPA examination through Virginia so that the requirement is no more restrictive than the requirement of most of the other states. The board believes that the reduction will not harm the public interest and that the change is necessitated by an emergency situation for three reasons:

1. Continuing a requirement that causes a person to take the additional steps needed to take the CPA examination through another state creates an impediment to doing business in Virginia. The Commonwealth has a long-standing commitment to eliminate impediments to doing business in Virginia.

2. Without this change, as knowledge of the ability to take the CPA examination through another state becomes more widespread, applications to take the CPA examination through Virginia will decrease significantly. The resulting significant reduction in the board's revenues will occur relatively quickly.

3. The General Assembly in Chapter 804 of the 2007 Acts of Assembly gave the board emergency authority to promulgate this new regulation within 280 days of July 1, 2007.

The emergency regulation also defines "accounting concentration or equivalent," which is a requirement for licensure and for taking the CPA examination through Virginia.

18VAC5-21-30. Qualifications for CPA certificate.

A. Each applicant must be a person of good character as defined in 18VAC5-21-10.

~~B. Education prior to taking the CPA exam.~~

~~1. Each candidate whose application to sit for a CPA exam administered prior to July 1, 2006, shall have received a baccalaureate degree or its equivalent conferred by an accredited college or university as required by § 54.1-4409 B 1 of the Code of Virginia and shall at the time the application is received have completed the following courses at the undergraduate or graduate level to meet the accounting concentration requirement of § 54.1-4409 B 1 of the Code of Virginia:~~

~~a. At least 24 semester hours of accounting including courses covering the subjects of financial accounting, auditing, taxation, and management accounting; and~~

~~b. At least 18 semester hours in business courses (other than the courses described in subdivision 1 a of this subsection).~~

~~A candidate whose application is received under the requirements of this subdivision may take the CPA exam so long as the requirements of subsection C of this section are met.~~

~~2. Each candidate whose application to sit for a CPA exam administered on or after July 1, 2006, shall meet the requirements of § 54.1-4409 B 2 of the Code of Virginia and shall at the time the application is received have completed the following courses at the undergraduate or graduate level to meet the accounting concentration requirement of § 54.1-4409 B 2 of the Code of Virginia:~~

~~a. At least 30 semester hours of accounting, including courses covering the subjects of financial accounting, auditing, taxation, and management accounting; and~~

~~b. At least 24 semester hours in business courses (other than the courses described in subdivision 2 a of this subsection).~~

~~3. A quarter hour of coursework shall be considered the equivalent of two-thirds of a semester hour of coursework.~~

~~4. Each candidate with a degree or coursework earned at a nonaccredited college or university shall, if credit for such degree or coursework is to be considered by the board, (i) have his educational credentials evaluated by an academic credentials service approved by the board or an accredited institution, as defined in 18VAC5-21-10, to determine the extent to which such credentials are equivalent to the education requirements set forth in subdivisions 1 and 2 of this subsection and (ii) submit such evaluations to the board, which may accept or reject the evaluator's recommendations in whole or in part.~~

~~5. Evidence of having obtained the required education shall be submitted in the form of official transcripts transmitted in a manner determined by the board. In unusual circumstances, the board may accept other evidence it deems to be substantially equivalent.~~

B. Education.

1. In order for a person to take the CPA examination through Virginia, he must have obtained from one or more accredited institutions or from the National College at least 120 semester hours of education, a baccalaureate or higher degree, and an accounting concentration or equivalent prior to taking any part of the CPA examination.

2. For the purpose of complying with subdivision B 1 of this section and with subsection A 1 a of § 54.1-4409.2 of the Code of Virginia, obtaining an accounting concentration or equivalent requires obtaining at a minimum:

a. 24 semester hours of accounting courses, including courses in auditing, financial accounting, management accounting, and taxation; and

b. 24 semester hours of business courses, no more than six semester hours of which could be considered accounting courses.

Principles or introductory accounting courses cannot be considered in determining whether a person has obtained the 48 minimum number of semester hours required for an accounting concentration or equivalent.

C. CPA exam.

1. Each candidate shall pass (i) a national uniform CPA exam, as approved by the board, in auditing and attestation, regulation, business environment and concepts, business law and professional responsibilities, accounting and reporting (taxation, managerial, governmental and not-for-profit organizations), financial accounting and reporting, and other such related subject areas as deemed appropriate by the board and (ii) an ethics exam approved by the board. Each part of the CPA exam must be passed by attaining a uniform passing grade established through a psychometrically acceptable standard-setting procedure approved by the board.

2. The following rules for granting CPA exam credits are applicable until the computer-based CPA exam becomes effective.

If at a given sitting of the CPA exam a candidate passes two or more but not all sections, then the candidate shall be given credit for those sections that the candidate has passed and need not sit for reexamination in those sections provided the following conditions are met:

a. At that sitting, the candidate wrote all sections of the CPA exam for which the candidate did not have credit;

b. The candidate attained a minimum grade of 50 on each section taken at that sitting when the first two sections were passed and in each subsequent sitting attains a minimum grade of 50 on all sections taken at that sitting;

c. The candidate passes the remaining sections of the CPA exam within six consecutive CPA exams (irrespective of the date on which the CPA exam credit was earned) given after the one at which the first sections were passed; and

d. At each subsequent sitting at which the candidate seeks to pass any additional sections, the candidate writes all sections for which the candidate does not have credit.

3. The following rules for granting CPA exam credits will take effect beginning with the first computer-based CPA exam:

a. Granting of credit.

(1) Candidates will be allowed to sit for each section of the CPA exam individually and in any order.

(2) Candidates will retain credit for any section(s) passed for 18 months, without having to attain a minimum score on failed sections and without regard to whether they have taken other sections. Candidates will not be allowed to retake a failed section(s) within the same CPA exam window.

(3) Candidates must pass all four sections of the CPA exam within a "rolling" 18-month period, which begins on the date that the first section(s) passed is taken.

(4) In the event all four sections of the CPA exam are not passed within the rolling 18-month period, credit for any section(s) passed outside that 18-month period will expire and that section(s) must be retaken.

b. Conditional CPA exam credits.

(1) Candidates who have earned conditional credits on the noncomputer-based CPA exam as of the date of the first computer-based CPA exam will be given credits for the corresponding sections of the computer-based CPA exam as follows:

Noncomputer-Based CPA Exam	Computer-Based CPA Exam
Auditing	Auditing and Attestation
Financial Accounting and Reporting (FARE)	Financial Accounting and Reporting
Accounting and Reporting (ARE)	Regulation
Business Law and Professional Responsibilities (LPR)	Business Environment and Concepts

(2) Candidates who have attained conditional status as of the launch date of the first computer-based CPA exam will be allowed a transition period to complete any remaining test sections of the CPA exam. The transition is the maximum number of opportunities that a candidate who has conditioned under the noncomputer-based CPA exam has remaining, at the launch of the computer-based CPA exam, to complete all remaining test sections, or the number of remaining opportunities under the noncomputer-based CPA exam, multiplied by six months, which is first exhausted.

4. The board may, at its discretion, waive any of the above requirements for carryover CPA exam credits, if such waiver is in the public interest.

5. Each candidate shall follow all rules and regulations established by the board with regard to conduct at the CPA exam. Such rules shall include instructions communicated prior to the CPA exam date and instructions communicated at the CPA exam site on the date of the CPA exam.

6. Failure to comply with the rules and regulations governing conduct in the CPA exam may result in the loss

of established eligibility to sit for the CPA exam or credit for CPA exam parts passed.

7. A candidate to sit for the CPA exam shall obtain an application form from the board or its designee, complete the application in accordance with the instructions on the application, and submit the application together with all required documents to the board or its designee by the date determined by the board or its designee.

8. A candidate who fails to appear for the CPA exam or reexamination shall forfeit the fees charged for that CPA exam or reexamination unless excused by the board.

9. The fee to sit for the CPA exam is established in 18VAC5-21-20 G, whether paid directly to the board or to a designee under contract to the board.

10. The board or its designee will forward notification of eligibility for the computer-based CPA exam to NASBA's National Candidate Database.

11. Cheating by a candidate in applying for, taking or subsequent to the CPA exam will be deemed to invalidate any grade otherwise earned by a candidate on any test section of the CPA exam, and may warrant summary expulsion from the CPA exam site and disqualification from taking the CPA exam for a specified period of time.

12. Notwithstanding any other provisions under these rules, the board may postpone scheduled CPA exams, the release of grades, or the issuance of certificates due to a breach of CPA exam security; unauthorized acquisition or disclosure of the contents of a CPA exam; suspected or actual negligence, errors, omissions, or irregularities in conducting a CPA exam; or for any other reasonable cause or unforeseen circumstances.

D. Experience.

1. Each applicant for initial issuance of a CPA certificate under this section shall provide documentation of having met the experience requirements established by § 54.1-4409 C of the Code of Virginia, which requires at least one year of acceptable experience in accounting or a related field. The experience may include providing any type of service or advice involving the use of accounting, management, financial, tax, or consulting advisory skills or services. Acceptable experience shall include employment in government, industry, academia or public accounting or related services. The applicant's experience may be supervised by a non-CPA certificate holder, although, when completing the application for the CPA certificate, the experience must be verified by a CPA certificate holder.

2. One year of experience shall consist of full- or part-time employment that extends over a period of no less than a year and no more than three years and includes no fewer than 2,000 hours of performance of services described in subdivision 1 of this subsection.

VA.R. Doc. No. R09-1099; Filed May 14, 2009, 3:37 p.m.

VIRGINIA BOARD FOR ASBESTOS, LEAD, AND HOME INSPECTORS

Proposed Regulation

Title of Regulation: **18VAC15-40. Virginia Certified Home Inspectors Regulations (amending 18VAC15-40-10, 18VAC15-40-30, 18VAC15-40-50, 18VAC15-40-80, 18VAC15-40-90, 18VAC15-40-100, 18VAC15-40-120, 18VAC15-40-130, 18VAC15-40-140, 18VAC15-40-190; adding 18VAC15-40-45, 18VAC15-40-48, 18VAC15-40-52, 18VAC15-40-72, 18VAC15-40-85, 18VAC15-40-105; repealing 18VAC15-40-70, 18VAC15-40-110).**

Statutory Authority: § 54.1-201 and 54.1-501 of the Code of Virginia.

Public Hearing Information:

July 10, 2009 - 10 a.m. - Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 200, Board Room 4, Richmond, VA

Public Comments: Public comments may be submitted until 5 p.m. on August 7, 2009.

Agency Contact: Justin Garofalo, Board Administrator, Virginia Board for Asbestos, Lead and Home Inspectors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-2567, FAX (804) 527-4297, or email justin.garofalo@dpor.virginia.gov.

Basis: Subdivision 7 of § 54.1-501 states that the board shall promulgate regulations regarding the professional qualifications of home inspectors applicants, the requirements necessary for passing home inspectors examinations in whole or in part, the proper conduct of its examinations, the proper conduct of the home inspectors certified by the board, the implementation of exemptions from certifications requirements, and the proper discharge of its duties.

The imperative form of the verb "shall" is used, making the board’s authority to regulate mandatory rather than discretionary.

Purpose: Purchasing a home is the largest financial decision and investment made by most Virginia citizens. A competent home inspection is critical to the purchase decision to avoid unexpected expenses thus protecting the welfare of Virginia's citizens.

The current regulations were the first to be promulgated under the statutory authority granted by the 2001 Session of the Virginia General Assembly and have been in effect since July 1, 2003, without amendment. The passing of four years since initial promulgation and the board’s experience with the current regulations led the board to conclude that a general

review as well as consideration of continuing professional education (CPE) provisions is appropriate.

The board conducted a general review of its current regulation's provisions with emphasis on the definitions, entry standards, experience requirements, standards of practice, and the need to add continuing professional education (CPE) requirements.

Substance: Sixteen hours of continuing professional education (CPE) will be required during each 24-month certificate renewal cycle beginning with the certificate renewal cycle that ends two years after the amendment becomes effective.

Two definitions are added to the definition section to clarify words used in the regulation language and two definitions are deleted because the terms are not used in the regulation text.

Two new entry standards are added to allow a home inspector certificate to be issued to individuals who have completed fewer home inspections when those inspections were completed under the direct supervision of a Virginia-certified home inspector.

Amendments are made to the language allowing applicants with 10 years of home inspection experience to qualify for a certificate without classroom training. The amendments require documentation of a minimum of 250 home inspections completed in substantial compliance with the board's regulations in order to qualify.

Amendments are made to the certificate renewal procedure to specify that the act of submitting a renewal application is an affirmation that the renewal applicant maintains the required insurance, has completed the CPE requirements, and is in continued compliance with the board's regulations. The current regulation is less specific. The board's staff sends a renewal notice to expiring regulants stating that the act of returning the renewal notice is the renewal applicant's certification that he continued to maintain the required insurance and is in continued compliance with the board's regulations. Those that apply for renewal without returning the renewal application are sent a statement to sign indicating they are in compliance. The regulation amendment will streamline the renewal process for the regulant and for board staff by eliminating the need for documentation from the applicant to confirm compliance; renewal of the certification infers compliance.

Amendments are made to the home inspection contract section addressing the inspection for asbestos, lead-based paint, mold and radon, and the inspection of outbuildings as well as the presence of components involved in manufacturers' recalls. An amendment is also made to allow the home inspection client's authorized representative to sign the home inspection contract.

Amendments are made to the certified home inspection report section allowing the client to be represented by an authorized representative and emphasizing that the report must describe in writing the conditions of readily accessible components and readily observable defects. Amendments are also made to address certain components that are adjacent, but not attached, to the property being inspected, the inspection of garages and railings, the inspection of garage door openers, the inspection of arc fault interrupters, and the inspection of systems that are turned off, winterized, or otherwise secured.

Amendments are made to the conflict of interest section allowing certified home inspectors to perform certain types of inspections or refer clients to others only after the home inspector's involvement or interest in the property to be inspected is disclosed.

Amendments are made to the unworthiness and incompetence section empowering the board to take disciplinary action against those home inspectors who perform home inspections when they are not qualified by training or experience to conduct the specific inspection. The amendments also empower disciplinary action against certificate holders who fail to maintain the proficiency necessary to perform home inspections.

A number of nonsubstantive amendments are made to rearrange the current regulation provisions to conform to the DPOR model regulations.

Issues: The primary advantage of the new and amended provisions to the public is the availability of minimally competent home inspectors using contracts designed to disclose the scope and limitations of the planned home inspection and using inspection reports that document, in writing, any defects found. Further, the public will benefit from certified home inspectors who keep up with changes in technology and other aspects of housing construction through continuing professional education (CPE). Revising contracts and inspection reports currently in use as well as completing CPE will add some costs; however, these are expected to be minor. Many regulants belong to professional organizations that already require CPE as a condition of continued membership.

The primary advantage to DPOR and the Commonwealth is an amended regulation that can be administered effectively and is anticipated to provide a reasonable level of public protection with a minimum intrusion into the conduct of commerce. No disadvantage has been identified.

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

Summary of the Proposed Amendments to Regulation. The Board of Asbestos, Lead and Home Inspectors (Board) proposes to amend its Certified Home Inspectors Regulation as part of the periodic review process. The Board proposes to:

- Require certificate holders to complete 16 hours of continuing education during each biennial renewal cycle,
- Institute two new certificate qualification standards which will allow applicants to complete fewer home inspections if those home inspections are completed under the supervision of a Board certified home inspector,
- Require home inspectors who are applying for certification with 10 years or more of experience as a home inspector provide documentation of "a minimum of 250 home inspections completed in substantial compliance with" Board standards for home inspection, and
- Allow certified home inspectors to inspect residential buildings that they have repaired or modified (within the last 12 months), or refer clients to another party to make repairs of modifications on a residential building that they have inspected, only after they have disclosed their interest to their clients.

Result of Analysis. The benefits likely exceed the costs for several of these proposed changes. There is insufficient data to determine whether benefits exceed costs for at least one proposed change. Detailed analysis of major costs and benefits can be found below.

Estimated Economic Impact. Currently, the Certified Home Inspectors Regulations (promulgated in 2003) do not include any requirement for continuing education. The Board proposes to require certified home inspectors to complete 16 hours of continuing education during each biennial renewal cycle. Continuing education hours will have to cover only the content areas of the Board's examination for initial certification. The Department of Professional and Occupational Regulation (DPOR) reports that home building technology is subject to change and that home inspectors will need continuing education to adequately inspect new equipment/systems.

If home building technology does change fairly continuously, certified building inspectors may benefit from continuing education requirements only to the extent that 1) the initial Board examination has content areas that are sufficiently broad that they cover any possible new technology or 2) this exam evolves to include knowledge of any new equipment/systems. Any benefit that might be realized from requiring certified home inspectors to keep abreast of new developments in their field must be weighed against both the explicit and implicit costs of continuing education. DPOR reports that the fees for each hour of continuing education range from $30 to $90, so certified home inspectors will incur fees of $480 to $1,440 during each biennial renewal period. Additionally, certified home inspectors may incur other explicit costs for any required books/supplies and will incur implicit costs for time spent traveling to, and participating in, required continuing education. If these costs outweigh any benefits accrued, this continuing education requirement will serve as a barrier to entry to, and continuing participation in, this profession.

Currently, these regulations include several paths to certification that combine differing levels of education and experience. Applicants may currently complete:

- 35 hours of classroom instruction and a minimum of 100 home inspections,
- 70 hours of classroom instruction and a minimum of 50 home inspections, or
- Have ten years of verifiable experience as a home inspector.

The Board proposes to add two new paths to certification. Applicants who have completed 35 hours of classroom instruction would only need to complete 50 home inspections, and applicants who have completed 70 hours of classroom instruction would only need to complete 25 home inspections, if they complete those inspections under the supervision of an already certified home inspector.

These proposed new paths will provide the benefit of increased options for individuals seeking certification as home inspectors. No cost is likely to be incurred on account of these proposed changes; if these paths turn out to cost more than paths to certification that are currently open to applicants, they will likely just choose not to use them.

Currently, individuals with ten years of experience as home inspectors may qualify for certification without completing classroom instruction. Board staff must currently evaluate and approve proof of experience offered by individuals taking this path to certification. The Board proposes to make this path more specific by requiring that these individuals provide documentation of at least 250 home inspections completed in substantial compliance with current Board regulations. DPOR does not anticipate that individuals who currently qualify for this path to certification would be excluded under the proposed new regulatory language. If this turns out to be the case, costs for affected individuals are unlikely to increase on account of these proposed regulations.

Current regulations do not allow certified home inspectors to inspect residential buildings that they have repaired or modified or refer clients to another party to make repairs of modifications on a residential building that they have inspected. These proposed regulations will allow inspectors to complete such inspections, and make such referrals, after they have disclosed their former actions or interest to their clients. This regulatory change will benefit certified home inspectors as they will be able to do work that they are currently not allowed to do. No cost is likely to be associated with this change as the clients of these inspectors will be making

decisions with full knowledge of any possible conflict of interest.

Businesses and Entities Affected. DPOR reports that there are 256 certified home inspectors in the Commonwealth; all of these individuals likely qualify as small businesses.

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

Projected Impact on Employment. To the extent that continuing education requirements increase costs for continuing certification, fewer individuals will likely enter and/or remain in this profession. To the extent that instituting two new paths to certification may tend to decrease costs for entry into this field, more individuals may choose to become certified home inspectors.

Effects on the Use and Value of Private Property. This regulatory action will likely increase costs for affected small businesses by imposing continuing education requirements. These extra costs will likely decrease profits for these businesses and, therefore, will decrease their value.

Small Businesses: Costs and Other Effects. DPOR reports that there are 256 certified home inspectors in the Commonwealth; all of these individuals likely qualify as small businesses. These certified home inspectors will incur costs associated with completing continuing education required by these proposed regulations.

Small Businesses: Alternative Method that Minimizes Adverse Impact. Since this certification program is relatively new, and continuing education requirements will be absolutely new, the Board may find that building technology does not change frequently enough to justify the amount of continuing education proposed here. If this turns out to be the case, the Board will be able to decrease costs for affected small businesses by decreasing or eliminating continuing education requirements.

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 Response to the Department of Planning and Budget's Economic Impact Analysis: Concur with approval.

Summary:

The amendments (i) update the definitions, the qualifications for certification, the certified home inspection contract provisions, the certified home inspection report provisions, the conflict of interest provisions, and the unworthiness and incompetence provisions; (ii) add continuing professional education requirements; and (iii) change several sections to conform to DPOR's model regulations with no substantive impact.

Part I
General

18VAC15-40-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless a different meaning is provided or is plainly required by the context:

"Adjacent" means structures, grading, drainage, or vegetation within three feet of the residential building that may affect the building.

"Board" means the Virginia Board for Asbestos, Lead, and Home Inspectors.

"Certificate holder" means any person holding a valid certificate as a certified home inspector issued by the board.

"Certification" means an authorization issued to an individual by the board to perform certified home inspections by meeting the entry requirements established in these regulations.

"Client" means a person who engages or seeks to engage the services of a certified home inspector for the purpose of obtaining an inspection of and a written report upon the condition of a residential building.

"Compensation" means the receipt of monetary payment or other valuable consideration for services rendered.

"Component" means a part of a system.

"Contact hour" means 50 minutes of participation in a structured training activity.

"Department" means the Department of Professional and Occupational Regulation.

"Fireplace" means an interior fire-resistant masonry permanent or prefabricated fixture that can be used to burn fuel and is either vented or unvented.

"Foundation" means the base upon which the structure or a wall rests, usually masonry, concrete, or stone, and generally partially underground.

~~"Function" means the action for which an item, component or system is specially fitted or used, or for which an item, component or system exists.~~

"Inspect" or "inspection" means to visually examine readily accessible systems and components of a building established in this chapter.

"Outbuilding" means any building on the property that is more than three feet from the residential building that might burn or collapse and affect the residential building.

"Readily accessible" means available for visual inspection without requiring moving of personal property, dismantling, destructive measures, or any action that will likely involve risk to persons or property.

"Reinstatement" means having a certificate restored to effectiveness after the expiration date has passed.

"Renewal" means continuing the effectiveness of a certificate for another period of time.

"Residential building" means, for the purposes of home inspection, a structure consisting of one to four dwelling units used or occupied, or intended to be used or occupied, for residential purposes.

"Solid fuel burning appliances" means a hearth and fire chamber or similarly prepared place in which a fire may be built and that is built in conjunction with a chimney, or a listed assembly of a fire chamber, its chimney and related factory-made parts designed for unit assembly without requiring field construction.

~~"Structural component" means a component that supports nonvariable forces or weights (dead loads) and variable forces or weights (live loads).~~

"System" means a combination of interacting or interdependent components, assembled to carry out one or more functions.

Terms not defined in this chapter have the same definitions as those set forth in § 54.1-500 of the Code of Virginia.

18VAC15-40-30. Qualifications for certification.

Every applicant for an individual home inspector certificate shall have the following qualifications:

1. The applicant shall be at least 18 years old.

2. The applicant shall meet the following educational and experience requirements:

a. High school diploma or equivalent; and

b. One of the following:

(1) Completed 35 contact hours of classroom instruction and have completed a minimum of 100 home inspections; ~~or~~

(2) Completed 35 contact hours of classroom instruction and have completed a minimum of 50 certified home inspections in compliance with this chapter under the direct supervision of a certified home inspector, who shall certify the applicant's completion of each inspection and shall be responsible for each inspection;

~~(2)~~ (3) Completed 70 contact hours of classroom instruction and have completed a minimum of 50 home inspections; or

(4) Completed 70 contact hours of classroom instruction and have completed a minimum of 25 certified home inspections in compliance with this chapter under the direct supervision of a certified home inspector, who shall certify the applicant's completion of each inspection and shall be responsible for each inspection.

Instruction courses shall cover the content areas of the board-approved examinations.

An applicant who cannot fulfill the classroom instruction requirement as outlined in this subsection may ~~substitute~~ provide documentation of a minimum of 10 years of experience as a home inspector with a minimum of 250 home inspections completed in substantial compliance with this chapter to satisfy this requirement. The ~~experience substitution~~ documentation is subject to board review and approval.

3. The applicant shall have passed a written competency examination approved by the board.

4. The board may accept proof of membership in good standing, in a national or state professional home inspectors association approved by the board, as satisfaction of subdivisions 1, 2, and 3 of this section, provided that the requirements for the applicant's class of membership in such association are equal to or exceed the requirements established by the board for all applicants.

5. The applicant shall have a good reputation for honesty, truthfulness, and fair dealing, and be competent to transact

the business of a home inspector in such a manner as to safeguard the interests of the public.

6. The applicant shall disclose whether a certificate or license as a home inspector from any jurisdiction where certified or licensed has ever been suspended, revoked or surrendered in connection with a disciplinary action or which has been the subject of discipline in any jurisdiction prior to applying for certification in Virginia. The board may deny certification to any applicant so disciplined after examining the totality of the circumstances.

7. The applicant shall disclose any conviction or finding of guilt, regardless of adjudication, in any jurisdiction of the United States of any misdemeanor involving violence, repeat offenses, multiple offenses, or crimes that endangered public health or safety, or of any felony, there being no appeal pending therefrom or the time for appeal having elapsed. Subject to the provisions of § 54.1-204 of the Code of Virginia, the board shall have the authority to determine, based upon all the information available, including the applicant's record of prior convictions, if the applicant is unfit or unsuited to engage in the profession of residential home inspections. The board will decide each case by taking into account the totality of the circumstances. Any plea of nolo contendere shall be considered a conviction for purposes of this subdivision. A certified copy of a final order, decree, or case decision by a court with the lawful authority to issue such order, decree or case decision shall be admissible as prima facie evidence of such conviction or guilt.

8. Procedures and appropriate conduct established by either the board or any testing service administering an examination approved by the board or both shall be followed by the applicant. Such procedures shall include any written instructions communicated prior to the examination date and any instructions communicated at the site, either written or oral, on the date of the examination. Failure to comply with all procedures established by the board or the testing service with regard to conduct at the examination shall be grounds for denial of the application.

9. Applicants shall show evidence of having obtained general liability insurance with minimum limits of $250,000.

18VAC15-40-45. Application denial.

The board may refuse initial certification due to an applicant's failure to comply with entry requirements or for any of the reasons it may discipline a regulant.

18VAC15-40-48. General fee requirements.

All fees are nonrefundable and shall not be prorated. The date on which the fee is received by the department or its agent will determine whether the fee is on time. Checks or money orders shall be made payable to the Treasurer of Virginia.

18VAC15-40-50. Application fees.

~~A. All application fees for certificates are nonrefundable and the date of actual receipt by the board or its agent is the date that will be used to determine whether it is timely received~~ The application fee for an initial home inspector certification shall be $25.

~~B. The fee for an initial application for Certified Home Inspector shall be $25.~~

18VAC15-40-52. Renewal and reinstatement fees.

Renewal and reinstatement fees are as follows:

Fee type	Fee amount	When due
Renewal	$25	With renewal application
Late renewal	$25 (renewal) + $25 (late fee) = $50 total fee	With renewal application
Reinstatement	$75 (reinstatement) + $25 (renewal) = $100 total fee	With reinstatement application

18VAC15-40-70. ~~Qualification for renewal.~~ (Repealed.)

~~A. As a condition of renewal, all certified home inspectors shall be required to affirm that they continue to maintain insurance as required by 18VAC15-40-30. Failure to maintain the required insurance as directed by the board will result in the certification not being renewed or disciplinary action pursuant to this chapter, or both.~~

~~B. Each certificate holder desiring to renew the certificate shall return to the board the renewal application form and the appropriate fee as outlined in 18VAC15-40-100.~~

18VAC15-40-72. Continuing professional education (CPE) required.

A. Each certificate holder shall have completed 16 contact hours of continuing professional education (CPE) during each certificate renewal cycle, beginning with the certificate renewal cycle that ends (insert date two years after the effective date of this chapter).

B. The subject matter addressed during CPE contact hours shall be limited to the content areas covered by the board's examination.

C. The following shall be maintained by the certificate holder to document completion of the hours of CPE specified in subsection A of this section:

1. Evidence of completion that shall contain the name, address, and telephone number of the training sponsor;

2. The dates the applicant participated in the training;

3. Descriptive material of the subject matter presented documenting that it covers the content areas covered by the board's examination; and

4. A statement from the sponsor verifying the number of CPE contact hours completed.

D. Each certificate holder shall maintain evidence of the satisfactory completion of CPE for at least three years following the end of the certificate renewal cycle for which the CPE was taken. Such documentation shall be in the form required by subsection C of this section and shall be provided to the board or its duly authorized agents upon request.

E. The certificate holder shall not receive CPE credit for the same training course more than once during a single certificate renewal cycle.

F. Distance learning courses that comply with subsection B of this section and provide the documentation required by subsection C of this section shall comply with the CPE requirement.

G. The certificate holder may request additional time to meet the CPE requirement; however, CPE hours earned during a certificate renewal cycle to satisfy the CPE requirement of the preceding certificate renewal cycle shall be valid only for that preceding certificate renewal cycle.

18VAC15-40-80. Procedures for renewal.

A. The board will mail a renewal application form to the certificate holder at the last known home address of record. These notices shall outline the procedures for renewal. Failure of the board to mail or of the certificate holder to receive these notices does not relieve the certificate holder of the obligation to renew.

B. Prior to the expiration date shown on the certificate, regulants desiring to renew their certificate shall return the renewal application form to the board together with the appropriate fee specified in 18VAC15-40-52. If the regulant fails to receive the renewal notice, a copy of the certificate may be submitted with the required fee as an application for renewal. The date on which the fee is received by the department or its agent will determine whether the fee is on time.

C. By causing a renewal application to be sent to the board or its authorized agent, the regulant is affirming that the insurance required by 18VAC15-40-30 continues to be in effect, that the CPE requirements of 18VAC15-40-72 have been met, and that he is in continued compliance with this chapter.

18VAC15-40-85. Late renewal.

If the renewal requirements of 18VAC15-40-80 are met more than 30 days but less than six months after the expiration date on the certificate, a late renewal fee shall be required as established in 18VAC15-40-52. The date on which the renewal application and the required fees are actually received by the board or its agent shall determine whether the certificate holder must pay the renewal fee only or whether the late renewal fee must be paid.

18VAC15-40-90. ~~Failure to renew; reinstatement required~~ Reinstatement.

~~A. If the requirements for renewal of a certificate, including receipt of the fee by the board, are not completed by the certificate holder within 30 days of the expiration date noted on the certificate, a late renewal fee shall be required in addition to the renewal fee.~~

~~B.~~ A. If the requirements for renewal of a certificate, including receipt of the fee by the board, are not completed by the certificate holder within six months ~~of~~ after the expiration date noted on the certificate, a reinstatement fee shall be required.

~~C.~~ B. All applicants for reinstatement shall meet all requirements set forth in 18VAC15-40-30, 18VAC15-40-72 and 18VAC15-40-80.

~~D.~~ C. A certificate may be reinstated for up to two years following the expiration date with payment of the reinstatement fee. After two years, the certificate shall not be reinstated under any circumstances and the applicant shall apply as a new applicant, requiring the applicant to retake the examination.

~~E. The certificate holder who reinstates his certification shall be regarded as having been continuously certified without interruption. Therefore, the certificate holder shall remain under the disciplinary authority of the board during this entire period and shall be held accountable for his activities during this period.~~

18VAC15-40-100. ~~Fees for renewal, reinstatement and examination.~~ (Repealed.)

~~A. All fees for renewal and reinstatement are nonrefundable, and the date of actual receipt by the board or its agent is the date that will be used to determine whether it is timely received.~~

~~B. Renewal and reinstatement fees are as follows:~~

~~Renewal fee~~	~~$25~~
~~Late renewal fee~~	~~$25~~
~~Reinstatement fee~~	~~$100~~

~~C. The examination fee shall consist of the administration expenses of the department ensuing from the board's examination procedures and contract charges. Examination service contracts shall be established through competitive negotiations in compliance with the Virginia Public Procurement Act (§ 2.2-4300 et seq. of the Code of Virginia).~~

18VAC15-40-105. Status of certificate holder during the period prior to reinstatement.

A certificate holder who reinstates his certificate shall be regarded as having been continuously certified without interruption and shall remain under the disciplinary authority of the board during this entire period and shall be held accountable for activities during this period.

18VAC15-40-110. ~~Board discretion to deny renewal or reinstatement.~~ (Repealed.)

~~A. The board may deny renewal or reinstatement of a certificate for the same reasons as it may refuse initial certification or discipline a current certificate holder.~~

~~B. The board may deny renewal or reinstatement of a certificate if the applicant has not met the terms of an agreement for certification or not fully paid monetary penalties, satisfied sanctions and paid costs imposed by the board, plus any accrued interest.~~

Part IV
Minimum Standards for Conducting Certified Home Inspections

18VAC15-40-120. Certified home inspection contract.

A. For the protection of both the client and the certificate holder, both parties shall sign a legible written contract clearly specifying the terms, conditions, and limitations and exclusions of the work to be performed.

B. At a minimum, the written contract shall include:

1. Name, business name (if applicable), business address, and telephone number of the certified home inspector.

2. Certificate number and expiration date of the certified home inspector.

3. Name of the clients.

4. Physical address of the residential properties to be inspected.

5. Cost and method of payment of the certified home inspection.

6. A listing of all areas~~,~~ and systems~~, and components~~ to be inspected, including those inspections that are either partial or limited in scope.

7. To the extent that any of the following categories are not covered by the home inspection, they shall be noted as exclusions in the inspection contract:

a. The condition of systems or components that are not readily accessible.

b. The remaining life of any system or component.

c. The strength, adequacy, effectiveness, or efficiency of any system or component.

d. The causes of any condition or deficiency.

e. The methods, materials, or costs of corrections.

f. Future conditions including, but not limited to, failure of systems and components.

g. The suitability of the property for any specialized use.

h. Compliance with regulatory requirements (codes, including the Virginia Uniform Statewide Building Code, regulations, laws, ordinances, etc.).

i. The market value of the property or its marketability.

j. The advisability of the purchase of the property.

k. The presence of diseases harmful to humans or potentially hazardous plants or animals including, but not limited to, wood destroying organisms and mold.

l. The presence of any environmental hazards including, but not limited to, toxins, carcinogens, noise, asbestos, lead-based paint, mold, radon, and contaminates in soil, water, and air.

m. The effectiveness of any system installed or methods utilized to control or remove suspected hazardous substances.

n. The operating costs of systems or components.

o. The acoustical properties of any system or component.

p. The presence of components involved in manufacturer's recalls.

q. The inspection of outbuildings.

To the extent any other items are not specifically included in the home inspection by agreement of the parties, they shall also be noted as exclusions in the inspection contract.

8. Expected delivery date to the client of the certified home inspection report.

9. Dated signatures of both the certified home inspector and the client or the client's authorized representative.

C. The certified home inspection contract shall make written disclosure that the certified home inspection report is based upon visual observation of existing conditions of the inspected property at the time of the inspection and is not intended to be, or to be construed as, a guarantee, warranty, or any form of insurance.

18VAC15-40-130. Certified home inspection report.

A. Certified home inspection reports shall contain:

1. The name, business address and telephone number of the certificate holder as well as his certificate number and expiration date;

2. The name, address, and telephone number of the ~~clients~~ client or the client's authorized representative, if available at the time of the inspection;

3. The physical address of the residential properties inspected; and

4. The date, time (to include both start and finish times of the inspection), and weather conditions at the time of the certified home inspection.

B. In conducting a certified home inspection and reporting its findings, the certified home inspector, at a minimum, shall inspect the condition of and shall describe in writing the composition/characteristics of the following readily accessible components and readily observable defects, except as may be limited in the certified home inspection contract agreement:

1. Structural system.

a. Foundation.

b. Framing.

c. Stairs.

d. Crawl space, the method of inspecting the crawl space shall be noted and explained in the inspection report. If the crawl space cannot be inspected, the certificate holder shall explain in the inspection report why this component was not inspected.

e. Crawl space ventilation and vapor barriers.

f. Slab floor, when present.

g. Floors, ceilings, and walls.

2. Roof structure, attic, and insulation.

a. Roof covering. The method of inspecting the roof covering shall be noted and explained in the inspection report. If the roof covering cannot be inspected, the certificate holder shall explain in the inspection report why this component was not inspected.

b. Roof ventilation.

c. Roof drainage system, to include gutters and downspouts.

d. Roof flashings, if readily visible.

e. Skylights, chimneys, and roof penetrations, but not antennae or other roof attachments.

f. Roof framing and sheathing.

g. Attic, unless area is not readily accessible ~~due to size or condition of structure~~.

h. Attic insulation.

3. Exterior of dwelling.

a. Wall covering, flashing, and trim~~, and protective coatings~~.

b. Readily accessible doors and windows, but not the operation of associated security locks, devices, or systems.

c. Attached, or adjacent and on the same property, decks, balconies, stoops, steps, porches, carports, and any associated railings, but not associated screening, shutters, awnings, storm windows, garages, or storm doors.

d. Eaves, soffitts, and fascias where readily accessible from ground level.

e. Walkways, grade steps, patios, and driveways, but not fences or privacy walls.

f. Vegetation, trees, grading, drainage, and any retaining walls in contact with or ~~immediately~~ adjacent to the dwelling that may affect the dwelling.

g. Visible exterior portions of chimneys.

4. Interior of dwelling.

a. Readily accessible interior walls, ceilings, and floors of dwelling and any attached or adjacent garage.

b. Steps, stairways, railings, and balconies and associated railings.

c. Countertops and installed cabinets, including hardware.

d. Readily accessible doors and windows, but not the operation of associated security locks, devices, or systems.

e. Garage doors and permanently mounted and installed garage door operators. The automatic safety reverse function of garage door openers shall be tested, either by physical obstruction as specified by the manufacturer, or by breaking the beam of the electronic photo eye but only when the test can be safely performed and will not risk damage to the door, the opener, any nearby structure, or any stored items.

f. Fireplaces, including flues, venting systems, hearths, dampers, and fireboxes, but not mantles, fire screens and doors, seals and gaskets.

g. Solid fuel burning appliances if applicable.

5. Plumbing system.

a. Interior water supply and distribution systems, including water supply lines and all fixtures and faucets, but not water conditioning systems or fire sprinkler systems.

b. Water drainage, waste, and vent systems, including all fixtures.

c. Drainage sumps, sump pumps, and related piping.

d. Water heating equipment, including ~~heat~~ energy source and related vent systems, flues, and chimneys, but not solar water heating systems.

e. Fuel storage and distribution systems for visible leaks.

6. Electrical system.

a. Service drop.

b. Service entrance conductors, cables, and raceways.

c. Service equipment and main disconnects.

d. Service grounding.

e. Interior components of service panels and sub panels, including feeders.

f. Conductors.

g. Overcurrent protection devices.

h. Readily accessible installed lighting fixtures, switches, and receptacles.

i. Ground fault circuit interrupters.

j. Presence or absence of smoke detectors.

k. Presence of solid conductor aluminum branch circuit wiring.

l. Arc fault interrupters shall be noted if installed but not tested if equipment is attached to them.

7. Heating system.

a. Heating equipment, including operating controls, but not heat exchangers, gas logs, built-in gas burning appliances, grills, stoves, space heaters, solar heating devices, or heating system accessories such as humidifiers, air purifiers, motorized dampers, and heat reclaimers.

b. Energy source.

c. Heating distribution system.

d. Vent systems, flues, and chimneys, including dampers.

8. Air conditioning system.

a. Central and installed ~~window/wall~~ wall air conditioning equipment.

b. Operating controls, access panels, and covers.

c. Energy source.

d. Cooling distribution system.

C. Systems in the home that are turned off, winterized, or otherwise secured so that they do not respond to normal activation using standard operating controls need not be put into operating condition. The certified home inspector shall state, in writing, the reason these systems or components were not tested.

Part V
Standards of Conduct and Practice

18VAC15-40-140. Conflict of interest.

A. The certificate holder shall not:

1. Design or perform repairs or modifications to a residential building on which he has performed a certified home inspection as a result of the findings of the certified home inspection within 12 months after the date he performed the certified home inspection, except in cases where the home inspector purchased the residence after he performed the inspection;

2. Perform a certified home inspection of a residential building upon which he has designed or performed repairs or modifications within the preceding 12 months without disclosing to the client in the certified home inspection contract the specifics of the repairs or modifications he designed or performed;

3. Refer his client to another party to make repairs or modifications to a residential building on which he has performed a certified home inspection ~~within the preceding 12 months~~. However, such inspection may be performed if such repairs or modifications are disclosed to the client or to the client's authorized representative; ~~or~~

4. Represent the financial interests, either personally or through his employment, of any of the parties to the transfer or sale of a residential building on which he has performed a certified home inspection; or

5. Perform a certified home inspection of a residential building under a contingent agreement whereby any compensation or future referrals are dependent on the reported findings or on the sale of the property.

B. The certificate holder shall not disclose any information concerning the results of the certified home inspection without the approval of the client for whom the certified home inspection was performed. However, the certificate holder may disclose information in situations where there is an imminent endangerment to life and health.

C. The certificate holder will not accept compensation, financial or otherwise, from more than one interested party for the same service on the same property without the consent of all interested parties.

D. The certificate holder shall not accept nor offer commissions or allowances, directly or indirectly, from other parties dealing with the client in connection with work for which the certificate holder is responsible. Additionally, the certificate holder shall not enter into any financial relationship with any party that may compromise the

certificate holder's commitment to the best interest of his client.

E. The certified home inspection shall not be used as a ~~tool~~ pretext by the certificate holder to solicit or obtain work in another field, except for additional diagnostic inspections or testing.

18VAC15-40-190. Unworthiness and incompetence.

~~Actions constituting~~ The following shall constitute unworthy and incompetent conduct ~~include~~ and may result in disciplinary action by the board:

1. Obtaining a certificate by false or fraudulent representation.

2. Performing improvements or repairs to a residential building as a result of the findings of the certified home inspection within 12 months before or after performing a certified home inspection on it, except in cases where the home inspector purchased the residential building after he performed the inspection.

3. Violating or inducing another person to violate any of the provisions of Chapter 1, 2, 3, or 5 of Title 54.1 of the Code of Virginia or this chapter.

4. Subject to the provisions of § 54.1-204 of the Code of Virginia, having been convicted or found guilty, regardless of adjudication in any jurisdiction of the United States, of any misdemeanor involving violence, repeat offenses, multiple offenses, or crimes that endangered public health or safety, or of any felony, there being no appeal pending therefrom or the time for appeal having elapsed. Any plea of nolo contendere shall be considered a conviction for the purposes of this subdivision. A certified copy of a final order, decree, or case decision by a court with the lawful authority to issue such order, decree or case decision shall be admissible as prima facie evidence of such conviction or guilt.

5. Failing to inform the board in writing within 30 days of pleading guilty or nolo contendere or being convicted or found guilty, regardless of adjudication in any jurisdiction of the United States of any misdemeanor involving violence, repeat offenses, multiple offenses, or crimes that endangered public health or safety, or of any felony, there being no appeal pending therefrom or the time for appeal having elapsed.

6. Failing to act as a certificate holder in such a manner as to safeguard the interests of the public.

7. Engaging in improper, fraudulent, or dishonest conduct in conducting a certified home inspection.

8. Having been found guilty by the board, an administrative body, or by any court of any misrepresentation in the course of performing home inspections.

9. Having performed a certified home inspection when not qualified by training or experience to competently perform any part of the certified home inspection.

10. Failing to maintain, through training, the proficiency to perform Virginia certified home inspections.

VA.R. Doc. No. R08-1010; Filed May 20, 2009, 11:41 a.m.

BOARD OF AUDIOLOGY AND SPEECH-LANGUAGE PATHOLOGY

Final Regulation

Title of Regulation: **18VAC30-20. Regulations Governing the Practice of Audiology and Speech-Language Pathology (amending 18VAC30-20-160; adding 18VAC30-20-185).**

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

Effective Date: July 8, 2009.

Agency Contact: Lisa R. Hahn, Executive Director, Board of Audiology and Speech-Language Pathology, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4630, FAX (804) 527-4413, or email lisa.hahn@dhp.virginia.gov.

Summary:

The amendments allow an applicant whose license has been lapsed for five or more years to apply for reinstatement based on documentation of meeting current requirements for education, examination and certification or documentation of a current license in another jurisdiction in the United States and evidence of active practice for at least three of the past five years. If an applicant for reinstatement in audiology cannot meet the current licensure requirements or cannot document current licensure and active practice for three years, a third option is provided in the amended regulation. The applicant who has the educational qualifications and has passed the examination may be granted a provisional license and practice under supervision for six months and must be recommended for licensure by his supervisor.

New regulations for licensure by endorsement mirror the provisions for reinstatement of a lapsed Virginia license as evidence of current competency to practice.

There are changes made to the proposed regulation. Subsection C of 18VAC30-20-171 provides that the holder of a provisional license in audiology shall only practice under the supervision of a licensed audiologist in order to obtain clinical experience as required for certification by the American Speech-Language-Hearing Association. The purpose of provisional licensure for an applicant for licensure by endorsement is to gain experience if he has not actively practiced for three of the past five years; it is not to obtain clinical experience as required for ASHA

certification, therefore, the reference to subsection C of 18VAC30-20-171 is eliminated and the requirement for supervision by a licensed audiologist is added to 18VAC30-20-160 and 18VAC30-20-185.

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

18VAC30-20-160. Reinstatement of lapsed license.

A. When a license has not been renewed within one year of the expiration date, a person may apply to reinstate his license by submission of a reinstatement application, payment of the reinstatement fee, and submission of documentation of 15 continuing competency hours ~~equal to the requirement for the number of years~~ for each year the license has been lapsed, not to exceed ~~four years, in which the license has been lapsed~~ 60 hours obtained during the time the license in Virginia was lapsed.

B. A licensee who does not reinstate within ~~four~~ five years as prescribed by subsection A of this section shall either:

~~reapply~~ 1. Reapply for licensure as prescribed by ~~Part III (18VAC30-20-170 et seq.) of this chapter~~ 18VAC30-20-170 and meet the qualifications for licensure in effect at the time of the new application; or

2. Meet the continuing competency requirements specified in subsection A of this section and provide documentation of a current license in another jurisdiction in the United States and evidence of active practice for at least three of the past five years.

C. An applicant for reinstatement in audiology who does not meet one of the [~~qualifications~~ requirements] of subsection B of this section may qualify for reinstatement by practice under supervision with a provisional license for six months and a recommendation for reinstatement by his supervisor. The board may issue a provisional license to an applicant who can provide evidence of having met the applicable educational qualifications prescribed in 18VAC30-20-170 and passage of the qualifying examination at the time of initial licensure. Provisional licensure shall be practiced [under the supervision of a licensed audiologist and] in accordance with subsections [~~C,~~] D [,] and E of 18VAC30-20-171.

~~C.~~ D. If the licensee holds licensure in any other state or jurisdiction, he shall provide evidence that no disciplinary action has been taken or is pending. The board reserves the right to deny a request for reinstatement to any licensee who has been determined to have committed an act in violation of 18VAC30-20-280.

18VAC30-20-185. Licensure by endorsement.

A. An applicant who has been licensed in another jurisdiction in the United States may apply for licensure in Virginia by submission of a completed application, payment of the application fee, and submission of documentation of 15 continuing competency hours for each year in which he has been licensed in the other jurisdiction, not to exceed 60 hours.

B. An applicant shall either:

1. Meet the qualifications for licensure as prescribed by 18VAC30-20-170; or

2. Provide documentation of a current license in another jurisdiction in the United States and evidence of active practice for at least three of the past five years.

C. An applicant for licensure by endorsement in audiology who does not meet one of the [~~qualifications~~ requirements] of subsection B of this section may qualify for endorsement by practice under supervision with a provisional license for six months and a recommendation for licensure by his supervisor. The board may issue a provisional license to an applicant who can provide evidence of having met the educational qualifications prescribed in 18VAC30-20-170 and passage of the qualifying examination at the time of initial licensure. Provisional licensure shall be practiced [under the supervision of a licensed audiologist and] in accordance with subsections [~~C,~~] D [,] and E of 18VAC30-20-171.

D. An applicant shall provide evidence that no disciplinary action has been taken or is pending against his license in another jurisdiction. The board reserves the right to deny a request for licensure to any applicant who has been determined to have committed an act in violation of 18VAC30-20-280.

NOTICE: The forms used in administering the above regulation are not being published; however, the name of each form is listed below. The forms are available for public inspection by contacting the agency contact for this regulation, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

[FORMS (18VAC30-20)

Application for Audiology License by ASHA or ABA Certification (rev. 6/08).

Application Checklist for Audiology License by ASHA or ABA Certification (rev. 5/08).

Application for a License to Practice Audiology by Endorsement (eff. 5/09).

Application Checklist for Applicants by Endorsement - Audiology (eff. 5/09).

Application for Provisional Licensure to Practice Audiology (rev. 9/07).

Application Checklist for Applicants Requesting Provisional Licensure (rev. 9/07).

Application for Provisional Audiologist to Apply for Full Audiology License (rev. 7/08).

Application Checklist for Provisional Applicants Requesting Full Audiologist Licensure (eff. 8/08).

Application for a License to Practice Speech-Language Pathology by Education (rev. 9/07).

Application Checklist for Applicants by Education (rev. 9/07).

Application for a License to Practice Speech-Language Pathology by ASHA Certification (rev. 5/08).

Application Checklist for Applicants by ASHA Certification (rev. 5/08).

Application for a License to Practice Speech-Language Pathology by Endorsement (eff. 5/09).

Application Checklist for Applicants by Endorsement - Speech-Language Pathology (eff. 5/09).

Application for a License to Practice as a School Speech-Language Pathologist (rev. 7/07).

Application Checklist for Applicants for School Speech-Language Pathology License (rev. 8/07).

Application for Reinstatement of License to Practice (rev. 11/07).

Reinstatement Application Checklist for Audiology and Speech-Language Pathology (rev. 8/08).

Application for Reinstatement of School Speech Language Pathology License (rev. 11/07).

Reinstatement Application Checklist for School Speech-Language Pathologists Applicants (rev. 8/07).

Application for Reinstatement of Inactive License to Practice (rev. 11/07).

Continued Competency Activity and Assessment Form (rev. 7/07).

Application for Approval as a Continuing Competency Sponsor (rev. 7/07).]

VA.R. Doc. No. R08-1218; Filed May 20, 2009, 11:10 a.m.

COMMON INTEREST COMMUNITY BOARD

Final Regulation

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

Title of Regulation: **18VAC48-20. Condominium Regulations (adding 18VAC48-20-10 through 18VAC48-20-800).**

Statutory Authority: § 54.1-2349 of the Code of Virginia.

Effective Date: July 9, 2009.

Agency Contact: Trisha Henshaw, Executive Director, Common Interest Community Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8510, FAX (804) 527-4298, or email cic@dpor.virginia.gov.

Summary:

Pursuant to Chapters 851 and 871 of the Code of Virginia, this regulatory action administratively transfers the regulation from the Real Estate Board to the Common Interest Community Board.

The regulation establishes the registration requirements for condominium projects in the Commonwealth. In addition, the regulation provides annual reporting requirements, information regarding implementation and amendment of public offering statements, and marketing standards. The only change in transferring the regulation from the Real Estate Board to the Common Interest Community Board is the replacement of all references to "Real Estate Board" with "Common Interest Community Board."

CHAPTER 20
CONDOMINIUM REGULATIONS

Part I
General

18VAC48-20-10. Purpose.

This chapter governs the exercise of powers granted to and the performance of duties imposed upon the Common Interest Community Board by the Horizontal Property Act (§ 55-79.1 et seq. of the Code of Virginia) and by the Condominium Act (§ 55-79.39 et seq. of the Code of Virginia).

18VAC48-20-20. Definitions.

The definitions provided in § 55-79.41 of the Code of Virginia, as they may be supplemented herein, shall apply to

this chapter. The corresponding meanings assigned to certain terms by § 55-79.41 of the Code of Virginia shall be applicable in this chapter.

18VAC48-20-30. Explanation of terms.

Each reference in this chapter to a "declarant," "purchaser," and "unit owner" or to the plural of those terms shall be deemed to refer, as appropriate, to the masculine and the feminine, to the singular and the plural and to natural persons and organizations. The term "declarant" shall refer to any successors to the persons referred to in § 55-79.41 who come to stand in the same relation to the condominium as their predecessors in that they assumed rights reserved for the benefit of a declarant that (i) offers to dispose of his or its interest in a condominium unit not previously disposed of, (ii) reserves or succeeds to any special declarant right, or (iii) applies for registration of the condominium.

18VAC48-20-40. Condominiums located outside of Virginia.

A. In any case involving a condominium located outside of Virginia in which the laws or practices of the jurisdiction in which such condominium is located prevent compliance with a provision of these condominium regulations, the board or its subordinate shall prescribe, by order, a substitute provision to be applicable in such case that is as nearly equivalent to the original provision as is reasonable under the circumstances.

B. The words "declaration," "bylaws," "plats," and "plans," when used in these condominium regulations with reference to a condominium located outside of Virginia, shall refer to documents, portions of documents, or combinations thereof, by whatever name denominated, which have a content and function identical or substantially equivalent to the content and function of their Virginia counterparts.

C. The words "recording" or "recordation," when used with reference to condominium instruments of a condominium located outside of Virginia, shall refer to a procedure which, in the jurisdiction in which such condominium is located, causes the condominium instruments to become legally effective.

D. This chapter shall apply to a contract for the disposition of a condominium unit located outside of Virginia only to the extent permissible under the provisions of § 55-79.40 B of the Code of Virginia.

18VAC48-20-50. Condominium advisory committee.

A condominium advisory committee, appointed by the board, may advise the board in the exercise of its powers and the performance of its duties under the Horizontal Property Act (§ 55-79.1 et seq. of the Code of Virginia) and the Condominium Act (§ 55-79.39 et seq. of the Code of Virginia).

18VAC48-20-60. Property registration administrator.

A property registration administrator, employed and designated as such by the Director of the Department of Professional and Occupational Regulation, shall function as a subordinate of the board within the meaning of § 2.2-4001 of the Code of Virginia for the purpose of carrying out the routine daily operations of the board with respect to condominium regulations, including, without limitation, the entry of any orders provided for in these condominium regulations, the issuance of public reports and the administration of oaths and affirmations in connection with investigations or other proceedings. The administrator shall act as secretary of the condominium advisory committee.

Part II
Application for Registration

18VAC48-20-70. Application for registration.

Application for registration of condominium units shall be filed at the offices of the board. The application shall contain all of the documents and information required by the standard application form.

18VAC48-20-80. Applications not in proper form.

Upon receipt of an application for registration not in proper form, the board shall return the application to the declarant with a statement specifying the deficiencies in its form; however, if the board has reason to believe that the application may readily be put into proper form it may retain the application and notify the declarant of the steps that must be taken to put the application in proper form.

18VAC48-20-90. Form of the application; submission of documents.

The board may establish specific guidelines that establish the form for preparation of the application for registration. These guidelines shall set forth reasonable requirements for paper size, binding and organization that assure uniformity in the manner disclosures are made to prospective purchasers.

18VAC48-20-100. Procedure upon receipt of application for registration.

A. Upon receipt of an application for registration and the fee required by § 55-79.89 D of the Code of Virginia, the board shall issue the notice of filing required by § 55-79.92 A of the Code of Virginia and shall conduct an inquiry and investigation to determine whether the prerequisites for registration set out in § 55-79.91 of the Code of Virginia and 18VAC48-20-130 have been met. In conducting such inquiry and investigation, the board shall take cognizance of any reliable information concerning the declarant or the condominium coming to the board's attention.

B. If any of the prerequisites for registration appear to the board not to have been met, the board may informally advise

the declarant of such fact and indicate in detail the nature of the failure to meet the prerequisites.

C. If the document review conducted by the administrator reveals that the prerequisites for registration have not been met, the board shall issue the correction notification required by § 55-79.92 C of the Code of Virginia.

D. A request for an extension of the 60-day application period shall be in writing and shall be delivered to the board prior to the expiration of the period being extended. The request shall be for an extension of definite duration. The board may grant in writing a request for an extension of the application period and it may limit the extension to a period not longer than is reasonably necessary to permit correction of the application. An additional extension of the application period may be obtained, subject to the conditions applicable to the initial request. A request for an extension of the application period shall be deemed a consent to delay within the meaning of § 55-79.92 A of the Code of Virginia.

E. If the prerequisites for registration are not met within the application period or a valid extension thereof, the board shall, upon the expiration of such period, enter an order rejecting registration as required by § 55-79.92 C of the Code of Virginia.

F. The board shall receive and act upon corrections to the application for registration at any time prior to the effective date of an order rejecting registration.

G. At such time as the board affirmatively determines that the prerequisites for registration have been met, the board shall enter an order registering the condominium. The order shall designate the form and content of the public offering statement, substituted disclosure document or prospectus to be used and, in the case of application for registration made pursuant to 18VAC48-20-680 D, shall provide that previous orders designating the form and content of the public offering statement, substituted disclosure document or prospectus to be used are superseded.

18VAC48-20-110. Application for registration of expandable condominium.

In accordance with the practice contemplated by § 55-79.74 A of the Code of Virginia, the declarant may register all units for which development rights have been reserved.

18VAC48-20-120. Filing fee.

Each application shall be accompanied by a fee in an amount equal to $35 per unit, except that the initial application fee shall be not less than $1,750 nor more than $3,500, and the fee for any application for registration of additional units shall be not less than $875 nor more than $3,500.

Part III
Registration

18VAC48-20-130. Prerequisites for registration.

The following provisions are prerequisites for registration and are supplementary to the provisions of § 55-79.91 of the Code of Virginia.

1. The declarant shall own or have the right to acquire an estate in the land constituting or to constitute the condominium that is of at least as great a degree and duration as the estate to be conveyed in the condominium units.

2. The condominium instruments must be adequate to bring a condominium into existence upon recordation except that the certification requirements of § 55-79.58 of the Code of Virginia need not be complied with as a prerequisite for registration. This subsection does not apply to condominium instruments that may be recorded after the condominium has been created.

3. The declarant shall have filed with the board evidence of its ability to complete all proposed improvements on the condominium. Such evidence shall consist of the commitment of an institutional lender to advance construction funds to the declarant and, to the extent that any such commitments will not furnish all the necessary funds, other evidence, satisfactory to the board, of the availability to the declarant of necessary funds. A lender's commitment may be subject to such conditions, including registration of the condominium units and presale requirements as are normal for loans of the type and as to which nothing appears to indicate that the conditions will not be complied with or fulfilled. In the case of a condominium located in Virginia, proposed improvements are uncompleted improvements that the declarant is affirmatively and unconditionally obligated to complete under §§ 55-79.58 and 55-79.67 (a1) of the Code of Virginia and applicable provisions of the condominium instruments or which the declarant would be so obligated to complete, if plats and plans filed with the board in accordance with 18VAC48-20-140 A were recorded. In the case of a condominium located outside of Virginia, "proposed improvements" are all uncompleted improvements that the declarant intends, without condition or limitation, to build or place on the condominium.

4. The current and planned condominium marketing activities of the declarant shall comply with § 18.2-216 of the Code of Virginia, and 18VAC48-20-160, 18VAC48-20-180 and 18VAC48-20-190.

5. The declarant shall have filed with the board: (i) a proposed public offering statement that complies with § 55-79.90 A of the Code of Virginia and 18VAC48-20-210 through 18VAC48-20-440 and 18VAC48-20-540 through 18VAC48-20-650 and, if applicable, § 55-79.94 A

of the Code of Virginia and 18VAC48-20-470 through 18VAC48-20-520; (ii) a substituted disclosure document that complies with 18VAC48-20-450; or (iii) a prospectus that complies with 18VAC48-20-460.

18VAC48-20-140. Requirements for plats and plans.

A. Except as provided in subsection C hereof, improvements shall be depicted on plats filed with the application for registration exactly as the declarant has depicted or intends to depict them on the recorded plats and "(NOT YET BEGUN)" and "(NOT YET COMPLETED)" labels shall be used with respect to such improvements exactly as the declarant has used or intends to use them on the recorded plats. Copies of plats and plans as recorded by the declarant shall be filed with the board if such plats and plans are different from those filed with the application for registration.

B. The requirement of § 55-79.58 B of the Code of Virginia that plans shall show the location and dimensions of the boundaries of each unit shall be deemed satisfied, in the case of units that are identical (within normal constructions tolerances), by depiction of the location and dimensions of the vertical boundaries and horizontal boundaries, if any, of one such unit. The identifying numbers of all units represented by such depiction shall be indicated. Each structure within which any such units are located shall be depicted so as to indicate the exact location of each such unit within the structure.

C. In the case of a condominium located outside Virginia, certain materials may be filed with the application for registration in lieu of plats and plans complying with the provisions of § 55-79.58 of the Code of Virginia. Such materials shall contain, as a minimum, (i) a plat of survey depicting all existing improvements and all improvements that the declarant intends, without condition or limitation to build or place on the condominium and (ii) legally sufficient descriptions of each unit. Any improvements whose completion is subject to conditions or limitations shall be appropriately labeled to indicate that such improvements may not be completed. Unit descriptions may be written or graphic, shall demarcate each unit vertically and, if appropriate, horizontally, and shall indicate each unit's location relative to established points or datum.

D. The plats and plans must bear the form of the certification statement required by § 55-79.58 A and B of the Code of Virginia. However, such certification may appear in a separate document to be recorded with the plats and plans. As stated in subdivision 2 of 18VAC48-20-130, the statement need not be executed prior to recordation.

18VAC48-20-150. Exemption from registration of nonresidential condominiums.

The exemption from registration of condominiums in which all units are restricted to nonresidential use provided in § 55-79.87 A shall not be deemed to apply to any condominium as to which there is a substantial possibility that a unit therein other than a unit owned by the declarant or the unit owners' association will be used as permanent or temporary living quarters or as a site upon which vehicular or other portable living quarters will be placed and occupied. Residential use for the purposes of these regulations includes transient occupancy.

Part IV
Marketing

18VAC48-20-160. Preregistration offers prohibited.

A. No declarant or individual or entity acting on behalf of the declarant shall offer a condominium unit prior to its registration.

B. No condominium marketing activity shall be deemed an offer unless, by its express terms, it induces, solicits, or encourages a prospective purchaser to execute a contract of sale of the condominium unit or lease of a leasehold condominium unit or perform some other act that would create or purport to create a legal or equitable interest in the condominium unit other than a security interest in or a nonbinding reservation of the condominium unit.

18VAC48-20-170. Condominium marketing activities.

Condominium marketing activities shall include every contact for the purpose of promoting disposition of a condominium unit. Such contacts may be personal, by telephone, by mail, or by advertisement. A promise, assertion, representation, or statement of fact or opinion made in connection with a condominium marketing activity may be oral, written, or graphic. With respect to condominiums located outside of Virginia, the application of these regulations is limited to those condominiums for which contracts are executed in Virginia as required by § 55-79.40 B of the Code of Virginia.

18VAC48-20-180. Condominium marketing standards.

A. No promise, assertion, representation or statement of fact or opinion in connection with a condominium marketing activity shall be made that is false, inaccurate, or misleading by reason of inclusion of an untrue statement of a material fact or omission of a statement of a material fact relative to the actual or intended characteristics, circumstances, or features of the condominium or a condominium unit.

B. No promise, assertion, representation, or statement of fact or opinion made in connection with a condominium marketing activity shall indicate that an improvement will be built or placed on the condominium unless the improvement is a proposed improvement within the meaning of subdivision 3 of 18VAC48-20-130; except that, if the condominium is one for which no application for registration has been filed, there shall be no indication that an improvement will be built or placed on the condominium unless the declarant has

sufficient financial assets and a bona fide intention to complete the improvement as represented.

C. No promise, assertion, representation, or statement of fact or opinion made in connection with a condominium marketing activity and relating to a condominium unit not registered shall, by its express terms, induce, solicit, or encourage a prospective purchaser to leave Virginia for the purpose of executing a contract for sale or lease of the condominium unit or performing some other act that would create or purport to create a legal or equitable interest in the condominium unit other than a security interest in or a nonbinding reservation of the condominium unit.

18VAC48-20-190. Offering literature.

A. Offering literature is any written promise, assertion, representation, or statement of fact or opinion made in connection with a condominium marketing activity mailed or delivered directly to a specific prospective purchaser, except that information printed in a publication shall not be deemed offering literature solely by virtue of the fact that the publication is mailed or delivered directly to a prospective purchaser.

B. Offering literature mailed or delivered prior to the registration of the condominium that is the subject of the offering literature shall bear a conspicuous legend containing the substance of the following language:

Identification of the condominium has not been registered by the Common Interest Community Board. A condominium unit may be reserved on a nonbinding reservation agreement, but no contract of sale or lease may be entered into prior to registration.

C. Prior to registration a copy of every item of offering literature other than a personal communication shall be filed with the board prior to its use. A personal communication is a communication directed to a particular prospective purchaser that has not been and is not intended to be directed to any other prospective purchaser.

D. The declarant of a condominium shall provide with the application for registration a narrative description of the promotional plan for the condominium.

E. Offering literature or marketing activities violative of the Virginia Fair Housing Law, Chapter 5.1 (§ 36-96.1 et seq.) of Title 36 of the Code of Virginia, and the Virginia Condominium Act, § 55-79.52 C of the Code of Virginia is prohibited.

F. Offering literature shall indicate that the property being offered is under the condominium form of ownership. The requirement of this subsection is satisfied by including the full name of the condominium in all offering literature.

18VAC48-20-200. Exemption from marketing regulations.

Nothing in 18VAC48-20-160, 18VAC48-20-180, and 18VAC48-20-190 shall apply in the case of a condominium exempted from registration by § 55-79.87 of the Code of Virginia, or condominiums located outside of Virginia for which no contracts are to be signed in Virginia.

Part V
Public Offering Statement

18VAC48-20-210. Scope of public offering statement.

A public offering statement shall make disclosure relative to a single offering and to the entire condominium in which the condominium units being offered are located. Not more than one version of a public offering statement shall be authorized for use or used at any given time with respect to a particular condominium.

18VAC48-20-220. Offering defined.

As used in these condominium regulations, the word "offering" shall refer to the continuing act of the declarant in making condominium units owned by the declarant within a particular condominium available for acquisition by purchasers or, where appropriate, to the aggregate of the condominium units thus made available.

18VAC48-20-230. Preparation of public offering statement.

The public offering statement shall be clear and legible with pages numbered sequentially. A blank cover or a cover bearing identification information only may be used. Except as elsewhere provided, no portion of the public offering statement may be printed in larger, heavier, or different color type than the remainder of the public offering statement. The first page of the public offering statement shall be substantially as follows.

PURCHASER SHOULD READ THIS DOCUMENT FOR HIS OWN PROTECTION

PUBLIC OFFERING STATEMENT

NAME OF CONDOMINIUM:

LOCATION OF CONDOMINIUM:

NAME OF DECLARANT:

ADDRESS OF DECLARANT:

EFFECTIVE DATE OF PUBLIC OFFERING STATEMENT: _____

AMENDED: _____

REVISED: _____

This public offering statement presents information regarding condominium units being offered for sale by the declarant. Virginia law requires that a public offering

statement be given to every purchaser in order to provide full and accurate disclosure of the significant features of the condominium units being offered. The public offering statement is not intended, however, to be all-inclusive. The purchaser should consult other sources for details not covered by the public offering statement.

The public offering statement summarizes information and documents furnished by the declarant to the Virginia Common Interest Community Board. The board has carefully reviewed the public offering statement to ensure that it is an accurate summary but does not guarantee its accuracy. In the event of any inconsistency between the public offering statement and the material it is intended to summarize, the latter will control.

Under Virginia law a purchaser of a condominium unit is afforded a 10-day period during which he may cancel the contract of sale and obtain a full refund of any sums deposited in connection with the contract. The 10-day period begins running on the contract date or the date of delivery of a public offering statement, whichever is later. The purchaser should inspect the condominium unit and all common areas and obtain professional advice. If the purchaser elects to cancel, he must deliver notice of cancellation to the declarant by hand or by United States mail, return receipt requested.

The following are violations of Virginia law and should be reported to the Virginia Common Interest Community Board, Perimeter Center, Suite 400, 9960 Mayland Drive, Richmond, Virginia 23233:

1. A misrepresentation made in the public offering statement.

2. An oral modification of the public offering statement.

3. A representation that the board has passed on the merits of the condominium units being offered or endorses the condominium.

PURCHASER SHOULD READ THIS DOCUMENT FOR HIS OWN PROTECTION

18VAC48-20-240. Nature of information to be included.

A. The provisions of §§ 55-79.90 A and 55-79.94 A of the Code of Virginia, and 18VAC48-20-210 through 18VAC48-20-720 shall be strictly construed to promote full and accurate disclosure in the public offering statement and, thereby, to protect the interests of purchasers.

B. The requirements for disclosure are not exclusive. In addition to expressly required information, the declarant shall disclose all other available information that may reasonably be expected to affect the decision of the ordinarily prudent purchaser to accept or reject the offer of a condominium unit. The declarant shall disclose any additional information necessary to make the required information not misleading. No information may be presented in such a fashion as to obscure the facts, to encourage a misinterpretation of the facts, or otherwise to mislead a purchaser.

C. No information shall be incorporated by reference to an extrinsic source that is not readily available to an ordinary purchaser. Whenever required information is not known or not reasonably available, such fact shall be stated in the public offering statement with a brief explanation. Whenever special circumstances exist that would render required disclosure inaccurate or misleading, the required disclosure shall be modified to accomplish the purpose of the requirement or the disclosure shall be omitted, provided that such modification or omission promotes full and accurate disclosure.

D. Disclosure shall be made of pertinent facts, events, conditions, or other states of affairs that the declarant has reason to believe will occur or exist in the future or which the declarant intends to cause to occur or exist in the future. Disclosure relating to future facts, events, conditions or states of affairs shall be limited by the provisions of subsection F of this section.

E. The public offering statement shall be as brief as is consistent with full and accurate disclosure. In no event shall the public offering statement be made so lengthy or detailed as to discourage close examination.

F. Expressions of opinion in the public offering statement shall be deemed inconsistent with full and accurate disclosure unless there is ample foundation in fact for the opinion; provided, however, that this sentence shall not affect in any way the declarant's duty to set forth a projected budget for the condominium's operation.

G. Except for brief excerpts therefrom, the public offering statement shall not incorporate verbatim portions of the condominium instruments or other documents. The purchaser's attention may be directed to pertinent portions of the declaration, bylaws, or other documents attached to the public offering statement that are too lengthy to incorporate verbatim.

H. Maps, photographs, and drawings may be utilized in the public offering statement, provided that such utilization promotes full and accurate disclosure.

18VAC48-20-250. Readability.

The public offering statement shall be clear and understandable. Determinations as to compliance with the standards of this paragraph are within the exclusive discretion of the board.

18VAC48-20-260. Summary of important considerations.

A. Immediately following the first page and before the table of contents, the public offering statement shall include a summary of important considerations consisting of particularly noteworthy items of disclosure. Certain summary

statements are required by subsection D of this section. Other summary statements may be proposed by the declarant or included by order of the board for the purpose of reinforcing the disclosure of significant information not otherwise included in the summary of important considerations. No summary statement shall be included for the sole purpose of enhancing the sales appeal of condominium units.

B. The summary shall be titled as such and shall be introduced by the following statement: "Following are important matters to be considered in acquiring a condominium unit. They are highlights only. The narrative sections should be examined to obtain detailed information." Each summary statement shall include a reference to pertinent portions, if any, of the public offering statement for details respecting the information summarized. Each summary statement, exclusive of any reference to other portions of the public offering statement, shall be limited to not more than three sentences except that the board may, by order, permit or require additional sentences.

C. Whenever the board finds that the significance to purchasers of certain information requires that it be disclosed more conspicuously than by regular presentation in the summary of important considerations, it may provide, by order, that a summary statement of the information shall be underscored, italicized, or printed in a larger or heavier or different color type than the remainder of the public offering statement.

D. Summary statements shall be made of the substance of the following facts and circumstances, to the extent that each is applicable. Specific information shall be substituted for the general information indicated by brackets. Appropriate modifications shall be made to reflect facts and circumstances varying from those indicated herein:

1. The condominium will be governed by a unit owners' association. Each unit owner will have a vote on certain decisions of the association and will be bound by all decisions of the association including those with which he disagrees.

2. Certain decisions of the unit owners' association will be made by an executive organ.

3. The expenses of operating the unit owners' association will be paid by the unit owners on the basis of a periodic budget. Each unit owner will pay a periodic assessment. A unit owner cannot reduce the amount of his assessment by refraining from use of the common elements.

4. If a unit owner fails to pay an assessment when due, the unit owners' association will have a lien against his condominium unit. Certain other penalties may be applied.

5. The declarant must pay assessments on unsold condominium units.

6. The declarant, its predecessors or principal officer has undergone a debtor's relief proceeding.

7. The declarant will retain control of the unit owners' association for an initial period.

8. A managing agent will perform the routine operations of the unit owners' association. The managing agent is related to the declarant, director, or officer of the unit owners' association.

9. The declarant may rent unsold condominium units. The right of any unit owner to rent his unit is subject to restrictions.

10. The declarant may expand or contract the condominium or convert convertible land or space without the consent of any unit owner.

11. The right of the unit owner to resell his condominium unit is subject to restrictions.

12. The units are restricted to residential use.

13. The unit owner may not alter the structure of his unit or modify the exterior of his unit without the approval of the declarant or unit owners' association.

14. The unit owners' association will obtain certain insurance benefiting the unit owner, but the unit owner should obtain other insurance on his own.

15. The unit owner will pay real estate taxes on his condominium unit.

16. The unit owner's right to bring legal action against the declarant is limited by certain provisions of the purchase contract; specifically the contract requires the unit owner or the association to pay the attorney's fee of the declarant; requires the unit owner to waive trial by jury in any civil action against the declarant.

17. The condominium is (is not) subject to development as a time-share.

18. Marketing and sale of condominium units will be conducted in accordance with the Virginia Fair Housing Law, Chapter 5.1 (§ 36-96.1 et seq.) of Title 36 of the Code of Virginia and the Virginia Condominium Act (§ 55-79.52 C of the Code of Virginia).

18VAC48-20-270. Narrative sections.

The information to be presented in the public offering statement shall be broken down into sections in order to facilitate reading and comprehension. Certain sections are required by 18VAC48-20-280 through 18VAC48-20-430. Supplementary sections may be included whenever necessary to incorporate information that cannot properly be placed within one of the required sections. Supplementary section captions that indicate the nature of the material presented thereunder shall be utilized. The sections may be set out in

any order that lends itself to the organized presentation of information. Section captions may be underscored, italicized, or printed in larger or heavier or different color type than the remainder of the public offering statement. A table of contents shall be utilized.

18VAC48-20-280. Narrative sections; condominium concept.

The public offering statement shall contain a section captioned "The Condominium Concept." The section shall consist of a brief discussion of the condominium form of ownership. The section shall discuss the distinction among units, common elements, and limited common elements, if any, and shall explain ownership of an undivided interest in the common elements. Attention shall be directed to any features of ownership of the condominium units being offered which are different from typical condominium unit ownership.

18VAC48-20-290. Narrative sections; creation of condominium.

The public offering statement shall contain a section captioned "Creation of the Condominium." The section shall briefly explain the manner in which the condominium was or will be created and shall briefly describe each of the condominium instruments, their functions, and the procedure for their amendment. The section shall indicate where each of the condominium instruments or copies thereof may be found. In the case of a condominium located in Virginia or in a jurisdiction having a law similar to § 55-79.96 of the Code of Virginia, the section shall indicate the purchaser will receive copies of the recorded declaration and bylaws, or amendments, as appropriate, within the time provided for in the applicable statute.

18VAC48-20-300. Narrative sections; description of condominium.

A. The public offering statement shall contain a section captioned "Description of the Condominium." The section shall contain a narrative description of the condominium. The description shall include statements of (i) the land area of the condominium; (ii) the number of units in the condominium; (iii) the number of units in the offering; (iv) the number of units in the condominium planned to be rented; and (v) whether at the time of registration the declarant intends to sell more than 20% of the units to persons who do not intend to occupy the units as their primary residence.

B. If the condominium is contractable, expandable or includes convertible land or space, the section shall contain a brief description of each such feature including the land area and the maximum number of units or maximum number of units per acre that may be added, withdrawn, or converted, as the case may be, together with a statement of the declarant's plans for the implementation of each such feature. In the case of a contractable or expandable condominium, the section shall contain the substance of the following statement: "The construction and development of the condominium may be abandoned or altered, at the declarant's option, short of completion and land or buildings originally intended for condominium development may be put to other uses or sold." In the case of a condominium including convertible land, the section shall contain the substance of the following statements: "Until such time as the declarant converts the convertible land into units or limited common elements, the declarant is required by the Virginia Condominium Act to pay for the upkeep of the convertible land. Once the convertible land has been converted, maintenance and other financial responsibilities associated with the land so designated become the responsibility of the unit owners and, therefore, may be reflected in the periodic assessment for the condominium." If the common expense assessments are expected to increase should convertible land be converted, this section shall also disclose an estimate of the approximate percentage by which such assessments are expected to increase by reason of any such conversion.

C. The section shall state whether or not the units are restricted solely to residential use and shall state where this and other use and occupancy restrictions are to be found in the condominium instruments.

18VAC48-20-310. Narrative section; individual units.

The public offering statement shall contain a section captioned "Individual Units." The section shall contain a general description of the various type units being offered, together with the dates on which substantial completion of unfinished units is anticipated. The section shall discuss what restrictions, if any, exist as to changes unit owners may make to the structure or exterior of their units, whether or not said exterior is a portion of the common elements.

18VAC48-20-320. Narrative sections; common elements.

A. The public offering statement shall contain a section captioned "Common Elements." The section shall contain a general description of the common elements.

B. A statement of the anticipated completion dates of unfinished common elements shall be included except that no such statement shall be necessary with respect to common elements that are completed or expected to be substantially complete when the units are completed.

C. With respect to common elements that the declarant intends to build or place on the condominium but which are not expected to be substantially complete when the units are completed, the section shall state: (i) in the case of a condominium located in Virginia, the nature, source and extent of the obligation to complete such common elements that the declarant has incurred or intends to incur upon recordation of the condominium instruments pursuant to §§ 55-79.58 A and 55-79.67(a)(1) of the Code of Virginia and applicable provisions of the condominium instruments and

pursuant to § 55-79.58:1 of the Code of Virginia, the declarant has filed with the Common Interest Community Board a bond to insure completion of improvements to the common elements that the declarant has incurred or intends to incur upon recordation of the condominium instruments; and (ii) in the case of a condominium located outside of Virginia, the nature, source, and extent of the obligation to complete such common elements that the declarant has incurred or intends to incur under the law of the jurisdiction in which the condominium is located.

D. The section shall describe any limited common elements that are assigned or that may be assigned and shall indicate the reservation of exclusive use. In the case of limited common elements that may be assigned, the section shall state the manner of such assignment or reassignment.

E. The section shall indicate the availability of vehicular parking spaces including the number of spaces available per unit and restrictions on or charges for the use of spaces.

18VAC48-20-330. Narrative sections; declarant.

A. The public offering statement shall contain a section captioned "The Declarant." The section shall contain a brief history of the declarant with emphasis on its experience in condominium development.

B. The following information shall be stated with regard to persons immediately responsible for the development of the condominium: (i) name; (ii) length of time associated with the declarant; (iii) role in the development of the condominium; and (iv) experience in real estate development. If different from the persons immediately responsible for the development of the condominium, the principal officers of the declarant shall be identified.

C. If the declarant or its parent or predecessor organization has, during the preceding 10 years, been adjudicated a bankrupt or has undergone any proceeding for the relief of debtors, such fact or facts shall be stated. If any of the persons identified pursuant to subsection B of this section has, during the preceding three years, been adjudicated a bankrupt or undergone any proceeding for the relief of debtors, such fact or facts shall be stated.

D. The section shall indicate any final action taken by an administrative agency or civil or criminal court that reflects adversely upon the performance of the declarant as a developer of real estate projects. The section shall also indicate any current or past proceedings brought against the declarant by any condominium unit owners' association or by its executive organ or any managing agent on behalf of such association or that has been certified as a class action on behalf of some or all of the unit owners. For the purposes of the previous sentence with respect to past proceedings, if the ultimate disposition of those proceedings is one that reflects adversely upon the performance of the declarant, that disposition shall be disclosed. The board has the sole discretion to require additional disclosure of any legal proceedings where it finds such disclosure necessary to assure full and accurate disclosure.

18VAC48-20-340. Narrative sections; terms of offering.

A. The public offering statement shall contain a section captioned "Terms of the Offering." The section shall discuss the expenses to be borne by a purchaser in acquiring a condominium unit and present information regarding the settlement of purchase agreements as provided in subsections B through G of this section.

B. The section shall indicate the offering prices for condominium units or a price range for condominium units, if either is established.

C. The section shall set forth the significant terms of any financing offered by or through the declarant to purchasers. Such discussion shall include the substance of the following statement: "Financing is subject to additional terms and conditions stated in the loan commitment or instruments."

D. The section shall discuss in detail any settlement costs that are not normal for residential real estate transactions including, without limitation, any contribution to the initial or working capital of the unit owners' association to be paid by a purchaser at settlement.

E. The section shall discuss any penalties or forfeitures to be incurred by a purchaser upon default in performance of a purchase agreement that are not normal for residential real estate transactions. Penalties or forfeitures to be discussed include, without limitation, the declarant's right to retain sums deposited in connection with a purchase agreement in the event of a refusal by a lending institution to provide financing to a purchaser who has made proper application for same.

F. The section shall discuss the right of the declarant to cancel a purchase agreement upon failure of the declarant to obtain purchase agreements on a given number or percentage of condominium units being offered or upon failure of the declarant to meet other conditions precedent to obtaining necessary financing.

G. The section shall set forth any provisions in the contract that require the unit owner or the association to pay the attorney's fee of the declarant or require the unit owner to waive trial by jury in any civil action against the declarant and the section shall set forth the paragraph or section and page number of the contract where such provision is located.

18VAC48-20-350. Narrative sections; encumbrances.

A. The public offering statement shall contain a section captioned "Encumbrances." The section shall include the significant terms of any encumbrances, easements, liens and matters of title affecting the condominium as provided in subsections B through I of this section.

B. Except to the extent that such encumbrances are required to be satisfied or released by § 55-79.46 A of the Code of Virginia, or a similar law, the section shall describe every mortgage, deed of trust, other perfected lien or choate mechanics or materialmen's lien affecting all or any portion of the condominium other than those placed on condominium units by their purchasers or owners. Such description shall identify the lender secured or the lien holder shall state the nature and original amount of the obligation secured, shall identify the party having primary responsibility for performance of the obligation secured and shall indicate the practical effect upon unit owners of failure of said party to perform the obligation.

C. Normal easements for utilities, municipal rights-of-way, and emergency access shall be described only as such, without reference to ownership, location or other details.

D. Easements reserved to the declarant to facilitate conversion, expansion, or sales shall be briefly described.

E. Easements reserved to the declarant or to the unit owners' association or its representatives or agents for access to units shall be briefly described. In the event that access to a unit may be had without notice to the unit owner, such fact shall be stated.

F. Easements across the condominium reserved to the owners or occupants of land located in the vicinity of the condominium including, without limitation, easements for the use of recreational areas shall be briefly described.

G. Covenants, servitudes, or other devices that create an actual or potential restriction on the right of any unit owner to use and enjoy his unit or any portion of the common elements other than limited common elements shall be briefly described.

H. Any matter of title that is not otherwise required to be disclosed by the provisions of this section and that has or may have a substantial adverse impact upon units owners' interests in the condominium shall be described. Under normal circumstances, an easement for encroachments and an easement running in favor of unit owners for ingress and egress across the common elements shall be deemed not to have a substantial adverse impact upon unit owners' interest in the condominium.

I. The section need not include any information required to be disclosed by 18VAC48-20-300 C, 18VAC48-20-310, or 18VAC48-20-360.

18VAC48-20-360. Narrative sections; restrictions on transfer.

The public offering statement shall include a section captioned "Restrictions on Transfer." The section shall describe and explain any rights of first refusal, preemptive rights, limitations on leasing, or other restraints on free alienability created by the condominium instruments or the rules and regulations of the unit owners' association and that affect the unit owners' right to resell, lease, or otherwise transfer an interest in his condominium unit.

18VAC48-20-370. Narrative sections; unit owners' association.

A. The public offering statement shall contain a section captioned "Unit Owners' Association." The section shall discuss the manner in which the condominium is governed and administered and shall include the information required by subsections B through J of this section.

B. The section shall state in summary fashion the functions of the unit owners' association.

C. The section shall describe the organizational structure of the unit owners' association. Such description shall indicate (i) the existence of or provision for an executive organ, officers and managing agent, if any; (ii) the relationships between such persons or bodies; (iii) the manner of their election or appointment; and (iv) the assignment or delegation of responsibility for the performance of the functions of the unit owners' association.

D. The section shall describe the allocation of voting power among the unit owners.

E. The section shall discuss any retention by the declarant of control over the unit owners' association.

F. The managing agent, if any, shall be identified. If a managing agent is to be employed in the future, the criteria, if any, for selection of the managing agent shall be briefly stated. The section shall indicate any relationship between the managing agent and the declarant or a member of the executive organ or an officer of the unit owners' association. The duration of any management agreement shall be stated.

G. Except to the extent otherwise disclosed in connection with discussion of a management agreement, the significant terms of any lease of recreational areas or similar contract or agreement affecting the use, maintenance, or access of all or any part of the condominium shall be stated. The section shall include a brief narrative statement of the effect of each such agreement upon a purchaser.

H. Rules and regulations of the unit owners' association and the authority to promulgate rules and regulations shall be discussed. Particular provisions of the rules and regulations shall not be discussed except as required by other provisions of these condominium regulations. The purchaser's attention shall be directed to the copy of rules and regulations, if any, attached to the public offering statement.

I. Any standing committees established or to be established to perform functions of the unit owners' association shall be discussed. Such committees include, without limitation, architectural control committees and committees having the

authority to interpret condominium instruments, rules and regulations, or other operative provisions.

J. Unless required to be disclosed by 18VAC48-20-350 E, any power of the declarant or of the unit owners' association or its representatives or agents to enter units shall be discussed. To the extent each is applicable, the following facts shall be stated: (i) a unit may be entered without notice to the unit owner; (ii) the declarant or the unit owners' association or its representatives or agents are empowered to take actions or perform work in a unit without the consent of the unit owner; and (iii) the unit owner may be required to bear the costs of actions so taken or work so performed.

18VAC48-20-380. Narrative sections; surrounding area.

The public offering statement shall contain a section captioned "Surrounding Area." The section shall briefly describe the zoning of the immediate neighborhood of the condominium. The section may indicate the existence and proximity of community facilities available to unit owners.

18VAC48-20-390. Narrative sections; financial matters.

A. The public offering statement shall contain a section captioned "Financial Matters." The section shall discuss the expenses incident to the ownership of a condominium unit, excluding certain taxes, in the manner provided in subsections B through I of this section.

B. The section shall distinguish, in general terms, the following categories of costs of operation, maintenance, repair, and replacement of various portions of the condominium: (i) common expenses apportioned among and assessed to all of the condominium units pursuant to § 55-79.83 C of the Code of Virginia or similar law or condominium instrument provision (referred to elsewhere in these regulations as "regular common expenses"); (ii) common expenses, if any, apportioned among and assessed to less than all of the condominium units pursuant to § 55-79.83 A and B of the Code of Virginia or similar law or condominium instrument provisions; and (iii) costs borne directly by individual unit owners. The section need not discuss taxes assessed against individual condominium units and payable directly by their owners.

C. A projected budget shall be prepared showing regular common expenses to be assessed for the first year of the condominium's operation or, if different, the latest year for which projections are available; provided, however, that in no event shall the year for which the budget is projected have commenced more than six months prior to the date application for registration is filed. The projected budget shall be attached to the public offering statement as an exhibit and the section shall direct the purchaser's attention thereto. The section shall describe the manner in which the projected budget is established.

D. The section shall describe the manner in which regular common expenses are apportioned among and assessed to the condominium units. The section shall include the substance of the following statement, if applicable: "A unit owner cannot obtain a reduction of the regular common expenses assessed against his unit by refraining from use of any of the common elements."

E. The section shall describe budget provisions for reserves for capital expenditures and for contingencies, if any.

F. The section shall describe provisions for special assessments to be levied in the event that budgeted assessments provide insufficient funds for operation of the unit owners' association.

G. The section shall discuss any common expenses actually planned to be specially assessed pursuant to § 55-79.83 A and B of the Code of Virginia or similar law or condominium instrument provisions.

H. The section shall indicate any fee, rental, or other charge to be payable by unit owners other than through common expense assessments to any party for use of the common elements or for use of recreational or parking facilities in the vicinity of the condominium. As an exception to the provisions of this subsection, the section need not discuss any fees provided for in §§ 55-79.84 H and 55-79.85 of the Code of Virginia, or similar laws or condominium instrument provisions or any costs for certificates for resale.

I. The section shall discuss the effect of failure of a unit owner to pay when due assessments levied against his condominium unit. Such discussion shall indicate provisions for penalties to be applied in the case of overdue assessments and for acceleration of unpaid assessments. The section shall indicate the existence of a lien for unpaid assessments and where applicable the bond conditioned on the payment of assessments filed with the board in accordance with § 55-79.84:1 of the Code of Virginia. The section shall include, to the extent applicable, the substance of the following statement: "The unit owners' association may obtain payment of overdue assessments by foreclosure of the lien resulting in a forced sale of the condominium unit or by suing the unit owner."

18VAC48-20-400. Narrative sections; insurance.

The public offering statement shall contain a section captioned "Insurance." The section shall describe generally the insurance on the condominium to be maintained by the unit owners' association. The section shall state, with respect to such insurance, each of the following circumstances, to the extent applicable: (i) property damage coverage will not insure personal property belonging to unit owners; (ii) property damage coverage will not insure improvements to a unit that increase its value beyond the limits of coverage provided in the unit owners' association's policy, and (iii) liability coverage will not insure against liability arising from

an accident or injury occurring within a unit or as a result of the act or negligence of a unit owner. The section shall indicate any conditions imposed by the condominium instruments or rules and regulations to which insurance obtained directly by unit owners will be subject. Such indication may be made by reference to pertinent provisions of the condominium instruments or rules and regulations.

18VAC48-20-410. Narrative sections; taxes.

A. The public offering statement shall contain a section captioned "Taxes." The section shall describe all existing or proposed taxes to be levied against condominium units individually including, without limitation, real property taxes, sewer connection charges, and other special assessments.

B. With respect to real property taxes, the section shall state the tax rate currently in effect. The section shall also state a procedure or formula by means of which the taxes may be estimated.

C. With respect to other taxes, the section shall describe each tax in sufficient detail as to indicate the time at which the tax will be levied and the actual or estimated amount to be levied.

18VAC48-20-420. Narrative sections; governmental approval.

The public offering statement shall contain a section captioned "Governmental Approval." The section shall discuss approval of a site plan and issuance of a building permit by appropriate governmental authorities. The section shall also discuss compliance with all zoning ordinances, building codes, housing codes, and similar laws affecting the condominium.

18VAC48-20-430. Narrative sections; warranties.

The public offering statement shall contain a section captioned "Warranties." The section shall describe any warranties provided by or through the declarant on the units or the common elements. If any such warranty is different from the warranty provided by § 55-79.79 B of the Code of Virginia or a similar applicable law, the section shall include the substance of the following statement: "Nothing contained in the warranty provided by the declarant shall limit the protection afforded by the statutory warranty."

18VAC48-20-440. Documents to be included.

Copies of the following documents shall be attached as exhibits to the public offering statement: (i) the declaration; (ii) the bylaws; (iii) the projected budget; (iv) rules and regulations of the unit owners' association; (v) any management contract; (vi) any lease of recreational areas; and (vii) any similar contract or agreement affecting the use, maintenance or access of all or any part of the condominium. Other pertinent documents may be attached to the public offering statement including, without limitation, a purchase agreement, a certificate of warranty, a warranty limitation agreement, and a depiction of unit layouts.

18VAC48-20-450. Documents from other jurisdictions.

A. A substituted disclosure document is a document originally prepared in compliance with the laws of another jurisdiction and modified in accordance with the provisions of this section in order to fulfill the disclosure requirements established for public offering statements by §§ 55-79.90 A and, if applicable, 55-79.94 A of the Code of Virginia. A substituted disclosure document shall not be employed in the case of a condominium located in Virginia.

B. The substituted disclosure document shall be prepared by deleting from the original disclosure document: (i) references to any governmental agency of another jurisdiction to which application has been made or will be made for registration or related action; (ii) references to the action of such governmental agency relative to the condominium; (iii) statements of the legal effect in another jurisdiction of delivery, failure to deliver, acknowledgement of receipt, or related events involving the disclosure document; (iv) the effective date or dates in another jurisdiction of the disclosure document; and (v) all other information that is untrue, inaccurate, or misleading with respect to marketing, offers or disposition of condominium units in Virginia.

C. The substituted disclosure document shall incorporate all information not otherwise included that is necessary to effect fully and accurately the disclosures required by §§ 55-79.90 A and, if applicable, 55-79.94 A of the Code of Virginia. The substituted disclosure document shall clearly explain any nomenclature that is different from the definitions provided in § 55-79.41 of the Code of Virginia or that, for any other reason, may confuse purchasers in Virginia. Any information not required by §§ 55-79.90 A and 55-79.94 A of the Code of Virginia may be deleted, provided that such deletion does not render the required information misleading.

D. The first page of the substituted disclosure document shall be prepared to conform as closely as possible to the specimen appended as Appendix A to these regulations and made a part hereof. The three blanks in the first sentence of the third paragraph of the specimen shall be completed by insertion of the following information: (i) the designation by that the original disclosure document is identified in the jurisdiction pursuant to whose laws it was prepared; (ii) the governmental agency of such other jurisdiction with that the original disclosure document is or will be filed; and (iii) the jurisdiction of such filing.

E. No portion of the substituted disclosure document may be underscored, italicized or printed in larger, heavier, or different color type than the remainder of the substituted disclosure document, except: (i) as required by subsection D of this section; (ii) as required or permitted in the original disclosure document by the laws of the jurisdiction pursuant

to which it was prepared; and (iii) as provided by order of the board in cases in which it finds that the significance to purchasers of certain information requires that such information be disclosed more conspicuously than by regular presentation in the substituted disclosure document.

F. The provisions of subdivision 2 of § 55-79.88, §§ 55-79.90, and 55-79.94 A of the Code of Virginia and 18VAC48-20-210, 18VAC48-20-230, 18VAC48-20-240, 18VAC48-20-250, 18VAC48-20-440, and 18VAC48-20-450 shall apply to substituted disclosure documents in the same manner and to the same extent that they apply to public offering statements.

18VAC48-20-460. Condominium securities.

A prospectus used in lieu of a public offering statement shall contain or have attached thereto copies of documents, other than the projected budget required to be attached to a public offering statement by 18VAC48-20-440. Such prospectus shall be deemed to satisfy all of the disclosure requirements of 18VAC48-20-260 through 18VAC48-20-440 and Part VII (18VAC48-20-540 through 18VAC48-20-650) of this chapter. In the case of a conversion condominium, the prospectus shall have attached thereto, in suitable form, the information required by 18VAC48-20-500, 18VAC48-20-510 C and D, and 18VAC48-20-520 to be disclosed in public offering statements for conversion condominiums. The provisions of subdivision 2 of § 55-79.88 of the Code of Virginia shall apply to the delivery of the prospectus in the same manner and to the same extent that they apply to the delivery of a public offering statement.

Part VI
Conversion Condominiums

18VAC48-20-470. Public offering statement for conversion condominium; general instructions.

The public offering statement for a conversion condominium shall conform in all respects to the requirements of 18VAC48-20-210 through 18VAC48-20-460 and Part VII (18VAC48-20-540 through 18VAC48-20-650) of this chapter. In addition, the public offering statement for a conversion condominium shall (i) contain special disclosures in the narrative sections captioned "Description of the Condominium," "Terms of the Offering" and "Financial Matters"; and (ii) incorporate narrative sections captioned "Present Condition of the Condominium" and "Replacement Requirements." Provisions for such additional disclosure are set forth in 18VAC48-20-490 through 18VAC48-20-520.

18VAC48-20-480. Public offering statement for conversion condominium; special definitions.

As used in this section and in 18VAC48-20-490 through 18VAC48-20-520:

"Class of physical assets" means two or more physical assets that are substantially alike in function, manufacture, date of construction or installation, and history of use and maintenance.

"Expected useful life" means the estimated number of years from the date on that such estimate is made until the date when, because of the effects of time, weather, stress, or wear, a physical asset will become incapable of performing its intended function and will have to be replaced.

"Major utility installation" means a utility installation or portion thereof that is a common element or serves more than one unit.

"Physical asset" is a generic term and means either a structural component or a major utility installation.

"Present condition" means condition as of the date of the inspection by means of which condition is determined.

"Replacement cost" means the expenditure that would be necessary to replace a physical asset with an identical or substantially equivalent physical asset as of the date on which replacement cost is determined and includes all costs of removing the physical asset to be replaced, of obtaining its replacement and of erecting or installing the replacement.

"Structural component" means a component constituting any portion of the structure of a unit or common element and in which a defect would reduce the stability or safety of all or a part of the structure below accepted standards or restrict the normal intended use of all or a part of the structure.

"Structural defect" shall have the meaning given in § 55-79.79 B of the Code of Virginia.

18VAC48-20-490. Description of conversion condominium.

In addition to the information required by 18VAC48-20-300, the section captioned "Description of the Condominium" shall indicate that the condominium is a conversion condominium. The term conversion condominium shall be defined and the particular circumstances that bring the condominium within the definition shall be stated. The nature and inception date of prior occupancy of the property being converted shall be stated.

18VAC48-20-500. Financial matters, conversion condominium.

A. The provisions for capital reserves described in the section captioned "Financial Matters" shall be supplemented by the information set forth in subsections B and C of this section.

B. The section shall state the aggregate replacement cost of all physical assets whose replacement costs will constitute regular common expenses and whose expected useful lives are 10 years or less. For the purposes of this subsection, an expected useful life which is stated as being within a range of years pursuant to 18VAC48-20-520 E shall be deemed to be

10 years or less, if the lower limit of such range is 10 years or less. The total common expense assessments per unit that would be necessary in order to accumulate an amount of capital reserves equal to such aggregate replacement cost shall be stated.

C. The section shall state the amount of capital reserves that will be accumulated by the unit owners' association during the period of declarant's control together with any provisions of the condominium instruments specifying the rate at which reserves are to be accumulated thereafter. If any part of the capital reserves will or may be obtained other than through regular common expense assessments, such fact shall be stated.

D. The actual expenditures made over a three-year period on operation, maintenance, repair, or other upkeep of the property prior to its conversion to condominium shall be set forth in tabular form as an exhibit immediately preceding or following the budget attached to the public offering statement pursuant to 18VAC48-20-390 C. Distinction shall be made between expenditures that would have constituted regular common expenses and expenditures that would have been borne by unit owners individually if the property had been converted to condominium prior to the commencement of the three-year period. To the extent that it is impossible or impracticable to so distinguish the expenditures it shall be assumed that they would have constituted regular common expenses.

Both types of expenditures shall be cumulatively broken down on a per unit basis in the same proportion that common expenses are or will actually be assessed against the condominium units. The three-year period to which this subsection refers shall be the most recent three-year period prior to application for registration during which the property was occupied and for which expenditure information is available. The expenditure information shall indicate the years for which expenditures are stated. If any portion of the property being converted to condominium was not occupied for the full three-year period, expenditure information shall be set forth for the maximum period the property was occupied. The "Financial Matters" section shall direct the purchaser's attention to the expenditure information.

18VAC48-20-510. Present condition of conversion condominium.

A. The section captioned "Present Condition of the Condominium" shall contain a statement of the approximate dates of original construction or installation of all physical assets in the condominium. A single construction or installation date may be stated for all of the physical assets: (i) in the condominium; (ii) within a distinctly identifiable portion of the condominium; or (iii) within a distinctly identifiable category of physical assets. A statement made pursuant to the preceding sentence shall include a separate reference to the construction or installation date of any physical asset within a stated group of physical assets that was constructed or installed significantly earlier than the construction or installation date indicated for the group generally. No statement shall be made that a physical asset or portion thereof has been repaired, altered, improved, or replaced subsequent to its construction or installation unless the approximate date, nature and extent of such repair, alteration, improvement or replacement is also stated.

B. Subject to the exceptions provided in subsections D, E and F of this section, the section captioned "Present Condition of the Condominium" shall contain a description of the present condition of all physical assets within the condominium. The description of present condition shall disclose all structural defects and incapacities of major utility installations to perform their intended functions as would be observable, detectable, or deducible by means of standard inspection and investigative techniques employed by architects or professional engineers, as the case may be.

C. The section shall indicate the dates of inspection by means of which the described present condition was determined; provided, however, that such inspections shall have been conducted not more than one year prior to the date of filing the application for registration. The section shall identify the party or parties by whom present condition was ascertained and shall indicate the relationship of such party or parties to the declarant.

D. A single statement of the present condition of a class of physical assets shall suffice to disclose the present condition of each physical asset within the class; provided, however, that, unless subsection F of this section applies, such statement shall include a separate reference to the present condition of any physical asset within the class that is significantly different from the present condition indicated for the class generally.

E. The description of present condition may include a statement that all structural components in the condominium or in a distinctly identifiable portion thereof are in sound condition except those for which structural defects are noted.

F. In a case in which there are numerous physical assets within a class of physical assets and inspection of each such physical asset is impracticable, the description of present condition of all the physical assets within the class may be based upon an inspection of a number of them selected at random, provided that the number selected is large enough to yield a reasonably reliable sample and that the total number of physical assets within the class and the number selected are disclosed.

18VAC48-20-520. Replacement requirements in conversion condominium.

A. Subject to the exceptions provided in subsections B and H of this section, the section captioned "Replacement Requirements" shall state the expected useful lives of all

physical assets in the condominium. The section shall state that expected useful lives run from the date of the inspection by means of which the expected useful lives were determined. Such inspection date shall be stated.

B. A single statement of the expected useful life of a class of physical assets shall suffice to disclose the expected useful life of each physical asset within the class; provided, however, that such statement shall include a separate reference to the expected useful life of any physical asset within such class that is significantly shorter than the expected useful life indicated for the class generally.

C. An expected useful life may be qualified. A qualified expected useful life is an expected useful life expressly conditioned upon a given use or level of maintenance or other factor affecting longevity. No use, level of maintenance or other factor affecting longevity shall be stated as a qualification unless such use, level of maintenance or factor affecting longevity is normal or reasonably anticipated for the physical asset involved. If appropriate, an expected useful life may be stated as being indefinite, subject to the stated qualification that the physical asset involved must be properly used and maintained. An expected useful life may be stated as being within a range of years, provided that the range is not so broad as to render the statement meaningless. In no event shall the number of years constituting the lower limit of such range be less than two-thirds of the number of years constituting the upper limit.

D. Subject to the exceptions provided in subsections E and H of this section, the section captioned "Replacement Requirements" shall state the replacement costs of all physical assets in the condominium including those whose expected useful lives are stated as being indefinite.

E. A statement of the replacement cost of a representative member of a class of physical assets shall suffice to disclose the replacement cost of each physical asset within the class; provided, however, that such statement shall include a separate reference to the replacement cost of any physical asset within the class which is significantly greater than the replacement cost indicated for the representative member of the class.

F. Distinction shall be made between replacement costs that will be common expenses and replacement costs that will be borne by unit owners individually. The latter type of replacement costs shall be broken down on a per unit basis. The purchaser's attention shall be directed to the "Financial Matters" section for an indication of the amount of the former type or replacement costs.

G. In any case in which the replacement cost of a physical asset may vary depending upon the circumstances surrounding its replacement, the stated replacement cost shall reflect the circumstances under which replacement will most probably be undertaken.

H. A single expected useful life and an aggregate replacement cost may be stated for all of the structural components of a building or structure that have both (i) the same expected useful lives and (ii) replacement costs that will constitute regular common expenses. A statement made pursuant to the preceding sentence shall be accompanied by statements of the expected useful lives and replacement costs, stated on a per unit basis, of all of the structural components of the building or structure whose expected useful lives differ from the general expected useful life or whose replacement costs will be borne by unit owners individually.

18VAC48-20-530. Notice to tenants.

No notice to terminate a tenancy provided for by § 55-79.94 B of the Code of Virginia shall be given prior to the registration of the condominium unit as to which the tenancy is to be terminated.

Part VII
Time-Share Condominiums

18VAC48-20-540. Public offering statement for time-share condominiums; general instructions.

This Part VII of the Condominium Regulations applies to those property developments in which purchasers are offered both condominium and time-share interests. The developer of a time-share condominium shall prepare one public offering statement that complies with the requirements of this part even though the developer may be required to register under both the Condominium Act (§ 55-79.39 et seq. of the Code of Virginia) and Real Estate Time-Share Act (§ 55-360 et seq. of the Code of Virginia).

The public offering statement for a time-share condominium shall conform in all respects to the requirements of 18VAC48-20-210 and 18VAC48-20-230 through 18VAC48-20-460. In addition, the public offering statement for a time-share condominium shall (i) contain special disclosures in the narrative sections captioned "Condominium Concept," "Description of Condominium," "Declarant," "Terms of Offering," "Encumbrances," "Unit Owners' Association," "Financial Matters," "Insurance," and "Taxes," and (ii) contain a narrative section entitled "Exchange Program."

18VAC48-20-550. Summary of important considerations.

In addition to the information required by 18VAC48-20-260 in the case of a time-share program, summary statements shall be made of the substance of the following facts and circumstances. Specific information shall be substituted for the general information indicated by brackets. Appropriate modifications shall be made to reflect facts and circumstances varying from those indicated herein:

1. The time-share program will [will not] be governed by a time-share owners' association.

2. Decisions affecting the time-share project will be made by the developer.

3. Each time-share owner cannot reduce the amount of his assessment by refraining from use of his time-share or the projects' facilities.

4. If a time-share owner fails to pay an assessment when due, the developer may impose certain sanctions or penalties, including the forfeiture of the time-share.

5. The developer, its principals, officers, directors, partners, or trustees have undergone [a debtor's relief proceeding].

6. A managing agent may perform routine operations for the operation, maintenance and upkeep of the time-share project, as determined by the developer. The managing agent is [affiliated with] the [developer, or a director or officer thereof].

7. The developer may rent on a transient basis, unsold time-shares. The right of a time-share use owner to rent his time-share is subject to [restrictions].

8. The right of a time-share owner to resell his time-share is subject to [restrictions].

9. The time-shares are restricted to residential use.

10. The time-share owner may not alter the structure or exterior of the unit in which his time-share is located.

11. The developer will obtain certain insurance benefiting the time-share use owner, but the time-share use owner should obtain additional insurance on his own.

12. The time-share owner may be required to pay applicable taxes imposed on the project similar in scope and design to taxes applicable to hotels, motels or other transient type accommodations.

13. Marketing and sale of time-shares will be conducted in accordance with Virginia Fair Housing Law (§ 36-96.1 et seq. of the Code of Virginia).

14. A time-share purchaser is required to make certain disclosures to purchasers in the resale of his time-share.

18VAC48-20-560. Condominium concept, time-share condominium.

In addition to the information required by 18VAC48-20-280, this section shall consist of discussion of the time-share form of ownership and shall include a detailed explanation of the type of time-share arrangement employed in the project.

18VAC48-20-570. Description of condominium, time share condominium.

In addition to the information required by 18VAC48-20-300, this section shall consist of a general description of the time-share program, the units, amenities and type of time-shares being made available to purchasers. The section shall include, without limitation, statements indicating:

1. The land area of the time-share project;

2. The number of units in the project;

3. The number of units in the project to be organized on a time-share basis;

4. An identification of units that are subject to time-sharing and the type of time-shares being offered;

5. The duration of the time-shares;

6. The different types of units available;

7. Provisions, if any, that have been made for public utilities in the time-share project, including water, electricity, telephone, and sewerage facilities;

8. Restrictions, if any, as to what changes a time-share owner may make to his unit in which his time-share is located; and

9. Whether or not the units are restricted solely to residential use.

18VAC48-20-580. Declarant/developer, time-share condominium.

In addition to the information required by 18VAC48-20-330, the following information shall be stated with regard to every director, partner or trustee of the declarant/developer: (i) name and address; and (ii) principal occupation. The name and address of each person owning or controlling an interest of 20% or more in the time-share project shall also be indicated.

18VAC48-20-590. Terms of offering, time-share condominium.

In addition to the information required by 18VAC48-20-340 A, this section shall set forth provisions with respect to the purchaser's right to cancel his purchase contract. Such disclosure shall be consistent with the applicable statutory provision, subdivision 2 of § 55-79.88 or § 55-376 of the Code of Virginia. Special escrow requirements of § 55-375 of the Code of Virginia shall be likewise described in this section.

18VAC48-20-600. Encumbrances, time-share condominium.

In addition to the information required by 18VAC48-20-350, regardless of the form of time-share project, the section shall describe the extent to which a time-share unit may become subject to a tax or other lien arising out of claims against other owners of the same unit. The section shall discuss the consequences that the filing of federal tax liens would have on the project.

18VAC48-20-610. Unit owners' association, time-share condominium.

A. In addition to the information required by 18VAC48-20-370, this section shall contain either a section captioned "Administration of Time-Share Estate Program" or a section captioned "Administration of Time-Share Use Program," depending upon the form of time-shares being offered by the developer. The section shall discuss the manner in which the time-share program will be governed and administered.

B. "Administration of time-share estate program."

1. The section shall describe the functions and the organization's structure of the time-share estate owners' association formed pursuant to the Virginia Nonstock Corporation Act. The description shall indicate:

a. The existence or provisions for a board of directors and officers;

b. The manner of their election or appointment;

c. The assignment or delegation of responsibility for performance of the functions of the unit owners' association; and

d. Those items outlined in subdivisions 2 through 10 of § 55-368 of the Code of Virginia.

2. The section shall describe the allocation of voting power among the time-share estate owners and will explain how votes will be cast. Any provision in the time-share instruments for regular meetings of the estate owners shall be mentioned.

3. The significant terms of any lease of recreational areas or similar contract or agreement affecting the use, maintenance or access of all or any part of the time-share shall be stated. A brief narrative statement of the effect of each of any such agreement shall be included.

4. Rules and regulations for the use, enjoyment, and occupancy of units, and the authority to promulgate and amend such rules shall be discussed. Included shall be a description of the method, if any, to be employed to assign or reserve occupancy periods for the time-share owners. Methods for providing alternate use periods or monetary compensation to a time-share owner if his contracted-for unit cannot be made available for the period to which the owner is entitled by schedule or by confirmed reservation shall be discussed.

5. Any standing committees established or to be established to perform functions of the time-share estate owners' association shall be discussed. Such committees include, without limitation, executive committees, architectural control committees, and committees, having the authority to interpret time-share instruments or rules and regulations.

6. Any power of the developer or of the time-share estate owners' association to enter units shall be discussed. To the extent each is applicable, the following facts shall be stated:

a. A unit may be entered without notice to the time-share owners;

b. The developer or representatives of the time-share estate owners' association are empowered to take actions or perform work in a unit without the consent of the units owners; and

c. The time-share owners may be required to bear the costs of actions so taken or work so performed.

7. The section shall describe any routine janitorial procedures that are to occur between occupancy periods of time-share owners, as well as any maintenance program that is to take place on an annual or semi-annual basis.

8. The managing agent, if any, shall be identified. If a managing agent is to be employed in the future, the criteria, if any, for selection of the managing agent shall be briefly stated. The section shall indicate any relationship between the managing agent and the developer or a member of the board of directors or an officer of the time-share estate owners' association. The duration of any management agreement shall be stated.

9. The section shall discuss any retention by the developer of control over the time-share estate owners' association. The association's power to pass special assessments against and raise the annual assessments of the time-share owners upon the termination of the developer control shall also be discussed.

C. "Administration of time-share use program." The section shall provide the information required by § 55-371 of the Code of Virginia.

18VAC48-20-620. Financial matters, time-share condominium.

A. In addition to the information required by 18VAC48-20-390, this section shall contain either a section captioned "Finances of Time Share Estate Ownership" or a section captioned "Finances of Time-Share Use Ownership," depending upon the form of time-share development used in the projects. The section shall discuss the expenses incident to the ownership of a time-share in the manner provided in subsections B through H of this section.

B. The section shall describe the nature of the costs and expenses of operating the time-share program and shall distinguish between those to be paid by the developer and those to be paid by the time-share owners. The section shall explain how the responsibilities for payment of operating costs will be apportioned among the time-share owners. In the case of a time-share estate program, this section shall describe

and distinguish between developer expenses and time-share estate occupancy expenses as well as the meaning of the "Developer Control Period" as outlined in § 55-369 of the Code of Virginia, and when it commences and ends. Mention shall be made of the developer's right to collect a periodic fee from the time-share estate owner for the payment of the latter expenses; the method of apportionment between time-share estate owners shall be explained.

C. The section shall contain a statement describing any current or expected fees or charges to be paid by time-share owners for the use and enjoyment of any facilities related to the project. This shall include, without limitation, any fee attributable to the use of recreational facilities mentioned in any of the time-share documents or during the marketing activities.

D. The section shall contain a statement describing the extent to which financial arrangements, if any, have been provided for completion of any time-share unit offered for sale.

E. The section shall describe any services that the developer provides or expenses it pays that may become at any subsequent time a time-share expense of the time-shares, and the projected time-share expense liability attributable to each of those services or expenses for each time-share.

F. The section shall contain the latest annual balance sheet and a projected budget for the program for one year after the date of the first transfer to a purchaser. After that one-year period, a current budget shall be included in lieu of the projected budget and annual balance sheet mentioned above. All budgets shall be accompanied by a statement indicating the name of the preparer of the budget, and a statement explaining all budgetary assumptions concerning occupancy and inflation. All budgets must include, without limitation: (i) a statement of the amount, or a statement that there is no amount, included in the budget as a reserve for repairs and replacements; and (ii) a statement of any other reserves. If the project is a time-share estate project and if the developer control period has not ended, the budget shall also include: (i) the projected common expense liability for all time-share owners; (ii) the projected common expense liability by category of expenditures; and (iii) a statement of the amount included in the budget reserved for repairs to and refurbishing of the project and the replacement of the personalty situated therein.

G. The "Finances of Time-Share Use Ownership" section shall, where the developer's equity in the project is less than $250,000, include a current audited financial statement disclosing the developer's net worth. Such statement shall specifically state the amount of equity in the project.

H. The section shall discuss the effect of failure of a time-share owner to pay when due the assessments, fees or charges levied against his time-share. Such discussion shall indicate provisions for penalties to be applied in the case of overdue assessments including the lien authorized by § 55-370 B of the Code of Virginia, and for the acceleration of unpaid assessments.

18VAC48-20-630. Insurance, time-share condominium.

In addition to the information required by 18VAC48-20-400, this section shall describe the insurance coverage provided for the benefit of time-share owners. Included shall be a discussion of the comprehensive general liability insurance for death, bodily injury, and property damage arising out of, or in connection with, the use and enjoyment of units by time-share estate owners or time-share use owners or their guests. It shall be made clear that in the case of a time-share estate project the costs associated with this liability insurance will be borne by the developer during the developer control period, and thereafter, the costs will be assumed by the time-share estate owners' association; and that in the case of a time-share use project, the costs associated with securing and maintaining such insurance shall be borne by the developer.

Depending on the time-share organization employed by the developer, subdivision 7 of § 55-368 or subdivision 7 of § 55-371 of the Code of Virginia shall be included in this discussion.

18VAC48-20-640. Taxes, time-share condominium.

In addition to the information required by 18VAC48-20-410, this section shall describe all existing or proposed taxes to be levied against time-shares individually including, without limitation, real property taxes, transient taxes, and other special assessments.

18VAC48-20-650. Exchange program, time-share condominium.

The public offering statement shall contain a section captioned "Exchange Program." if, at the time of purchase of a time-share, the purchaser is permitted or required to become a member of or a participant in an exchange program. An "exchange program" is a program offered by the developer or an independent exchange agent for the exchange of occupancy rights with the owners of time-shares of other time-share projects. This section shall contain the information required by § 55-374 B of the Code of Virginia.

Part VIII
Post-Registration Provisions

18VAC48-20-660. Material change defined.

As used in 18VAC48-20-670 through 18VAC48-20-700, "material change" means a change that renders inaccurate, incomplete, or misleading, any information or document disclosed in or attached to a public offering statement whose form and content are designated for use pursuant to 18VAC48-20-100 G or 18VAC48-20-680 B. Without

limiting the generality of the preceding sentence, a material change shall be whenever (i) information or a document required to be disclosed in or attached to a public offering statement but not so disclosed or attached by reason of its previous unavailability or nonexistence becomes available or comes into existence and (ii) a new budget is adopted.

18VAC48-20-670. Amendment of public offering statement.

A. Prior to or upon the occurrence of a material change, the declarant shall amend the public offering statement to disclose the modified or additional information or to include the modified or additional document, as the case may be. The declarant may amend the public offering statement other than in connection with a material change.

B. Amendment of the public offering statement may be accomplished in any intelligible manner and, to the extent that strict compliance with any of the provisions of these regulations governing the form of presentation of information in the public offering statement would be unduly burdensome, the declarant may deviate therefrom in amending the public offering statement, provided that (i) no such deviation shall be more extensive than is necessary and appropriate under the circumstances; (ii) the requirements of 18VAC48-20-230 and 18VAC48-20-280 are strictly observed and (iii) the presentation of information in the amended public offering statement is organized so as to facilitate reading and comprehension. Nothing contained herein shall authorize a deviation from strict compliance with a provision of these regulations governing the substance of disclosure in the public offering statement. If any information has become inaccurate or misleading by reason of the material change and is not deleted from the public offering statement in connection with its amendment, such fact shall be clearly noted.

C. Correction of spelling, grammar, omission or other similar errors not affecting the substance of a public offering statement shall not be deemed an amendment of the public offering statement for the purposes of these regulations; provided, however, that the declarant shall file with the board a copy of a public offering statement so corrected.

18VAC48-20-680. Filing of amended public offering statement.

A. The declarant shall promptly file with the board a copy of an amended public offering statement. Unless subsection D of this section applies, the declarant shall, as part of such filing, update the application for registration on file with the board either by filing a new application or by advising the board of changes in the information contained in a previously filed application or file new or substitute documents. In the case of a public offering statement (i) amended other than in connection with a material change or (ii) presumed current pursuant to 18VAC48-20-700, the filing shall indicate the date of amendment.

B. Unless subsection D of this section applies, the board shall issue a notice of filing within five business days following receipt in proper form of the materials required by subsection A of this section. The board shall review the amended public offering statement and supporting materials to determine whether the amendment complies with 18VAC48-20-670. At such time as the board affirmatively determines that the amendment complies with 18VAC48-20-670, but not later than the 30th day following issuance of the notice of filing, it shall enter an order designating the amended form and content of the public offering statement to be used. Such order shall provide that previous orders designating the form and content of the public offering statement for use are superseded.

C. If the board determines, pursuant to subsection B of this section, that an amendment to the public offering statement does not comply with 18VAC48-20-670, it shall immediately, but in no event later than the 30th day following issuance of the notice of filing enter an order declaring the amendment not in compliance with 18VAC48-20-670 and specifying the particulars of such noncompliance. In the case of a public offering statement amended other than in connection with a material change, the order shall relate back to the date of amendment. If neither of the orders provided for by this subsection and subsection B of this section are entered within the time allotted, the amendment shall be deemed to comply with 18VAC48-20-670, except that the 30-day period may be extended in the manner provided for extension of the correction period by 18VAC48-20-100 D. The declarant may, at any time correct and refile an amended public offering statement; provided, however, that if an order of noncompliance has been entered with respect to the amendment, all of the provisions of subsections A and B of this section and this subsection shall apply to such refiling.

D. If the material change that resulted in amendment of the public offering statement was an expansion of the condominium or the formation of units out of convertible land or convertible space, the declarant shall file a complete application for registration of the additional units, provided, that no such application need be filed for units previously registered. Such application for registration shall be subject to all of the provisions of 18VAC48-20-70 through 18VAC48-20-150 and the board shall observe the procedures of 18VAC48-20-100 in regard to the application. Documents then on file with the board and not changed in connection with the creation of additional units need not be refiled, provided that the application indicates that such documents are unchanged.

E. In each case in which an amended document is filed pursuant to this paragraph and the manner of its amendment is not apparent on the face of the document, the declarant

shall provide an indication of the manner and extent of amendment.

18VAC48-20-690. Current public offering statement.

A. A public offering statement is current if its form and content are designated for use pursuant to 18VAC48-20-100 G or 18VAC48-20-680 B and remains current so long as no material change occurs and any amendment of the public offering statement other than in connection with a material change is made in compliance with 18VAC48-20-670.

B. A public offering statement ceases to be current upon the occurrence of a material change and, subject to the exception provided in 18VAC48-20-700, does not thereafter become current unless and until (i) it is amended pursuant to 18VAC48-20-670 and (ii) the board, with respect to such amendment, enters an order pursuant to 18VAC48-20-100 G or 18VAC48-20-680 B or fails to enter, within the times allotted therefor, any of the orders provided for by 18VAC48-20-100 E and G or 18VAC48-20-680 B and C.

C. If the board determines that the public offering statement amended other than in connection with a material change fails to comply with 18VAC48-20-670 that public offering statement ceases to be current as of the date of amendment. Such cessation shall be affected retroactively by the board's entry of an order of noncompliance and nothing contained herein shall limit the declarant's right to use the public offering statement as current prior to the entry of an order of noncompliance. The public offering statement does not thereafter become current unless and until it is corrected and refiled and the board, with respect to such amendment, enters an order pursuant to 18VAC48-20-680 B or fails to enter either of the orders provided for by 18VAC48-20-680 B or C.

D. Upon issuance of a public offering statement amended because of the occurrence of a change that materially and adversely affects the purchaser's bargain, that was caused by the declarant or any agent or affiliate of the declarant, and of the possibility of which the purchaser was not forewarned in the public offering statement given him pursuant to subdivision 2 of § 55-79.88 of the Code of Virginia, then the purchaser's 10-day rescission right afforded by subdivision 2 of § 55-79.88 of the Code of Virginia is renewed. The declarant shall deliver the public offering statement so amended and give the purchaser notice of his renewed rescission right as required by 18VAC48-20-710.

18VAC48-20-700. Certain amended public offering statements presumed current.

A. A public offering statement amended by the declarant to disclose any material change that is an aspect or result of the orderly development of the condominium or the normal functioning of the unit owners' association shall be presumed current immediately upon its amendment, subject, however, to the condition that the board shall subsequently determine that the amendment was made in compliance with 18VAC48-20-670. An amended public offering statement presumed current pursuant to this subsection shall be referred to elsewhere in these regulations as a presumptively current public offering statement.

B. The declarant shall file with the board a copy of a presumptively current public offering statement and all of the provisions of 18VAC48-20-680 shall apply to such filing except that, in addition: (i) filing shall be made not later than 10 business days following the occurrence of the material change which necessitated the amendment, and (ii) the filing shall indicate the declarant's plans, if any, to deliver the presumptively current public offering statement to purchasers pursuant to subdivision 2 of § 55-79.88 of the Code of Virginia.

C. A board order declaring that an amendment that resulted in a presumptively current public offering statement is not in compliance with 18VAC48-20-670 shall render ineffective the presumption that the public offering statement is current. In that event, the public offering statement shall be deemed to have ceased being current upon the occurrence of the material change which necessitated the amendment. Nothing contained herein shall limit the declarant's right to use a presumptively current public offering statement prior to entry of the order of noncompliance. A presumptively current public offering statement also ceases being current upon the declarant's failure to file within the time provided in subsection B of this section, but such cessation shall have no retroactive effect. A presumptively current public offering statement that ceases to be current pursuant to this subsection does not thereafter become current unless and until it is filed or refiled with the board pursuant to 18VAC48-20-680 and the board, with respect to such public offering statement, enters an order pursuant to 18VAC48-20-100 G or 18VAC48-20-680 B or fails to enter, within the times allotted therefor, any of the orders provided for in 18VAC48-20-100 E and G or 18VAC48-20-680 B and C.

18VAC48-20-710. Public offering statement not current; notification of purchasers.

The declarant shall notify every purchaser to whom has been delivered a public offering statement that was subsequently determined not to have been current at the time of its delivery. Such notification shall indicate that any contract for disposition of a condominium unit may be cancelled unless and until the declarant complies with the provisions of subdivision 2 of § 55-79.88 of the Code of Virginia. The declarant shall file a copy of the notification with the board and provide proof that such notification has been delivered to all purchasers under contract.

18VAC48-20-720. Annual report by declarant.

Prior to filing the annual report required by § 55-79.93 of the Code of Virginia, the declarant shall review the public offering statement then being delivered to purchasers. If such

public offering statement is current, the declarant shall so certify in the annual report and include a copy thereof in the report. If such public offering statement is not current, the declarant shall amend the public offering statement and the annual report shall, in that event, consist of a filing complying with the requirements of 18VAC48-20-680. In addition, the annual report shall indicate the number of condominium units (i) conveyed, (ii) under contract for disposition, (iii) being rented by the declarant and (iv) still being offered. The annual report shall indicate the status of declarant's control retained pursuant to § 55-79.74 of the Code of Virginia. The annual report may be in any form suitable for compliance with the provisions of this section and § 55-79.93 of the Code of Virginia.

18VAC48-20-730. Provisions applicable to substituted disclosure document, prospectus.

A. The provisions of 18VAC48-20-660 through 18VAC48-20-720 shall apply to a substituted disclosure document in the same manner and to the same extent that they apply to public offering statements.

B. The provisions of 18VAC48-20-660 through 18VAC48-20-700 shall apply to a prospectus only to the extent that amendment of the information or documents attached to the prospectus pursuant to 18VAC48-20-460 is required or permitted. The body of the prospectus shall be amended only as provided in applicable securities law. The declarant shall immediately file with the board any amendments to the body of the prospectus and, upon receipt thereof, the board shall enter an order designating the form and content of the prospectus to be used and providing that previous orders designating the form and content of the prospectus for use are superseded. A prospectus is current so long as it is effective under applicable securities law and the information and documents attached thereto are current under the provisions of 18VAC48-20-690 and 18VAC48-20-700. The declarant shall immediately notify the board if the prospectus ceases being effective. If no prospectus is effective and the declarant proposes to continue offering condominium units, the declarant shall file a public offering statement with the board pursuant to 18VAC48-20-680.

C. The provisions of 18VAC48-20-710 shall apply to a prospectus in the same manner and to the same extent that they apply to a public offering statement.

D. In an annual report involving a prospectus the declarant shall comply with all of the provisions of 18VAC48-20-720 applicable to public offering statements and, in addition, shall certify that an effective prospectus is available for delivery to purchasers and shall indicate the declarant's plans or expectations regarding the continuing effectiveness of the prospectus.

Part IX
Horizontal Property Regimes

18VAC48-20-740. Horizontal property regime; special definitions.

The definitions provided in § 55-79.2 of the Code of Virginia, as they may be supplemented herein, shall apply to 18VAC48-20-740 through 18VAC48-20-800. A condominium established in Virginia prior to July 1, 1974, shall be referred to in 18VAC48-20-740 through 18VAC48-20-800 as a "horizontal property regime."

18VAC48-20-750. Horizontal property regime; provisions applicable.

A horizontal property regime and board action with respect thereto shall be subject to:

1. All of the provisions of 18VAC48-20-10 through 18VAC48-20-120; and

2. All of the provisions of 18VAC48-20-160 through 18VAC48-20-190, except 18VAC48-20-180 B, provided that each reference therein to registration shall be deemed to refer also to the issuance of a final public report.

18VAC48-20-760. Notice of intention.

A developer shall notify the board of its intention to offer apartments in a horizontal property regime in Virginia by completing and filing at the offices of the board a notice of intention containing substantially all of the information and documents required by the standard notice of intention. The notice of intention may request issuance of a preliminary, final, substitute or supplementary public report.

18VAC48-20-770. Inspection by board.

Upon receipt of a notice of intention requesting issuance of a final, substitute or supplementary public report the board shall determine whether an inspection of the horizontal property regime is necessary. If the board determines that inspection is necessary, it shall so notify the developer within 10 days following receipt of the notice of intention. The developer shall pay an inspection fee of $75 plus the reasonable expenses of first-class travel incurred in such inspection. The duty of conducting the inspection and preparing the public report is delegated to the property registration administrator. Inspection fees shall be placed to the credit of the special fund established by § 55-79.31 of the Code of Virginia.

18VAC48-20-780. Public report.

Five copies of each public report issued by the board shall be furnished to the developer without charge. Additional copies may be secured by the developer at its own expense. A developer shall not represent or cause a purchaser to believe that the board's issuance of a public report is an approval of any horizontal property regime. The public report shall be

used only in its entirety. The developer shall not cause any portion of a public report to be underscored, italicized, or printed in larger, heavier or different color type than the remainder of the public report unless the original issued by the board is so prepared.

18VAC48-20-790. Supplementary public report.

A. Whenever, following the first filing of a notice of intention with the board, a material change in the setup, value, or use of a horizontal property regime occurs, the developer shall so notify the board. If the board has issued a final, substitute, or supplementary public report relative to the horizontal property regime, the notification provided for in the preceding sentences shall be accomplished by the filing of a notice of intention requesting issuance of a supplementary report. Previously issued final, substitute or supplementary public reports shall not be delivered to purchasers following the occurrence of a material change in the setup, use, or value of the horizontal property regime.

B. For the purposes of this section, a material change in the setup, use, or value of a horizontal property regime shall include, without limitation, a change in the number of apartments, a change in the land area, a change in the percentage of ownership of the common elements by any co-owner including the developer as owner of unsold apartments, a change in common elements constituting amenities, and a change of the developer whereby a party other than the developer identified in the most recently issued public report succeeds to the rights and interests of such original developer in the horizontal property regime. Upon the request of a developer in a specific case, the board shall determine whether a particular change constitutes a material change in the setup, use or value; provided, however, that the presentation of information to the board in connection with such request shall not relieve the developer of any requirement for filing a notice of intention in the event that the board determines that a material change in the setup, use, or value has occurred or will occur.

C. Upon receipt of a notice of intention filed pursuant to this section, the board shall issue a supplementary public report and the developer shall deliver a true copy thereof to all purchasers who have executed but not settled contracts for acquisition of an apartment in the horizontal property regime.

D. The developer may amend a final, substitute, or supplementary public report to reflect changes not constituting material changes in the setup, value or use, provided that a copy thereof is filed with the board prior to its delivery to any prospective purchaser.

18VAC48-20-800. Horizontal property regime constituting conversion condominium.

A. A notice of intention requesting issuance of a final public report on a horizontal property regime that is a conversion condominium shall have attached thereto the information required by 18VAC48-20-500 B, C and D, 18VAC48-20-510, and 18VAC48-20-520 to be disclosed in public offering statements for conversion condominiums. Such information shall be prepared by the developer and submitted in a form suitable for presentation in the final public report. The board shall make any revisions in such information as are necessary to effect full compliance with the applicable regulations and shall incorporate the information into the final public report.

B. A notice of intention requesting issuance of a final public report on a horizontal property regime that is a conversion condominium shall have attached thereto a copy of the notice to be given to tenants pursuant to § 55-79.94 B of the Code of Virginia. The declarant shall certify that such notice to tenants shall be, at the time of issuance of the final public report, mailed or delivered to each of the tenants in the building or buildings in the horizontal property regime. No such notice shall be mailed or delivered to a tenant prior to the issuance of the final public report on the horizontal property regime.

VA.R. Doc. No. R09-1969; Filed May 12, 2009, 2:23 p.m.

BOARD OF FUNERAL DIRECTORS AND EMBALMERS

Final Regulation

Title of Regulation: **18VAC65-20. Regulations of the Board of Funeral Directors and Embalmers (amending 18VAC65-20-10, 18VAC65-20-60, 18VAC65-20-435; adding 18VAC65-20-436).**

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

Effective Date: July 8, 2009.

Agency Contact: Lisa Russell Hahn, Executive Director, Board of Funeral Directors and Embalmers, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4424, FAX (804) 527-4637, or email lisa.hahn@dhp.virginia.gov.

Summary:

The amendments include standards for crematories that are registered or are a part of a licensed funeral establishment to include requirements for (i) a manager of record who is a certified crematory operator and who is responsible for compliance with state and federal rules for crematories; (ii) certification of all persons who operate a retort; (iii) due diligence in the identification of the remains and authorization to cremate; (iv) safe and ethical operation of a crematory; (v) handling of human remains; and (vi) recordkeeping.

Changes made to the proposed regulation (i) require a crematory to observe a 24-hour waiting period between the time of death and the cremation when a visual identification is not made, (ii) allow a crematory 24 hours to cremate remains after taking custody rather than

immediately, (iii) require a biodegradable bag to be used if a biodegradable container is used for remains, and (iv) allow cremated remains in a container designed for scattering to be placed directly in the container if the next-of-kin so authorizes in writing.

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

Part I
General Provisions

18VAC65-20-10. Definitions.

Words and terms used in this chapter shall have the definitions ascribed in § 54.1-2800 of the Code of Virginia or in 16 CFR Part 453, Funeral Industry Practices, of the Federal Trade Commission, which is incorporated by reference in this chapter. In addition, the following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Branch" or "chapel" means a funeral service establishment that is affiliated with a licensed main establishment and that conforms with the requirements of § 54.1-2811 of the Code of Virginia.

"Courtesy card" means the card issued by the board which grants limited and restricted funeral service privileges in the Commonwealth to out-of-state funeral service licensees, funeral directors, and embalmers.

"Cremation container" means a container in which human remains are transported to the crematory and placed in the retort for cremation.

"Cremation urn" means a wood, metal, stone, plastic, or composition container or a container of other material, which is designed for encasing cremated ashes.

"Cremation vault" or "cremation outer burial container" means any container that is designed for encasement of an inner container or urn containing cremated ashes. Also known as a cremation box.

"FTC" means the Federal Trade Commission.

"Manager of record" means a funeral service licensee or licensed funeral director who is responsible for the direct supervision and management of a funeral service establishment or branch facility.

18VAC65-20-60. Accuracy of information.

A. All changes in the address of record or the public address, if different from the address of record, or in the name of a licensee or registrant shall be furnished to the board within 30 days after the change occurs.

B. Any change in ownership or manager of record for an establishment [or crematory] shall be reported to the board within 14 days of the change.

C. All notices required by law and by this chapter to be mailed by the board to any registrant or licensee shall be validly given when mailed to the latest address of record on file with the board and shall not relieve the licensee, funeral service intern, establishment, crematory, or firm of obligation to comply.

18VAC65-20-435. Registration of crematories.

A. At least 30 days prior to opening a crematory, any person intending to own or operate a crematory shall apply for registration with the board by submitting a completed application and fee as prescribed in 18VAC65-20-70. The name of the individual designated by the ownership to be manager of record for the crematory shall be included on the application. The owner of the crematory shall not abridge the authority of the manager of record relating to compliance with the laws governing the practice of funeral services and regulations of the board.

B. Every crematory, regardless of how owned, shall have a manager of record who has [(i)] achieved certification by the Cremation Association of North America (CANA) [, ;] the International Cemetery, Cremation and Funeral Association (ICCFA) [, ;] or other certification recognized by the board and [~~who has~~ (ii)] received training in compliance with requirements of the Occupational Health and Safety Administration (OSHA). Every manager of record registered by the board prior to [~~(the effective date of this section)~~ July 8, 2009,] shall have one year from that date to obtain such certification.

C. The manager shall be fully accountable for the operation of the crematory as it pertains to the laws and regulations governing the practice of funeral services, to include but not be limited to:

1. Maintenance of the facility within standards established in this chapter;

2. Retention of reports and documents as prescribed by the board in 18VAC65-20-436 during the period in which he serves as manager of record; and

3. Reporting to the board of any changes in information as required by 18VAC65-20-60.

D. All persons who operate the retort in a crematory shall have certification by the Cremation Association of North America (CANA) [, ;] the International Cemetery, Cremation and Funeral Association (ICCFA) [, ;] or other certification recognized by the board. Every operator in a crematory registered by the board prior to [~~(the effective date of this section)~~ July 8, 2009,] shall have one year from that date to obtain such certification. Persons receiving training toward certification to operate a retort shall be allowed to

work under the supervision of an operator who holds certification for a period not to exceed six months.

~~B.~~ E. A crematory providing cremation services directly to the public shall also be licensed as a funeral service establishment or shall be a branch of a licensed establishment.

~~C.~~ F. The board may take disciplinary action against a crematory registration for a violation of § 54.1-2818.1 of the Code of Virginia or for the inappropriate handling of dead human bodies or cremains.

18VAC65-20-436. Standards for registered crematories or funeral establishments that operate a crematory.

A. Authorization to cremate.

[1.] In accordance with § 54.1-2818.1 of the Code of Virginia, a crematory shall require a cremation authorization form executed in person or electronically in a manner that provides a copy of an original signature of the next-of-kin or the person designated pursuant to § 54.1-2825 of the Code of Virginia.

[2.] The cremation authorization form shall include an attestation of visual identification of the deceased from a viewing of the remains or a photograph signed by the person making the identification. The identification attestation shall either be given on the cremation authorization form or on an identification form attached to the cremation authorization form.

[3. In the event visual identification is not made, a crematory shall observe a 24-hour waiting period between the time of death and the cremation pursuant to § 54.1-2818.1 of the Code of Virginia.]

B. Standards for cremation. The following standards shall be required for every crematory:

1. Every crematory shall provide evidence at the time of an inspection of a permit to operate issued by the Department of Environmental Quality (DEQ).

2. A crematory shall not knowingly cremate a body with a pacemaker, defibrillator or other potentially hazardous implant in place.

3. A crematory shall not cremate the human remains of more than one person simultaneously in the same retort, unless the crematory has received specific written authorization to do so from the person signing the cremation authorization form.

4. A crematory shall not cremate nonhuman remains in a retort permitted by DEQ for cremation of human remains.

5. Whenever a crematory is unable to cremate the remains [~~immediately~~ within 24 hours] upon taking custody thereof, the crematory shall maintain the remains in refrigeration at 40 degrees Fahrenheit or less, unless the remains have been embalmed.

C. Handling of human remains.

1. Human remains shall be transported to a crematory in a cremation container and shall not be removed from the container unless the crematory has been provided with written instructions to the contrary by the person who signed the authorization form. A cremation container shall substantially meet all the following standards:

a. Be composed of readily combustible materials suitable for cremation;

b. Be able to be closed in order to provide complete covering for the human remains;

c. Be resistant to leakage or spillage; and

d. Be rigid enough for handling with ease.

2. No crematory shall require that human remains be placed in a casket before cremation nor shall it require that the cremains be placed in a cremation urn, cremation vault or receptacle designed to permanently encase the cremains after cremation. Cremated remains shall be placed in a plastic bag inside a rigid container provided by the crematory or by the next-of-kin for return to the funeral establishment or to the next-of-kin. [If cremated remains are placed in a biodegradable container, a biodegradable bag shall be used. If placed in a container designed for scattering, the cremated remains may be placed directly into the container if the next-of-kin so authorized in writing.]

3. The identification of the decedent shall be physically attached to the remains and appropriate identification placed on the exterior of the cremation container. The crematory operator shall verify the identification on the remains with the identification attached to the cremation container and with the identification attached to the cremation authorization. The crematory operator shall also verify the identification of the cremains and place evidence of such verification in the cremation record.

D. Recordkeeping. A crematory shall maintain the records of cremation for a period of three years from the date of the cremation that indicate the name of the decedent, the date and time of the receipt of the body, and the date and time of the cremation and shall include:

1. The cremation authorization form signed by the person authorized by law to dispose of the remains and the form on which the next-of-kin or his designee has made a visual identification of the deceased;

2. The permission form from the medical examiner;

3. The DEQ permit number of the retort used for the cremation and the name of the retort operator; and

4. The form verifying the release of the cremains, including date and time of release, the name of the person

and the entity to whom the cremains were released and the name of the decedent.

NOTICE: The forms used in administering the above regulation are not being published; however, the name of each form is listed below. The forms are available for public inspection by contacting the agency contact for this regulation, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

[FORMS (18VAC65-20)

Funeral Service Provider Application (rev. 3/08).

Application for Courtesy Card (rev. 7/08).

Funeral Service Establishment Application (rev. 3/08).

Notification of Change Application (rev. 4/08).

Waiver of Full-time Manager Application (rev. 4/08).

~~Application for~~ Crematory Registration Application (rev. ~~4/08)~~ 4/09).

Application for Renewal for Waiver of Full-time Manager (rev. 7/08).

Verification of State Licensure Form (rev. 3/08).

Surface Transportation and Removal Service Application (rev. 6/08).

Continuing Education Provider Application (rev. 3/08).

Application for Reinstatement of Funeral Service Provider (rev. 4/08).

Application for Reinstatement of Funeral Service Establishment (eff. 3/08).

Appendix I: General Price List (rev. 12/02).

Appendix II: Casket Price List; Outer Burial Container Price List (rev. 12/02).

Appendix III: Itemized Statement of Funeral Goods and Services Selected (rev. 12/02).]

VA.R. Doc. No. R08-786; Filed May 20, 2009, 11:22 a.m.

BOARD OF MEDICINE

Proposed Regulation

Title of Regulation: **18VAC85-80. Regulations Governing the Licensure of Occupational Therapists (amending 18VAC85-80-10, 18VAC85-80-26, 18VAC85-80-40, 18VAC85-80-45, 18VAC85-80-50, 18VAC85-80-65, 18VAC85-80-70, 18VAC85-80-72, 18VAC85-80-73, 18VAC85-80-80, 18VAC85-80-90, 18VAC85-80-100, 18VAC85-80-110; adding 18VAC85-80-111; repealing 18VAC85-80-61).**

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

Public Hearing Information:

July 28, 2009 - 10 a.m. - Department of Health Professions, 9960 Mayland Drive, 2nd Floor, Richmond, VA

Public Comments: Public comments may be submitted until 5 p.m. on August 7, 2009.

Agency Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4621, FAX (804) 527-4429, or email william.harp@dhp.virginia.gov.

Basis: Section 54.1-2400 of the Code of Virginia which provides the Board of Medicine the authority to promulgate regulations to administer the regulatory system.

In the Medical Practice Act (§ 54.1-2900 et seq. of the Code of Virginia), the Board of Medicine is mandated to set in regulation the requirements for licensure as an occupational therapy assistant.

Purpose: The board has reviewed the role delineations for occupational therapy and adopted regulations that specify the extent of responsibilities within the education and experience of the two levels of licensees. While the occupational therapist assistant (OTA) can be an active participant in patient care from the initial assessment through discharge decisions and planning, the occupational therapist (OT) is ultimately responsible and accountable for patient care and outcomes under clinical supervision. The role of an OTA is to perform those tasks assigned, document in the patient record, consult with the OT on patient responses and functionality, and provide for resources necessary upon discharge. The OTA renders services under the supervision of an OT that do not require the clinical decision or specific knowledge, skills and judgment of a licensed OT and do not include the discretionary aspects of the initial assessment, evaluation or development of a treatment plan for a patient. By clearly specifying the scope of practice for an OTA and the requirements of the OT for supervision, co-signing patient records and reevaluating patients, there is some assurance that the health and safety of citizens receiving occupational therapy services are protected.

Substance: The intent of the regulatory action is compliance with the statute that requires the board to establish licensure for OTAs and to promulgate regulations for that purpose. The substance of the regulation is to set the minimum criteria necessary for initial licensure and continued licensure and to establish an appropriate scope of practice for an OTA who practices in coordination with and under the supervision of an OT.

Issues: The primary advantage of this proposal to the public is more accountability for occupational therapist assistants by becoming a licensed profession. As such, their scope of practice is more defined and more inclusive, so their ability to

provide services to populations of patients is enhanced. The availability of additional licensed practitioners has the potential to improve accessibility and the quality of occupational therapy services. There are no disadvantages.

There are no disadvantages of these provisions to the agency or the Commonwealth; licensure is required by law and already in effect under emergency regulations. More specificity about the scope of practice and supervision of OTAs allows board staff to direct persons with questions about those issues to the regulations.

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

Summary of the Proposed Amendments to Regulation. Pursuant to Chapters 64 and 89 of the 2008 Acts of the Assembly, the Board of Medicine proposes to promulgate regulations to govern the licensure of occupational therapy assistants. These proposed regulations will replace identical emergency regulations that will expire October 31, 2009.

Result of Analysis. Costs likely outweigh benefits for this licensure program.

Estimated Economic Impact. Until legislation mandated it in 2008, occupational therapy assistants were not required to be licensed. Individuals who engaged in the work of an occupational therapy assistant were, however, subject to title protection legislation that did not allow them to call themselves occupational therapy assistants (OTAs) unless they were certified by National Board of Certification in Occupational Therapy (NBCOT).

These proposed regulations, and the emergency regulations that they replace, require that OTAs pay a licensure fee of $70 and attain the identical NBCOT certification that has been required by the title protection legislation in order to attain initial licensure. NBCOT requires that candidates for initial certification:

- complete a one year certificate program or a two year associates degree program (cost will vary from program to program but will likely be at least several thousand dollars),
- complete clinical field work as required to get their degree,
- pass the national examination ($520 fee), and
- pay a certification fee that is prorated depending on when certificate holders would be eligible to renew.

The Board will require OTAs to renew their licenses biennially. Candidates for renewal will have to complete 20 hours of continuing education and pay a $70 fee. Individuals who are more than 30 day late in renewing their licenses will be subject to a late fee. Any OTA who allows his or her license to lapse for two or more years will have to reinstate that license. Individuals whose licenses have been lapsed for at least two years but not more than six years will have to complete a Board approved practice of 160 hours and pay a reinstatement fee of $90. Individuals whose licenses have been lapsed for more than six years will have to complete a Board approved practice of 320 hours and pay the reinstatement fee.

Additionally, the Board proposes to change supervision requirements in these regulations. Prior to the promulgation of emergency regulations, occupational therapists have to meet with their personnel (including OTAs) to review and evaluate treatment and progress of individual patients every fifth treatment session or 21 calendar days, whichever occurs first. These proposed regulations, and the emergency regulations that they replace, allow occupational therapists to meet with their personnel every 10 treatment sessions or every 30 calendar days, whichever occurs first. For facilities with larger occupational therapy programs, this change may allow occupational therapists to supervise a greater number of OTAs at one time. This may allow these facilities to realize some savings on labor costs as they may be able to have a staff consisting of a greater number of lower paid OTAs supervised by a fewer number of higher paid occupational therapists. This staff substitution effect, however, will be limited by other regulatory language that limits the number of OTAs occupational therapists may supervise to three.

OTAs that are subject to these regulations will incur the education (both initial and continuing education) and examination costs, as well as fees, listed above. Additionally, these individuals will incur opportunity costs for time spent gaining credentials needed for licensure rather than working in their chosen field and opportunity costs for time spent maintaining licensure. To the extent that non-certified individuals have been able to do the job of an occupational therapy assistant, even if they could not legally call themselves OTAs, these increased costs may lead to fewer people working in this field as some of these individuals may choose to not seek licensure. This may increase the price of OTA services in the Commonwealth (increase the wage that licensed OTAs can demand).

These costs must be weighed against any possible benefit that might be gained by requiring licensure. The individuals who need occupational therapy might benefit, for instance, if the requirements for licensure increase OTA competency and decrease any instances of harm done to patients by incompetent practice. OTAs who gain licensure may benefit from higher wages if this licensure program serves as a barrier to entry for this field. Additionally, some businesses that have need for a larger number of occupational therapy personnel may save on labor costs due to less frequently required reviews and evaluations of individual patients' treatment plans and progress.

The Department of Health Professions (DHP) reports that the Board of Health Professions completed a study on the

appropriate level of regulation for OTAs in 2001. This study concluded that there was not enough risk of harm to patients to warrant licensure. This finding combined with the fact that OTAs must still practice under the supervision of an occupational therapist, who has "ultimately responsible and accountable for patient care and occupational therapy outcomes," points to a conclusion that the public will get minimal benefit from this licensure program. Because of this, the costs of this licensure requirement likely outweigh its benefits.

Businesses and Entities Affected. The Department of Health Professions (DHP) reports that there are currently 204 OTAs that are licensed by the Board.

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

Projected Impact on Employment. The legislation that mandates this regulatory action may have the effect of decreasing the number of individuals who choose to work in this field.

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 who employ OTAs may incur extra labor costs if this licensure program decreases the number of OTAs that are available for hire.

Small Businesses: Alternative Method that Minimizes Adverse Impact. There are likely no alternatives available to the Board that would minimize costs for small businesses. Any meaningful changes to the costs associated with this licensure program would require legislative action.

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

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

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

The agency does not concur with the conclusion of the economic impact analysis that the costs of licensure of occupational therapy assistants outweigh the benefits.

First, the economic analysis does not account for the fact that licensure is a mandate of the Code of Virginia, not a result of this regulatory proposal. The EIA appears to be an analysis of the legislation passed by the General Assembly in 2008 rather than an analysis on regulations adopted by the Board of Medicine. By adopting the COTA (Certified Occupational Therapy Assistant) certification as the criteria for licensure, the board has accepted the credential already specified and already held by persons who call themselves occupational therapy assistants (OTAs); therefore no additional education and examination is required to qualify for licensure.

Second, the economic analysis does not take into account the increased responsibilities for OTAs and additional occupational therapy services that OTAs will be able to perform – services that are presently reserved for licensed occupational therapists, who are higher-salaried individuals. The primary intent of the legislative action was to more fully utilize the professional services of OTAs by distinguishing them from unlicensed personnel. It is entirely possible that the costs of occupational therapy services will be reduced since the proposed (and emergency) regulations permit providers to employ OTAs to perform the following occupational therapy tasks:

1. Participation in the evaluation or assessment of a patient by gathering data, administering tests and reporting observations and client capacities to the occupational therapist;

2. Participation in intervention planning, implementation and review;

3. Implementation of interventions as determined and assigned by the occupational therapist;

4. Documentation of patient responses to interventions and consultation with the occupational therapist about patient functionality;

5. Assistance in the formulation of the discharge summary and follow-up plans; and

6. Implementation of outcome measurements and provision of needed patient discharge resources.

Third, by the proposed regulation, unlicensed occupational therapy personnel may now be supervised by an OTA, thus increasing the utilization of OTAs at a lower cost for services.

Fourth, since the OTA is now a licensed individual, the requirement for review and evaluation of services for individual patients by the occupational therapist has been extended from at least once every fifth treatment to once every tenth treatment session or every 30 calendar days, rather the previous requirement of every 21 days. Again, these changes will enable more occupational therapy services to be provided by a lower paid professional, so institutions such as long-term care may employ more OTAs for direct patient services with an OT as the supervisor of those services.

Summary:

The proposed amendments establish requirements for the licensure of occupational therapy assistants as mandated by Chapters 64 and 89 of the 2008 Acts of Assembly. The regulations will replace existing emergency regulations that will expire October 31, 2009.

The regulations specify the national credential for licensure, the requirements for continuing competency and renewal, fees for licensure as an occupational therapy assistant (OTA), the provisions for supervision of OTAs, and the perimeters for practice. In order to be licensed, an applicant must pass the certification examination for an occupational therapy assistant from the National Board for Certification in Occupational Therapy (NBCOT). Practice by an OTA must be supervised by an occupational therapist (OT) and include services that do not require the clinical decision or specific knowledge, skills and judgment of a licensed OT nor the discretionary aspects of the initial assessment, evaluation or development of a treatment plan.

Part I
General Provisions

18VAC85-80-10. Definitions.

A. The following words and terms when used in this chapter shall have the meanings ascribed to them in § 54.1-2900 of the Code of Virginia:

"Board"

"Occupational therapy assistant"

"Practice of occupational therapy"

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

"ACOTE" means the Accreditation Council for Occupational Therapy Education.

"Active practice" means a minimum of 160 hours of professional practice as an occupational therapist or an occupational therapy assistant within the 24-month period immediately preceding renewal or application for licensure, if previously licensed or certified in another jurisdiction. The active practice of occupational therapy may include supervisory, administrative, educational or consultative activities or responsibilities for the delivery of such services.

"Advisory board" means the Advisory Board of Occupational Therapy.

~~"Board" means the Virginia Board of Medicine.~~

"Contact hour" means 60 minutes of time spent in continued learning activity.

"NBCOT" means the National Board for Certification in Occupational Therapy, under which the national examination for certification is developed and implemented.

"National examination" means the examination prescribed by NBCOT for certification as an occupational therapist or an occupational therapy assistant and approved for licensure in Virginia.

"Occupational therapy personnel" means appropriately trained individuals who provide occupational therapy services under the supervision of a licensed occupational therapist.

18VAC85-80-26. Fees.

A. The following fees have been established by the board:

1. The initial fee for the occupational therapist license shall be $130; for the occupational therapy assistant, it shall be $70.

2. The fee for reinstatement of the occupational therapist license that has been lapsed for two years or more shall be $180; for the occupational therapy assistant, it shall be $90.

3. The fee for active license renewal for an occupational therapist shall be $135 ~~and~~; for ~~inactive license renewal shall be $70 and~~ an occupational therapy assistant, it shall be $70. The fees for inactive license renewal shall be $70 for an occupational therapist and $35 for an occupational therapy assistant. Renewals shall be due in the birth month of the ~~licensed therapist~~ licensee in each even-numbered year.

4. The additional fee for processing a late renewal application within one renewal cycle shall be $50 for an occupational therapist and $30 for an occupational therapy assistant.

5. The fee for a letter of good standing or verification to another state for a license shall be $10.

6. The fee for reinstatement of licensure pursuant to § 54.1-2408.2 of the Code of Virginia shall be $2,000.

7. The fee for a returned check shall be $35.

8. The fee for a duplicate license shall be $5, and the fee for a duplicate wall certificate shall be $15.

9. The fee for an application or for the biennial renewal of a restricted volunteer license shall be $35, due in the licensee's birth month. An additional fee for late renewal of licensure shall be $15 for each renewal cycle.

B. Unless otherwise provided, fees established by the board shall not be refundable.

18VAC85-80-40. Educational requirements.

A. An applicant who has received his professional education in the United States, its possessions or territories, shall successfully complete all academic and fieldwork requirements of an accredited educational program as verified by the ACOTE.

B. An applicant who has received his professional education outside the United States, its possessions or territories, shall successfully complete all academic and clinical fieldwork requirements of a program approved by a member association of the World Federation of Occupational Therapists as verified by the candidate's occupational therapy program director and as required by the NBCOT and submit proof of proficiency in the English language by passing the Test of English as a Foreign Language (TOEFL) with a score acceptable to the board. TOEFL may be waived upon evidence of English proficiency.

C. An applicant who does not meet the educational requirements as prescribed in subsection A or B of this section but who has received certification by the NBCOT as an occupational therapist or an occupational therapy assistant shall be eligible for licensure in Virginia and shall provide the board verification of his education, training and work experience acceptable to the board.

18VAC85-80-45. Practice by a graduate awaiting examination results.

A. A graduate of an accredited occupational therapy educational program may practice with the designated title of "Occupational Therapist, License Applicant" or "O.T.L.-Applicant" until he has taken and received the results of the licensure examination from NBCOT or for ~~one year~~ six months from the date of graduation, whichever occurs sooner. The graduate shall use one of the designated titles on any identification or signature in the course of his practice.

B. A graduate of an accredited occupational therapy assistant educational program may practice with the designated title of "Occupational Therapy Assistant-License Applicant" or "O.T.A.-Applicant" until he has taken and received the results of the licensure examination from NBCOT or for six months from the date of graduation, whichever occurs sooner. The graduate shall use one of the designated titles on any identification or signature in the course of his practice.

18VAC85-80-50. Examination requirements.

A. An applicant for licensure to practice as an occupational therapist shall submit evidence to the board that he has passed the certification examination for an occupational therapist and any other examination required for initial certification from the NBCOT.

B. An applicant for licensure to practice as an occupational therapy assistant shall submit evidence to the board that he has passed the certification examination for an occupational therapy assistant and any other examination required for initial certification from the NBCOT.

18VAC85-80-61. ~~Certification of occupational therapy assistants.~~ (Repealed.)

~~Effective July 26, 2005, a person who holds himself out to be or advertises that he is an occupational therapy assistant or uses the designation "O.T.A." or any variation thereof shall have obtained initial certification by the National Board for Certification in Occupational Therapy (NBCOT) as a certified occupational therapy assistant.~~

18VAC85-80-65. Registration for voluntary practice by out-of-state ~~licenses~~ licensees.

Any occupational therapist or an occupational therapy assistant who does not hold a license to practice in Virginia and who seeks registration to practice under subdivision 27 of § 54.1-2901 of the Code of Virginia on a voluntary basis under the auspices of a publicly supported, all volunteer, nonprofit organization that sponsors the provision of health care to populations of underserved people shall:

1. File a complete application for registration on a form provided by the board at least five business days prior to engaging in such practice. An incomplete application will not be considered;

2. Provide a complete record of professional licensure in each state in which he has held a license and a copy of any current license;

3. Provide the name of the nonprofit organization, the dates and location of the voluntary provision of services;

4. Pay a registration fee of $10; and

5. Provide a notarized statement from a representative of the nonprofit organization attesting to its compliance with provisions of subdivision 27 of § 54.1-2901 of the Code of Virginia.

Part III
Renewal of Licensure; Reinstatement

18VAC85-80-70. Biennial renewal of licensure.

A. An occupational therapist or an occupational therapy assistant shall renew his license biennially during his birth month in each even-numbered year by:

1. Paying to the board the renewal fee prescribed in 18VAC85-80-26;

2. Indicating that he has been engaged in the active practice of occupational therapy as defined in 18VAC85-80-10; and

3. Attesting to completion of continued competency requirements as prescribed in 18VAC85-80-71.

B. An occupational therapist or an occupational therapy assistant whose license has not been renewed by the first day of the month following the month in which renewal is required shall pay an additional fee as prescribed in 18VAC85-80-26.

18VAC85-80-72. Inactive licensure.

A. A licensed occupational therapist or an occupational therapy assistant who holds a current, unrestricted license in Virginia shall, upon a request on the renewal application and submission of the required fee, be issued an inactive license. The holder of an inactive license shall not be required to maintain hours of active practice or meet the continued competency requirements of 18VAC85-80-71 and shall not be entitled to perform any act requiring a license to practice occupational therapy in Virginia.

B. An inactive licensee may reactivate his license upon submission of the following:

1. An application as required by the board;

2. A payment of the difference between the current renewal fee for inactive licensure and the renewal fee for active licensure;

3. If the license has been inactive for two to six years, documentation of having engaged in the active practice of occupational therapy or having completed a board-approved practice of 160 hours within 60 consecutive days under the supervision of a licensed occupational therapist; and

4. Documentation of completed continued competency hours equal to the requirement for the number of years, not to exceed four years, in which the license has been inactive.

C. An occupational therapist or occupational therapy assistant who has had an inactive license for six years or more and who has not engaged in active practice, as defined in 18VAC85-80-10, shall serve a board-approved practice of 320 hours to be completed in four consecutive months under the supervision of a licensed occupational therapist.

D. The board reserves the right to deny a request for reactivation to any licensee who has been determined to have committed an act in violation of § 54.1-2915 of the Code of Virginia or any provisions of this chapter.

18VAC85-80-73. Restricted volunteer license.

A. An occupational therapist or an occupational therapy assistant who held an unrestricted license issued by the Virginia Board of Medicine or by a board in another state as a licensee in good standing at the time the license expired or became inactive may be issued a restricted volunteer license to practice without compensation in a clinic that is organized in whole or in part for the delivery of health care services without charge in accordance with § 54.1-106 of the Code of Virginia.

B. To be issued a restricted volunteer license, an occupational therapist or occupational therapy assistant shall submit an application to the board that documents compliance with requirements of § 54.1-2928.1 of the Code of Virginia and the application fee prescribed in 18VAC85-80-26.

C. The licensee who intends to continue practicing with a restricted volunteer license shall renew biennially during his birth month, meet the continued competency requirements prescribed in subsection D of this section, and pay to the board the renewal fee prescribed in 18VAC85-80-26.

D. The holder of a restricted volunteer license shall not be required to attest to hours of continuing education for the first renewal of such a license. For each renewal thereafter, the licensee shall attest to obtaining 10 hours of continuing education during the biennial renewal period with at least five hours of Type 1 and no more than five hours of Type 2 as specified in 18VAC85-80-71.

18VAC85-80-80. Reinstatement.

A. An occupational therapist or an occupational therapy assistant who allows his license to lapse for a period of two years or more and chooses to resume his practice shall submit a reinstatement application to the board and information on any practice and licensure or certification in other jurisdictions during the period in which the license was lapsed, and shall pay the fee for reinstatement of his licensure as prescribed in 18VAC85-80-26.

B. An occupational therapist or occupational therapy assistant who has allowed his license to lapse for two years but less than six years, and who has not engaged in active practice as defined in 18VAC85-80-10, shall serve a board-approved practice of 160 hours to be completed in two consecutive months under the supervision of a licensed occupational therapist.

C. An occupational therapist or an occupational therapy assistant who has allowed his license to lapse for six years or more, and who has not engaged in active practice, shall serve a board-approved practice of 320 hours to be completed in four consecutive months under the supervision of a licensed occupational therapist.

D. An applicant for reinstatement shall meet the continuing competency requirements of 18VAC85-80-71 for the number of years the license has been lapsed, not to exceed four years.

E. An occupational therapist or an occupational therapy assistant whose license has been revoked by the board and who wishes to be reinstated shall make a new application to the board and payment of the fee for reinstatement of his license as prescribed in 18VAC85-80-26 pursuant to § 54.1-2408.2 of the Code of Virginia.

Part IV
Practice of Occupational Therapy

18VAC85-80-90. General responsibilities.

A. An occupational therapist renders services of assessment, program planning, and therapeutic treatment upon request for such service. The practice of occupational therapy may include supervisory, administrative, educational or consultative activities or responsibilities for the delivery of such services.

B. An occupational therapy assistant renders services under the supervision of an occupational therapist that do not require the clinical decision or specific knowledge, skills and judgment of a licensed occupational therapist and do not include the discretionary aspects of the initial assessment, evaluation or development of a treatment plan for a patient.

18VAC85-80-100. Individual responsibilities.

A. An occupational therapist provides assessment by determining the need for, the appropriate areas of, and the estimated extent and time of treatment. His responsibilities include an initial screening of the patient to determine need for services and the collection, evaluation and interpretation of data necessary for treatment.

B. An occupational therapist provides program planning by identifying treatment goals and the methods necessary to achieve those goals for the patient. The therapist analyzes the tasks and activities of the program, documents the progress, and coordinates the plan with other health, community or educational services, the family and the patient. The services may include but are not limited to education and training in activities of daily living (ADL); the design, fabrication, and application of orthoses (splints); guidance in the selection and use of adaptive equipment; therapeutic activities to enhance functional performance; prevocational evaluation and training; and consultation concerning the adaptation of physical environments for individuals who have disabilities.

C. An occupational therapist provides the specific activities or therapeutic methods to improve or restore optimum functioning, to compensate for dysfunction, or to minimize disability of patients impaired by physical illness or injury, emotional, congenital or developmental disorders, or by the aging process.

D. An occupational therapy assistant is responsible for the safe and effective delivery of those services or tasks delegated by and under the direction of the occupational therapist. Individual responsibilities of an occupational therapy assistant may include:

1. Participation in the evaluation or assessment of a patient by gathering data, administering tests, and reporting observations and client capacities to the occupational therapist;

2. Participation in intervention planning, implementation, and review;

3. Implementation of interventions as determined and assigned by the occupational therapist;

4. Documentation of patient responses to interventions and consultation with the occupational therapist about patient functionality;

5. Assistance in the formulation of the discharge summary and follow-up plans; and

6. Implementation of outcome measurements and provision of needed patient discharge resources.

18VAC85-80-110. Supervisory responsibilities of an occupational therapist.

A. Delegation to ~~unlicensed occupational therapy personnel~~ an occupational therapy assistant.

1. An occupational therapist shall be ~~responsible for supervision of occupational therapy personnel who work under his direction~~ ultimately responsible and accountable for patient care and occupational therapy outcomes under his clinical supervision.

2. An occupational therapist shall not delegate the discretionary aspects of the initial assessment, evaluation or development of a treatment plan for a patient ~~to unlicensed occupational therapy personnel~~ nor shall he delegate any task requiring a clinical decision or the knowledge, skills, and judgment of a licensed occupational therapist.

3. Delegation shall only be made if, in the judgment of the occupational therapist, the task or procedures do not require the exercise of professional judgment, can be properly and safely performed by an appropriately trained ~~unlicensed occupational therapy personnel~~ occupational therapy assistant, and the delegation does not jeopardize the health or safety of the patient.

4. Delegated tasks or procedures shall be communicated to an occupational therapy assistant on a patient-specific basis with clear, specific instructions for performance of activities, potential complications, and expected results.

B. The frequency, methods, and content of supervision are dependent on the complexity of patient needs, number and diversity of patients, demonstrated competency and experience of the assistant, and the type and requirements of the practice setting. The occupational therapist providing clinical supervision shall meet with the occupational therapy personnel to review and evaluate treatment and progress of the individual patients at least once every ~~fifth~~ tenth treatment session or ~~21~~ 30 calendar days, whichever occurs first. For the purposes of this subsection, group treatment sessions shall be counted the same as individual treatment sessions.

C. An occupational therapist ~~shall not~~ may provide clinical supervision for ~~more than~~ up to six occupational therapy personnel, to include no more than three occupational therapy assistants at any one time.

D. ~~An occupational therapist shall be responsible and accountable for the services provided by occupational therapy personnel under his clinical supervision.~~ The occupational therapy assistant shall document in the patient record any aspects of the initial evaluation, treatment plan, discharge summary, or other notes on patient care performed by the assistant, and the supervising occupational therapist shall review and countersign within 10 days of such information being recorded.

18VAC85-80-111. Supervision of unlicensed occupational therapy personnel.

A. Unlicensed occupational therapy personnel may be supervised by an occupational therapist or an occupational therapy assistant.

B. Unlicensed occupational therapy personnel may be utilized to perform:

1. Nonclient-related tasks including, but not limited to, clerical and maintenance activities and the preparation of the work area and equipment; and

2. Certain routine patient-related tasks that, in the opinion of and under the supervision of an occupational therapist, have no potential to adversely impact the patient or the patient's treatment plan.

NOTICE: The forms used in administering the above regulation are not being published; however, the name of each form is listed below. The forms are available for public inspection by contacting the agency contact for this regulation, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS (18VAC85-80)

Instructions for Completing an Occupational Therapist Licensure Application (rev. 12/07).

Application for a License to Practice as an Occupational Therapist (rev. 12/07).

Instructions for Completing an Occupational Therapy Assistant Licensure Application (eff. 11/08).

Application for a License to Practice as an Occupational Therapy Assistant (eff. 11/08).

Form A, Claims History Sheet (rev. 8/07).

Form A, Occupational Therapy Assistant, Claims History Sheet (eff. 11/08).

Form B, Activity Questionnaire (rev. 8/07).

Form B, Occupational Therapy Assistant, Activity Questionnaire (eff. 11/08).

Form C, Clearance from Other State Boards (rev. 10/07).

Form C, Occupational Therapy Assistant, Clearance from Other State Boards (eff. 11/08).

Form L, Certificate of Professional Education (rev. 8/07).

Form L, Occupational Therapy Assistant, Certificate of Professional Education (eff. 11/08).

Board Approved Practice, Occupational Therapist Traineeship (rev. 8/07).

Instructions for Completing Reinstatement of Occupational Therapy Licensure (rev. 8/07).

Reinstatement Application Instructions for Occupational Therapy Practitioner Licensure after Mandatory Suspension, Suspension or Surrender (rev. 10/07).

Application for Reinstatement of Licensure to Practice Occupational Therapy (rev. 8/07).

Instructions for Supervised Practice, Occupational Therapy Reinstatement (rev. 8/07).

Supervised Practice Application, Occupational Therapy Reinstatement (rev. 8/07).

Continued Competency Activity and Assessment Form (rev. 4/00).

Application for Registration for Volunteer Practice (rev. 8/07).

Sponsor Certification for Volunteer Registration (rev. 8/08).

VA.R. Doc. No. R09-1387; Filed May 20, 2009, 11:25 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF OPTOMETRY

Proposed Regulation

Title of Regulation: **18VAC105-20. Regulations Governing the Practice of Optometry (amending 18VAC105-20-40, 18VAC105-20-45).**

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

Public Hearing Information:

July 22, 2009 - 9 a.m. - Department of Health Professions, 9960 Mayland Drive, 2nd Floor, Richmond, VA

Public Comments: Public comments may be submitted until 5 p.m. on August 7, 2009.

Agency Contact: Elizabeth A. Carter, Ph.D., Executive Director, Board of Optometry, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4426, FAX (804) 527-4466, or email elizabeth.carter@dhp.virginia.gov.

Basis: Section 54.1-2400 of the Code of Virginia provides the Board of Optometry the authority to promulgate regulations to administer the regulatory system.

Section 54.1-3215 of the Code of Virginia establishes grounds for disciplinary actions by the Board of Optometry against its licensees. Regulations on standards of conduct expand and clarify the statutory provisions.

Purpose: In its proposed regulatory action, the board clarifies and amends certain provisions of the section on unprofessional conduct to address issues and licensee conduct that have been problematic. The board added language relating to retention and destruction of patient records, disclosure of disciplinary actions in other states or malpractice judgments or settlements, prescribing and treating self or family members, practicing with an expired license or registration, sexual misconduct and other areas of practitioner conduct. Provisions are set out in regulation to ensure that the board has the necessary authority to protect the public health and safety from unprofessional conduct or substandard care.

Substance: The board reviewed unprofessional conduct regulations of other boards within the Virginia Department of Health Professions and the optometry regulations of other states. The following changes were made in the standards of conduct:

1. Adding language relating to treating self and family;

2. Adding language on record retention and a requirement to post or inform patients of patient record retention and destruction policies;

3. Adding a prohibition against failure to disclose disciplinary action in another state and malpractice cases;

4. Renaming of the section on Unprofessional Conduct to Standards of Conduct;

5. Including violation of Drug Control Act in the standards of conduct;

6. Requiring provisions for access to the practice for 24-hour patient care coverage;

7. Referencing § 54.1-2405 (transfer of patient records, closure or sale of practice).

8. Including language regarding the practice on an expired or unregistered professional designation.

9. Including provisions for boundary violation or sexual misconduct as grounds for disciplinary action.

10. Including compliance with general provisions of law and law relating to controlled substances and patient confidentiality.

11. Revising and updating requirements for content of a patient record for consistency with current practice and federal rules.

Issues: The advantage to the public may be that optometrists will become more aware of their professional responsibilities and compliance with state and federal law relating to provision of prescriptions, maintenance of records, protection of patient confidentiality and continuity of care.

Amended regulations will require that patients are informed about how long an optometrist will keep records, so a request for a patient record can be made and responded to in a timely manner. There are no disadvantages to the public.

There are no disadvantages to the agency or the Commonwealth. Clarification of the board’s intent and policies relating to professional conduct and standards of practice will enhance public protection.

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

Summary of the Proposed Amendments to Regulation. The Board of Optometry (Board) proposes several amendments to the regulations concerning standards of conduct. Most of the proposed changes are clarifications. Additionally the Board proposes to: 1) add language describing what types of relationships with clients constitutes grounds for disciplinary action and 2) explicitly require that optometrists ensure their "access to the practice location during hours in which the practice is closed in order to be able to properly evaluate and treat a patient in an emergency."

Result of Analysis. The benefits likely exceed the costs for one or more proposed changes.

Estimated Economic Impact. The current regulations do not address unprofessional relationships between optometrist and patient. The Board proposes to add the following to a list of standards of conduct for which practitioners may be subject to discipline for violating:

> Not enter into a relationship with a patient that constitutes a professional boundary violation in which the practitioner uses his professional position to take advantage of the vulnerability of a patient or his family, to include but not limited to actions that result in personal gain at the expense of the patient, a nontherapeutic personal involvement or sexual conduct with a patient. The determination of when a person is a patient is made on a case-by-case basis with consideration given to the nature, extent, and context of the professional relationship between the practitioner and the person. The fact that a person is not actively receiving treatment or professional services from a practitioner is not determinative of this issue. The consent to, initiation of, or participation in sexual behavior or involvement with a practitioner by a patient does not change the nature of the conduct nor negate the prohibition.

It does seem prudent to include not taking advantage of patients to the list of standards of conduct for the profession. The Board having the ability to deny, suspend or revoke the license to practice of optometrists who harm their patients would seem to be one of the primary arguments in favor of requiring licensure for the profession. Thus, this proposed new language should provide benefit for the public.

The Board proposes to require that optometrists ensure their "access to the practice location during hours in which the practice is closed in order to be able to properly evaluate and treat a patient in an emergency." According to the Department of Health Professions, this proposed language is intended to address problems that have arisen when an optometrist practice is located in conjunction with a mall, big box store or other entity; the optometrist needs to ensure access to his records and practice location in case of a patient emergency after hours.

Having this language in the regulation may help optometrists to convince owners or managers of relevant malls, etc., that they do truly need access to their office through a key or other means in off hours. On the other hand, this requirement may effectively reduce potential office location possibilities, which in turn could raise costs for some optometrists who would have preferred to locate in such facilities. Given that there likely are some relatively infrequent instances where having access to records off hours can make a significant difference in health outcomes for a small number of patients, the cumulative benefit for these improved health outcomes likely exceed the cost of some instances where location choices are slightly reduced.

Businesses and Entities Affected. There are 1436 licensed optometrists[1] and 470 offices of optometrists[2] in Virginia who would be affected by these amendments. All 470 offices of optometrists qualify as small businesses.

Localities Particularly Affected. The proposals do not disproportionately affect specific localities.

Projected Impact on Employment. The proposed amendments are not anticipated to have any significant impact on employment.

Effects on the Use and Value of Private Property. The proposal to require that optometrists ensure their "access to the practice location during hours in which the practice is closed in order to be able to properly evaluate and treat a patient in an emergency" may in a small number of incidences effectively reduce potential office location possibilities, which in turn could raise costs for some optometrists who would have preferred to locate in such facilities.

Small Businesses: Costs and Other Effects. The proposed amendments are unlikely to significantly affect costs for most small businesses. The proposal to require that optometrists ensure their "access to the practice location during hours in which the practice is closed in order to be able to properly evaluate and treat a patient in an emergency" may in a small number of incidences effectively reduce potential office location possibilities, which in turn could raise costs for some optometrists who would have preferred to locate in such facilities.

Small Businesses: Alternative Method that Minimizes Adverse Impact. There are no clear alternative methods that both achieve intended policy goals and reduce adverse impact.

Real Estate Development Costs. The proposed amendments do not create additional costs related to the development of real estate for commercial or residential purposes.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation,

including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

[1]Source: Department of Health Professions

[2]Source: Virginia Employment Commission

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Optometry concurs with the analysis of the Department of Planning and Budget on proposed regulations for 18VAC105-20, Regulations Governing the Practice of Optometry, relating to standards of professional conduct.

Summary:

The proposed amendments to the board's standards of conduct and standards of practice provide authority to address unprofessional actions or substandard patient care by optometrists. The amendments specify policy on patient records, continuity of care, prescribing for self or family, boundary violations, and compliance with law and regulations. The standard for content of a record during an eye examination is updated and clarified, and the specific requirements of federal rule for contact lens and eyeglass prescriptions are referenced.

18VAC105-20-40. ~~Unprofessional~~ Standards of conduct.

~~It shall be deemed unprofessional conduct for any licensed optometrist in the Commonwealth to violate any statute or regulation governing the practice of optometry or to fail to~~ The board has the authority to deny, suspend, revoke or otherwise discipline a licensee for a violation of the following standards of conduct. A licensed optometrist shall:

1. Use in connection with the optometrist's name wherever it appears relating to the practice of optometry one of the following: the word "optometrist," the abbreviation "O.D.," or the words "doctor of optometry."

2. ~~Maintain records on each patient for not less than five years from the date of the most recent service rendered~~ Disclose to the board any disciplinary action taken by a regulatory body in another jurisdiction.

3. Post in an area of the optometric office which is conspicuous to the public, a chart or directory listing the names of all optometrists practicing at that particular location.

4. Maintain patient records, perform procedures or make recommendations during any eye examination, contact lens examination or treatment as necessary to protect the health and welfare of the patient and consistent with requirements of 18VAC105-20-45.

5. Notify patients in the event the practice is to be terminated or relocated, giving a reasonable time period within which the patient or an authorized representative can request in writing that the records or copies be sent to any other like-regulated provider of the patient's choice or destroyed in compliance with requirements of § 54.1-2405 of the Code of Virginia on the transfer of patient records in conjunction with closure, sale, or relocation of practice.

6. Ensure his access to the practice location during hours in which the practice is closed in order to be able to properly evaluate and treat a patient in an emergency.

7. Provide for continuity of care in the event of an absence from the practice or, in the event the optometrist chooses to terminate the practitioner-patient relationship or make his services unavailable, document notice to the patient that allows for a reasonable time to obtain the services of another practitioner.

8. Comply with the provisions of § 32.1-127.1:03 of the Code of Virginia related to the confidentiality and disclosure of patient records and related to the provision of patient records to another practitioner or to the patient or his personal representative.

9. Treat or prescribe based on a bona fide practitioner-patient relationship consistent with criteria set forth in § 54.1-3303 of the Code of Virginia. A licensee shall not prescribe a controlled substance to himself or a family member other than Schedule VI as defined in § 54.1-3455 of the Code of Virginia. When treating or prescribing for self or family, the practitioner shall maintain a patient record documenting compliance with statutory criteria for a bona fide practitioner-patient relationship.

10. Comply with provisions of statute or regulation, state or federal, relating to the diversion, distribution, dispensing, prescribing or administration of controlled substances as defined in § 54.1-3401 of the Code of Virginia.

11. Not enter into a relationship with a patient that constitutes a professional boundary violation in which the practitioner uses his professional position to take advantage of the vulnerability of a patient or his family to include, but not limited to, actions that result in personal gain at the expense of the patient, a nontherapeutic personal involvement, or sexual conduct with a patient. The determination of when a person is a patient is made on a case-by-case basis with consideration given to the nature, extent, and context of the professional relationship between the practitioner and the person. The fact that a person is not actively receiving treatment or professional services from a practitioner is not determinative of this issue. The consent to, initiation of, or participation in sexual behavior or

involvement with a practitioner by a patient does not change the nature of the conduct nor negate the prohibition.

12. Cooperate with the board or its representatives in providing information or records as requested or required pursuant to an investigation or the enforcement of a statute or regulation.

13. Not practice with an expired or unregistered professional designation.

14. Not violate or cooperate with others in violating any of the provisions of Chapters 1 (§ 54.1-100 et seq.), 24 (§ 54.1-2400 et seq.) or 32 (§ 54.1-3200 et seq.) of Title 54.1 of the Code of Virginia or regulations of the board.

18VAC105-20-45. Standards of practice.

A. ~~A complete record of all examinations made of a patient shall include a diagnosis and any treatment and shall also include but not be limited to~~ An optometrist shall legibly document in a patient record the following:

1. During a ~~comprehensive~~ routine or medical eye examination:

a. ~~Case~~ An adequate case history, including the patient's chief complaint;

b. ~~Acuity measure~~ The performance of appropriate testing;

c. ~~Internal health evaluation~~ The establishment of an assessment or diagnosis; and

~~d. External health evaluation; and~~

~~e. Recommendations and directions to the patients, including prescriptions~~ d. A recommendation for an appropriate treatment or management plan, including any necessary follow up.

2. During an initial contact lens examination:

a. The requirements of a ~~comprehensive~~ routine or medical eye examination as prescribed in subdivision 1 of this subsection;

b. Assessment of corneal curvature;

c. ~~Assessment of corneal/contact lens relationship~~ Evaluation of contact lens fitting;

d. Acuity through the lens; and

e. Directions for the wear, care, and handling of lenses ~~and an explanation of the implications of contact lenses with regard to eye health and vision~~.

3. During a follow-up contact lens examination:

a. ~~Assessment~~ Evaluation of ~~corneal/contact~~ contact lens ~~relationship~~ fitting and anterior segment health;

b. Acuity through the lens; and

c. Such further instructions as ~~in subdivision 2 of this subsection, as~~ necessary for the individual patient.

4. In addition, the record of any examination shall include the signature of the attending optometrist and, if indicated, refraction of the patient.

B. The following information shall appear on a prescription for ophthalmic goods:

1. The printed name of the prescribing optometrist;

2. The address and telephone number at which the patient's records are maintained and the optometrist can be reached for consultation;

3. The name of the patient;

4. The signature of the optometrist;

5. The date of the examination and an expiration date, if medically appropriate; and

6. Any special instructions.

C. ~~Sufficient information for complete and accurate filling of an established contact lens prescription shall include but not be limited to the power, the material or manufacturer or both, the base curve or appropriate designation, the diameter when appropriate, and medically appropriate expiration date~~ An optometrist shall provide a patient with a copy of the patient's contact lens prescription in accordance with the Federal Trade Commission Contact Lens Rule (16 CFR Part 315).

D. A licensed optometrist shall provide a written prescription for spectacle lenses ~~upon the request of the patient once all fees have been paid. In addition, he shall provide a written prescription for contact lenses upon the request of the patient once all fees have been paid and the prescription has been established and the follow-up care completed. Follow-up care will be presumed to have been completed if no reappointment is recommended within 60 days after the last visit~~ in accordance with the Federal Trade Commission Eyeglass Rule (16 CFR Part 456).

E. Practitioners shall maintain a patient record for a minimum of five years following the last patient encounter with the following exceptions:

1. Records that have previously been transferred to another practitioner or health care provider or provided to the patient or his personal representative; or

2. Records that are required by contractual obligation or federal law to be maintained for a longer period of time.

F. From (one year after the effective date of this regulation), practitioners shall post information or in some manner inform all patients concerning the time frame for record retention and

destruction. Patient records shall only be destroyed in a manner that protects patient confidentiality.

VA.R. Doc. No. R08-1098; Filed May 20, 2009, 11:16 a.m.

Proposed Regulation

Title of Regulation: **18VAC105-20. Regulations Governing the Practice of Optometry (amending 18VAC105-20-70).**

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

Public Hearing Information:

July 22, 2009 - 9 a.m. - Department of Health Professions, 9960 Mayland Drive, 2nd Floor, Richmond, VA

Public Comments: Public comments may be submitted until 5 p.m. on August 7, 2009.

Agency Contact: Elizabeth A. Carter, Ph.D., Executive Director, Board of Optometry, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4426, FAX (804) 527-4466, or email elizabeth.carter@dhp.virginia.gov.

Basis: Section 54.1-2400 of the Code of Virginia provides the Board of Optometry the authority to promulgate regulations to administer the regulatory system.

There is a statutory mandate for the Board of Optometry to require continuing education for renewal of licensure provided in § 54.1-3219 of the Code of Virginia.

Purpose: Issues relating to the validity and value of continuing education for the optometrist have been apparent to the board through audits of continuing education, disciplinary cases and personal observation by members. For example, the current regulation allows courses that are primarily a sales pitch for a manufacturer product, so long as the course offers a miniscule segment relating to patient care. The board has determined that such courses should not be counted toward a practitioner's renewal requirement. Likewise, prescribing and treating with therapeutic pharmaceutical agents privileges has been expanded with many more classes of drugs available to optometrists, so the subject of required continuing education in treatment with pharmaceutical agents has been clarified. By adding value and substance to the continuing education requirements, the board intends to address the need to ensure continuing competency for the health and safety of consumers of optometric services.

Substance: The following substantive changes are proposed:

1. Affirmatively state in regulation that falsifying the attestation or failure to comply with continuing education requirements may subject a licensee to disciplinary action by the board, consistent with § 54.1-3215 of the Code of Virginia. Currently, falsifying an application is grounds for disciplinary action, so this change is a clarification that makes it clear that falsifying or failure to comply with requirements for a renewal application may provide grounds.

2. Specify that an approved continuing education sponsor must provide a certificate of attendance that shows the date, location, lecturer, content hours of the course, and contact information of the provider/sponsor. The certificate of attendance must be based on verification by the sponsor of the attendee's presence throughout the course – either provided by a post-test or by an independent monitor. The proposal also adds a requirement for an approved continuing education provider/sponsor to maintain documentation about the course and attendance for at least three years following its completion. Specifying the provision and content of a certificate of attendance and the length of time that records must be maintained by a continuing education sponsor/provider is consistent with current expectations and practices and should not represent any change or increased burden.

Issues: The advantage to the public may be that optometrists will take continuing education more closely related to patient care and to the treatment of the eye with prescription drugs. Further specification of requirements for approved sponsors will necessitate closer monitoring of participation. Optometrists will benefit from assuring that sponsors are able to verify continuing education attendance during a board audit.

There are no disadvantages to the agency or the Commonwealth. Clarification of the board's intent and policies relating to continuing education should alleviate some misunderstanding by licensee relating to approval of sponsors and filing for extensions.

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

Summary of the Proposed Amendments to Regulation. The Board of Optometry (Board) proposes to make amendments to the regulations that include: (1) requiring that in order to maintain approval for continuing education courses, providers or sponsors provide a certificate of attendance that shows the date, location, presenter or lecturer, content hours of the course, and contact information of the provider/sponsor for verification, and maintain documentation about the course and attendance for at least three years following its completion, (2) requiring that requests for the extension or waiver for the fulfillment of continuing education hours must be received by the Continuing Education Committee prior to December 31 of each year, and 3) changing the requirement that optometrists who are certified in the use of therapeutic pharmaceutical agents have at least two hours of continuing education "directly related to the prescribing and administration of such drugs" to "directly related to the treatment of the human eye and its adnexa with pharmaceutical agents,"

Result of Analysis. The benefits likely exceed the costs for one or more proposed changes. There is insufficient data to accurately compare the magnitude of the benefits versus the costs for other changes.

Estimated Economic Impact. The proposed regulation includes language that requires providers or sponsors to do two things in order to maintain approval for continuing education courses. First, providers or sponsors must provide a certificate of attendance that shows the date, location, presenter or lecturer, content hours of the course, and contact information of the provider/sponsor for verification. This certificate of attendance must be based on verification by the sponsor of the attendee's presence throughout the course, either provided by a post-test or by an independent monitor. Second, providers or sponsors must maintain documentation about the course and attendance for at least three years following its completion. This amendment is being proposed because by observation and experience with audits of continuing education, the Board is concerned that some sponsors do not provide a certificate of completion that gives sufficient information about the course, nor do they provide verification of attendance. These requirements will ensure that the certificate of attendance and all necessary information can be verified. The requirement that continuing education providers/sponsors maintain documentation about the course and attendance for at least three years following its completion came about because in conducting an audit of a licensee continuing education, it is often necessary to contact a sponsor or provider to request additional information about a course or about the licensee's attendance.

The cost of these amendments will most likely be born by the continuing education provider. Since most providers offer a certificate of completion—the Board's concern is that the certificates do not give sufficient information—this amendment should not impose prohibitively high costs. For those who do not currently provide certificates, it does not seem that the cost need exceed $0.50 per participant, which is a cost that will probably be born either by the provider, or passed on to the participant. For those course providers who do not provide a post-test, the proposed amendment would require them to verify the attendee's presence in the course through an independent monitor. The cost of the monitor is difficult to ascertain since, according to the Department of Health Professions (Department), the cost of the monitor is likely to vary widely depending upon how different vendors work out staffing across the different kinds of venues. Some vendors might pay an independent monitor, while some may ask staff members to monitor as a part of their regular duties. The costs associated with the certificate and the three years of recordkeeping are likely to be outweighed by the benefits of being able to conduct an accurate audit of continuing education acquisition, especially since many providers and sponsors already provide certificates and maintain documentation. Many courses already provide post-tests and independent monitors and for those courses, the benefits of this amendment are likely to outweigh the costs. For those courses that, under this proposal, will have to provide an independent monitor for each course delivered, however, it is not clear if the benefits of this particular amendment will outweigh the costs.

The proposed regulation includes language that "A request for an extension or a waiver [for meeting continuing education requirements] shall be received prior to December 31 of each year." This change is being proposed because the Board has had instances in which licensees realize that they are missing continuing education hours at the time of renewal and request an extension after the renewal date has passed. The license renewal period is January 1 to December 31, so this amendment ensures that the hours be completed, or an extension be granted, before the renewal deadline. This proposal should not impose any cost on licensees. Therefore, the benefit of this amendment outweighs the cost.

Under current regulation, for optometrists who are certified in the use of therapeutic pharmaceutical agents, at least two of the 16 required continuing education hours must be "directly related to the *prescribing and administration of such drugs*." The Board proposes to amend *"prescribing and administration of such drugs"* to *"treatment of the human eye and its adnexa with pharmaceutical agents."* The Board feels that the new language of "treatment of the human eye and its adnexa…" is more inclusive and descriptive of the types of courses related to patient care. The proposed language is more inclusive and remains directly relevant to patient care, this proposed amendment likely provides a net benefit.

Businesses and Entities Affected. There are 1444 optometrists[1] and 470 offices of optometrists[2] in Virginia who would be affected by these amendments. Of those optometrists, 1194 are TPA-certified (i.e., who are certified for treatment of diseases or abnormal conditions with therapeutic pharmaceutical agents) and therefore would be subject to all of the amendments. All 470 offices of optometrists qualify as small businesses.

Localities Particularly Affected. The proposals do not disproportionately affect specific localities.

Projected Impact on Employment. The proposed amendments are not anticipated to have any significant impact on employment.

Effects on the Use and Value of Private Property. The cost of providing an independent monitor could increase costs for certain course providers, thereby moderately decreasing the value of their business.

Small Businesses: Costs and Other Effects. The proposal to require continuing education course providers to provide either a post-test or an independent monitor will increase costs for those providers who do not already do so. The requirement is reasonable though, so as to ensure actual

course attendance by the licensee claiming continuing education credits.

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

Real Estate Development Costs. The proposed amendments do not create additional costs related to the development of real estate for commercial or residential purposes.

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

[1] Source: Department of Health Professions

[2] Source: Virginia Employment Commission

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Optometry concurs with the analysis of the Department of Planning and Budget on proposed regulations for 18VAC105-20, Regulations Governing the Practice of Optometry, relating to continuing education requirements.

Summary:

The proposed amendments (i) require that, in order to maintain approval for continuing education courses, providers or sponsors provide a certificate of attendance that shows the date, location, presenter or lecturer, content hours of the course, and contact information of the provider/sponsor for verification, and maintain documentation about the course and attendance for at least three years following its completion; (ii) require that requests for the extension or waiver for the fulfillment of continuing education hours must be received by the Continuing Education Committee prior to December 31 of each year; and (iii) require that optometrists who are certified in the use of therapeutic pharmaceutical agents have at least two hours of continuing education "directly related to the treatment of the human eye and its adnexa with pharmaceutical agents."

18VAC105-20-70. Requirements for continuing education.

A. Each license renewal shall be conditioned upon submission of evidence to the board of 16 hours of continuing education taken by the applicant during the previous license period.

1. Fourteen of the 16 hours shall pertain directly to the care of the patient. The 16 hours may include up to two hours of recordkeeping for patient care and up to two hours of training in cardiopulmonary resuscitation (CPR).

2. For optometrists who are certified in the use of therapeutic pharmaceutical agents, at least two of the required continuing education hours shall be directly related to the ~~prescribing and administration of such drugs~~ treatment of the human eye and its adnexa with pharmaceutical agents.

3. Courses ~~that are solely designed~~ for which the primary purpose is to promote the sale of specific instruments or products and courses offering instruction on augmenting income are excluded and will not receive credit by the board.

B. Each licensee shall attest to fulfillment of continuing education hours on the required annual renewal form. All continuing education shall be completed prior to December 31 unless an extension or waiver has been granted by the Continuing Education Committee. A request for an extension or waiver shall be received prior to December 31 of each year.

C. All continuing education courses shall be offered by an approved sponsor listed in subsection G or accredited as provided in subsection H of this section. Courses that are not approved by a board-recognized sponsor in advance shall not be accepted for continuing education credit. For those courses that have a post-test requirement, credit will only be given if the optometrist receives a passing grade as indicated on the certificate.

D. Licensees shall maintain continuing education documentation for a period of not less than three years. A random audit of licensees may be conducted by the board which will require that the licensee provide evidence substantiating participation in required continuing education courses within 14 days of the renewal date.

E. Documentation of hours shall clearly indicate the name of the continuing education provider and its affiliation with an approved sponsor as listed in subsection G or accredited as provided in subsection H of this section. Documents that do not have the required information shall not be accepted by the board for determining compliance. Correspondence courses shall be credited according to the date on which the post-test was graded as indicated on the continuing education certificate.

F. A licensee shall be exempt from the continuing competency requirements for the first renewal following the date of initial licensure by examination in Virginia.

G. An approved continuing education course or program, whether offered by correspondence, electronically or in person, shall be sponsored or approved by one of the following:

1. The American Optometric Association and its constituent organizations.

2. Regional optometric organizations.

3. State optometric associations and their affiliate local societies.

4. Accredited colleges and universities providing optometric or medical courses.

5. The American Academy of Optometry and its affiliate organizations.

6. The American Academy of Ophthalmology and its affiliate organizations.

7. The Virginia Academy of Optometry.

~~8. Council on Optometric Practitioner Education (C.O.P.E.).~~

~~9.~~ 8. State or federal governmental agencies.

~~10.~~ 9. College of Optometrists in Vision Development.

~~11. The Accreditation Council for Continuing Medical Education of the American Medical Association for Category 1 or Category 2 credit.~~

~~12.~~ 10. Providers of training in cardiopulmonary resuscitation (CPR).

~~13.~~ 11. Optometric Extension Program.

H. Courses accredited by the Council on Optometric Practitioner Education (COPE) or the Accreditation Council for Continuing Medical Education (ACCME) of the American Medical Association for Category 1 or Category 2 credit shall be approved.

I. In order to maintain approval for continuing education courses, providers or sponsors shall:

1. Provide a certificate of attendance that shows the date, location, presenter or lecturer, content hours of the course, and contact information of the provider/sponsor for verification. The certificate of attendance shall be based on verification by the sponsor of the attendee's presence throughout the course, either provided by a post-test or by an independent monitor.

2. Maintain documentation about the course and attendance for at least three years following its completion.

J. Falsifying the attestation of compliance with continuing education on a renewal form or failure to comply with continuing education requirements may subject a licensee to disciplinary action by the board, consistent with § 54.1-3215 of the Code of Virginia.

VA.R. Doc. No. R07-238; Filed May 20, 2009, 11:16 a.m.

BOARD OF PHARMACY

Proposed Regulation

Titles of Regulations: **18VAC110-20. Regulations Governing the Practice of Pharmacy (amending 18VAC110-20-20).**

18VAC110-50. Regulations Governing Wholesale Distributors, Manufacturers, and Warehousers (amending 18VAC110-50-20).

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

Public Hearing Information:

June 10, 2009 - 9 a.m. - Perimeter Center, 9960 Mayland Drive, 2nd Floor, Richmond, VA

Public Comments: Public comments may be submitted until August 7, 2009.

Agency Contact: Elizabeth Scott Russell, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4456, FAX (804) 527-4472, or email scotti.russell@dhp.virginia.gov.

Basis: Section 54.1-2400 of the Code of Virginia provides the Board of Pharmacy the authority to promulgate regulations to administer the regulatory system.

The legal authority to promulgate regulations to set the renewal date for permitted and registered facilities is found in Chapter 330 of the 2008 Acts of Assembly.

Purpose: All licenses, permits and registrations have expired on December 31 of each year, which has created an exceptional workload for staff during one period of time. The board sought legislation to allow expiration dates for permitted or registered facilities to be set on dates different from those of licensed pharmacists or registered technicians. All facility permits or registrations that currently expire on

December 31 will continue to be in effect until the next renewal date as set by the board in regulation. The goal is to distribute the workload for board and department staff and to make it less burdensome for pharmacies, some of which pay the renewal for the pharmacy permit and all licensed or registered staff.

A single expiration date means that the Board of Pharmacy staff annually renews all of its 20,000+ licenses at the same time. This creates a very unequal workload during this time of the year. Because of recent significant increases in numbers of licensees, the addition of registered pharmacy technicians, and increases in nonresident facility licenses, the board's ability to renew licenses in a timely manner is being challenged. Even though a number of persons use online licensure renewal, many facilities choose not to do so, and nonresident facilities are not able to do this because of the requirement to show proof of resident licensure and a pharmacist-in-charge who holds a Virginia license.

The action is necessary to protect the health and safety of the citizens because a staggered renewal system will assist staff in assuring that all requirements of renewal have been met.

Substance: Renewal dates for pharmacies and other types of licenses and permits, other than pharmacists and technicians, have been changed to February 28 or April 30.

Issues: There are no particular advantages or disadvantages to the public.

There is an advantage to the agency in greater distribution of the workload associated with renewals.

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

Summary of the Proposed Amendments to Regulation. The Board of Pharmacy (Board) proposes to amend its Regulations Governing the Practice of Pharmacy and its Regulations Governing Wholesale Distributers, Manufacturers and Warehousers so the licenses, permits and registrations issued under these regulations do not all expire on the same day each year. These amended regulations will replace emergency provisions that are set to expire September 22, 2009.

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

Estimated Economic Impact. Prior to the promulgation of emergency regulations (effective September 23, 2008), all Board licenses, permits and registrations expired on December 31 each year. The Department of Health Professions (DHP) reports that this not only led to an uneven workload for Board staff but was also burdensome for pharmacies that chose to pay for the renewal of the pharmacy's permit and also for the renewal of licenses and registrations held by pharmacy staff.

These proposed regulations, and the emergency regulations that they replace, institute a staggered schedule for renewal. Under these regulations, pharmacist active license, pharmacist inactive license and pharmacist technician registration renewals are still due December 31 each year. Physician permit to practice pharmacy, medical equipment supplier permit, Humane Society permit and controlled substances registration renewals are due February 28 each year. Pharmacy permit and nonresident pharmacy permit renewals are due April 30 each year. All licenses, permits and registrations issued under 18 VAC 110-50 will need to be renewed February 28th each year. Current facility permits and registrations that would have expired on the 31st of December will be valid until the new expiration dates set out in these proposed regulations.

It is unlikely that any regulated entity will incur any costs on account of these proposed regulations. Both Board employees and regulated entities will likely benefit under these regulatory changes. Board employees will likely benefit from having their renewal workload more widely distributed. Pharmacies that choose to pay for renewal of employee licenses and registrations as well as paying for the renewal of their pharmacy permit will likely benefit from having these fees due over a span of several months rather than all at once. Permit and registration holders who would have had to renew on December 31, but will now have until the end of February or the end of April to do so, will receive a one time benefit as their permits/registrations will be good for 14 or 16 months rather than 12 months.

Businesses and Entities Affected. These proposed regulations will affect all pharmacies, non-resident pharmacies, drug manufacturers, drug wholesale distributors, drug warehousers, physicians who are permitted to practice pharmacy, medical equipment suppliers and holders of controlled substance registrations in the Commonwealth. DHP reports that the Board currently permits 1,663 pharmacies, 541 nonresident pharmacies, 96 manufacturers, 42 warehousers, 14 physicians who are permitted to practice pharmacy and 421 medical equipment suppliers. DHP also reports that there are 746 wholesale distributors currently licensed by the Board and that there are 673 controlled substance registrations held in the Commonwealth. DHP does not know the exact number of affected license, permit or registration holders that would qualify as small businesses but suspects it is a small number since most pharmacies are now owned by large national chains.

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 Board of Pharmacy concurs with the analysis of the Department of Planning and Budget on proposed amended regulations for 18VAC110-20, Regulations Governing the Practice of Pharmacy, and 18VAC110-50, Regulations Governing Wholesale Distributors, Manufacturers and Warehousers relating to a change in renewal dates.

Summary:

The proposed amendments establish annual renewal dates for various licenses, permits, and registrations under the Board of Pharmacy. The amendments are currently in effect under emergency regulations that will expire September 22, 2009.

18VAC110-20-20. Fees.

A. Unless otherwise provided, fees listed in this section shall not be refundable.

B. Unless otherwise provided, any fees for taking required examinations shall be paid directly to the examination service as specified by the board.

C. Initial application fees.

1. Pharmacist license	$180
2. Pharmacy intern registration	$15
3. Pharmacy technician registration	$25
4. Pharmacy permit	$270
5. Permitted physician licensed to dispense drugs	$270
6. Medical equipment supplier permit	$180
7. Humane society permit	$20
8. Nonresident pharmacy	$270
9. Controlled substances registrations ~~(Between November 2, 2005, and December 31, 2006, the application fee for a controlled substance registration shall be $50)~~	$90
10. Robotic pharmacy system approval	$150
11. Innovative program approval. If the board determines that a technical consultant is required in order to make a decision on approval, any consultant fee, not to exceed the actual cost, shall also be paid by the applicant in addition to the application fee.	$250
12. Approval of a pharmacy technician training program	$150
13. Approval of a continuing education program	$100

D. Annual renewal fees.

1. Pharmacist active license – due December 31	$90
2. Pharmacist inactive license – due December 31	$45
3. Pharmacy technician registration – due December 31	$25
4. Pharmacy permit – due April 30	$270
5. Physician permit to practice pharmacy – due February 28	$270
6. Medical equipment supplier permit – due	$180

February 28

7. Humane society permit – due February 28	$20
8. Nonresident pharmacy – due April 30	$270
9. Controlled substances registrations – due February 28	$90
10. Innovative program continued approval based on board order not to exceed $200 per approval period.	

E. Late fees. The following late fees shall be paid in addition to the current renewal fee to renew an expired license within one year of the expiration date. In addition, engaging in activities requiring a license, permit, or registration after the expiration date of such license, permit, or registration shall be grounds for disciplinary action by the board.

1. Pharmacist license	$30
2. Pharmacist inactive license	$15
3. Pharmacy technician registration	$10
4. Pharmacy permit	$90
5. Physician permit to practice pharmacy	$90
6. Medical equipment supplier permit	$60
7. Humane society permit	$5
8. Nonresident pharmacy	$90
9. Controlled substances registrations	$30

F. Reinstatement fees. Any person or entity attempting to renew a license, permit, or registration more than one year after the expiration date shall submit an application for reinstatement with any required fees. Reinstatement is at the discretion of the board and, except for reinstatement following license revocation or suspension, may be granted by the executive director of the board upon completion of an application and payment of any required fees.

1. Pharmacist license	$210
2. Pharmacist license after revocation or suspension	$500
3. Pharmacy technician registration	$35
4. Pharmacy technician registration after revocation or suspension	$125
5. Facilities or entities that cease operation and wish to resume shall not be eligible for reinstatement but shall apply for a new permit or registration. Facilities or entities that failed to renew and continued to operate for more than one renewal cycle shall pay the current and all back renewal fees for the years in which they were operating plus the following reinstatement fees:	
a. Pharmacy permit	$240
b. Physician permit to practice pharmacy	$240
c. Medical equipment supplier permit	$210
d. Humane society permit	$30
e. Nonresident pharmacy	$115
f. Controlled substances registration	$180

G. Application for change or inspection fees for facilities or other entities.

1. Change of pharmacist-in-charge	$50
2. Change of ownership for any facility	$50
3. Inspection for remodeling or change of location for any facility	150
4. Reinspection of any facility	$150
5. Board-required inspection for a robotic pharmacy system	$150
6. Board-required inspection of an innovative program location	$150
7. Change of pharmacist responsible for an approved innovative program	$25

H. Miscellaneous fees.

1. Duplicate wall certificate	$25
2. Returned check	$35

~~I. For the annual renewal due on or before December 31, 2006, the following fees shall be imposed for a license, permit or registration:~~

~~1. Pharmacist active license~~	~~$50~~
~~2. Pharmacist inactive license~~	~~$25~~
~~3. Pharmacy technician registration~~	~~$15~~
~~4. Pharmacy permit~~	~~$210~~
~~5. Physician permit to practice pharmacy~~	~~$210~~
~~6. Medical equipment supplier permit~~	~~$140~~
~~7. Humane society permit~~	~~$20~~
~~8. Nonresident pharmacy~~	~~$210~~
~~9. Controlled substances registrations~~	~~$50~~

NOTICE: The forms used in administering the above regulation are not being published; however, the name of each form is listed below. The forms are available for public inspection by contacting the agency contact for this regulation, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS (18VAC110-20)

Application for Registration as a Pharmacy Intern (rev. 8/07).

Affidavit of Practical Experience, Pharmacy Intern (rev. 8/07).

Application for Licensure as a Pharmacist by Examination (rev. 8/07).

Instructions for Reinstating or Reactivating a Pharmacist License (rev. 11/07).

Application to Reinstate or Reactivate a Pharmacist License (rev. 11/07).

Application for Approval of a Continuing Education Program (rev. 8/07).

Application for Approval of ACPE Pharmacy School Course(s) for Continuing Education Credit (rev. ~~8/07)~~ 4/09).

Application for License to Dispense Drugs (permitted physician) (rev. 8/07).

Application for a Pharmacy Permit (rev. ~~8/07)~~ 3/09).

Application for a Nonresident Pharmacy Registration (rev. 7/08).

Application for a Permit as a Medical Equipment Supplier (rev. ~~8/07)~~ 3/09).

Application for a Controlled Substances Registration Certificate (rev. 8/07).

Application for a Permit as a Humane Society (rev. ~~8/07)~~ 3/09).

Application for Registration as a Pharmacy Intern for Graduates of a Foreign College of Pharmacy (rev. 8/07).

Closing of a Pharmacy (rev. 8/07).

Application for Approval of a Robotic Pharmacy System (rev. 8/07).

Inspection Required for Approval of a Robotic Pharmacy System (rev. 8/07).

Application for Approval of an Innovative (Pilot) Program (rev. 8/07).

Pharmacy Technician Registration Instructions and Application (rev. ~~7/08)~~ 3/09).

Instructions for Reinstating a Pharmacy Technician Registration (rev. 11/07).

Application to Reinstate a Pharmacy Technician Registration (rev. 11/07).

Application for Approval of a Pharmacy Technician Training Program (rev. 8/07).

Application for Registration for Volunteer Practice (rev. 8/07).

Sponsor Certification for Volunteer Registration (rev. 8/07).

Preceptor Verification Form (rev. 8/07).

Application for Reinstatement of Registration as a Pharmacy Intern (eff. 9/07).

Affidavit for Limited-Use Pharmacy Technician (rev. 8/07).

Limited-Use Pharmacy Technician Registration Instructions and Application (rev. 7/08).

Application for Registration as a Limited-Use Pharmacy Technician (eff. 7/08).

18VAC110-50-20. Fees.

A. Unless otherwise provided, fees listed in this section shall not be refundable.

B. Initial application fees.

1. Nonrestricted manufacturer permit	$270
2. Restricted manufacturer permit	$180
3. Wholesale distributor license	$270
4. Warehouser permit	$270
5. Nonresident wholesale distributor	$270
6. Controlled substances registration	$90

C. Annual renewal fees shall be due on February 28 of each year.

1. Nonrestricted manufacturer permit	$270
2. Restricted manufacturer permit	$180
3. Wholesale distributor license	$270
4. Warehouser permit	$270
5. Nonresident wholesale distributor	$270
6. Controlled substances registration	$90

D. Late fees. The following late fees shall be paid in addition to the current renewal fee to renew an expired license within one year of the expiration date. In addition, engaging in activities requiring a license, permit, or registration after the expiration date of such license, permit, or registration shall be grounds for disciplinary action by the board.

1. Nonrestricted manufacturer permit	$90
2. Restricted manufacturer permit	$60
3. Wholesale distributor license	$90
4. Warehouser permit	$90
5. Nonresident wholesale distributor	$90
6. Controlled substances registration	$30

E. Reinstatement fees.

1. Any entity attempting to renew a license, permit, or registration more than one year after the expiration date shall submit an application for reinstatement with any required fees. Reinstatement is at the discretion of the board and, except for reinstatement following license revocation or suspension, may be granted by the executive director of the board upon completion of an application and payment of any required fees.

2. Engaging in activities requiring a license, permit, or registration after the expiration date of such license, permit, or registration shall be grounds for disciplinary action by the board. Facilities or entities that cease operation and wish to resume shall not be eligible for reinstatement, but shall apply for a new permit or registration.

3. Facilities or entities that failed to renew and continued to operate for more than one renewal cycle shall pay the current and all back renewal fees for the years in which they were operating plus the following reinstatement fees:

a. Nonrestricted manufacturer permit	$240
b. Restricted manufacturer permit	$210
c. Wholesale distributor license	$240
d. Warehouser permit	$240
e. Nonresident wholesale distributor	$240
f. Controlled substances registration	$180

F. Application for change or inspection fees.

1. Reinspection fee	$150
2. Inspection fee for change of location, structural changes, or security system changes	$150
3. Change of ownership fee	$50
4. Change of responsible party	$50

G. The fee for a returned check shall be $35.

~~H. For the annual renewal due on or before December 31, 2006, the following fees shall be imposed for a license or permit:~~

~~1. Nonrestricted manufacturer permit~~	~~$210~~
~~2. Restricted manufacturer permit~~	~~$140~~
~~3. Wholesale distributor license~~	~~$210~~
~~4. Warehouser permit~~	~~$210~~
~~5. Nonresident wholesale distributor~~	~~$210~~

NOTICE: The forms used in administering the above regulation are not being published; however, the name of each form is listed below. The forms are available for public inspection by contacting the agency contact for this regulation, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS (18VAC110-50)

Application for a Permit as a Restricted Manufacturer (rev. ~~8/07)~~ 3/09).

Application for a Permit as a Nonrestricted Manufacturer (rev. ~~8/07)~~ 3/09).

Application for a Permit as a Warehouser (rev. ~~8/07)~~ 3/09).

Application for a License as a Wholesale Distributor (rev. ~~8/07)~~ 3/09).

Application for a Nonresident Wholesale Distributor Registration (rev. ~~8/07)~~ 9/08).

Application for a License as a Wholesale Distributor -- Limited Use for Distribution of Medical Gases Only (rev. ~~8/07)~~ 3/09).

VA.R. Doc. No. R09-1311; Filed May 20, 2009, 11:13 a.m.

BOARD OF COUNSELING

Fast-Track Regulation

Titles of Regulations: **18VAC115-20. Regulations Governing the Practice of Professional Counseling (amending 18VAC115-20-45, 18VAC115-20-130).**

18VAC115-50. Regulations Governing the Practice of Marriage and Family Therapy (amending 18VAC115-50-40, 18VAC115-50-110).

18VAC115-60. Regulations Governing the Practice of Licensed Substance Abuse Treatment Practitioners (amending 18VAC115-60-50, 18VAC115-60-130).

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

Public Hearing Information: No public hearings are scheduled.

Public Comments: Public comments may be submitted until 5 p.m. on July 8, 2009.

Effective Date: July 23, 2009.

Agency Contact: Evelyn B. Brown, Executive Director, Board of Counseling, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4488, FAX (804) 527-4435, or email evelyn.brown@dhp.virginia.gov.

Basis: Section 54.1-2400 of the Code of Virginia provides the Board of Counseling the authority to promulgate regulations to administer the regulatory system.

Purpose: The purpose of the action is to clarify and correct an oversight in the recent revisions of regulations. In an action that became final on September 3, 2008, the board added provisions for licensure by endorsement to allow persons who did not have educational and residency experience consistent with what is required for licensure in Virginia to be licensed based in part on their clinical experience in another state. It was assumed that the "clinical practice for five of the last six years" immediately preceding a licensure application in Virginia was "post-licensure" experience, so there would be a history of ethical, competent practice in another state on which to base a licensure decision in Virginia. Since the regulation does not specify "post-licensure" experience, a person has applied for licensure based on years of prelicensure experience in internship or residency. The board must clarify its intent in order to ensure that an applicant who does not otherwise meet its licensure requirements is competent and safe to practice – based on years of independent clinical practice as a licensee of another state board.

The Board of Counseling has two certified and three licensed professions. For many years, all of those professions, as well as those regulated by the Boards of Psychology and Social Work, have had a regulatory requirement for a practitioner to report incompetent or unprofessional conduct by another practitioner within the same profession and regulated by the same board. Several years ago, the Board of Counseling revised its regulations for the three licensed professions to require reporting of any mental health provider licensed by any health regulatory board. Board counsel subsequently decided that the mandate for reporting on any mental health provider exceeded the mandate in § 54.1-2400.6, which requires a practitioner to inform his patient of his right to report misconduct. Therefore, in an action that became final on July 25, 2007, regulations were changed from requiring reporting of any other mental health provider to informing the client of his right to report. At that time, the board failed to recapture the older language about reporting of another practitioner within the same profession. The reinstatement of the reporting requirement in the fast-track action will make all five Board of Counseling regulations consistent with each other and with regulations for psychology and social work. Without the amendment, the misconduct of another counselor, marriage and family therapy or licensed substance abuse may go unreported and harm to patients or their families would continue.

Rationale for Using Fast-Track Process: The fast-track process is being used to promulgate the amendments because there is unanimous agreement with the changes proposed. The action is not controversial and will resolve questions and issues that have come to the board in recent months.

Substance: The proposed action would insert “post-licensure” to the clinical experience required for licensure by endorsement and would reinsert a requirement to report misconduct by another licensee within the same profession in the standards of conduct.

Issues: There are no disadvantages to the public. For applicants who do not meet Virginia’s requirements for education and experience, the years of post-licensure clinical practice in another state provide a measure of competency that is important to persons who will receive mental health services by those licensees. A requirement for the licensee to report known or suspected violations of law or regulation within his profession also protects the public from persons who are incompetent or unethical in their practice.

There are no disadvantages to the agency or the Commonwealth. Clarification of the regulations will resolve some issues or questions that have been raised in recent months.

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

Summary of the Proposed Amendments to Regulation. The Board of Counseling (Board) proposes to amend its regulations governing the practices of professional counseling, marriage and family therapy and licensed substance abuse practitioners. Specifically, the Board proposes to clarify that experience required for licensure by endorsement in these fields must be post-licensure experience. The Board also proposes to require that all individuals licensed under these regulations must report incompetent or unprofessional behavior on the part of other individuals licensed under the same regulations (i.e., professional counselors will be required to report incompetent practice of other professional counselors).

Result of Analysis. There is insufficient data to gauge whether benefits will likely outweigh costs for these proposed changes.

Estimated Economic Impact. The Board recently promulgated standards for licensure by endorsement for professional counselors, marriage and family therapists and licensed substance abuse practitioners. Amongst these standards is a requirement that applicants for licensure by endorsement provide evidence of active clinical practice for five of the six years immediately preceding application for Virginia licensure. The Department of Health Professions (DHP) reports that the Board assumed it was understood that the clinical experience required would be experience post-licensure such that the applicant had a "history of ethical, competent practice in another state on which to base a licensure decision in Virginia". Since standards for licensure by endorsement became final (September 3, 2008), the Board has received an application from an individual who submitted evidence of pre-licensure experience (during internship or residency) to meet the Board’s requirements.

Since the Board did not originally specify that experience for this program must be post-licensure, it proposes to amend

these regulations with that stipulation. DHP reports that the Board intends to allow pre-licensure experience to be counted toward meeting the requirements for licensure by endorsement until these proposed changes are promulgated. This proposed regulatory change will bring current regulations into line with the Board's original intent. To the extent that independent, post-licensure experience is a better indicator of future competence of practice than would be supervised, pre-licensure experience, this proposed change may prove beneficial for the future patients of individuals licensed by endorsement. Individuals who have not been licensed for at least five years in another state, but who would meet experience requirements for licensure by endorsement if their pre-licensure experience were counted, will not be able to qualify for licensure by endorsement under these proposed standards. These individuals may incur costs if other avenues for Virginia licensure require more resources or if these individuals are required to wait (for perhaps several years) before being able to qualify for licensure by endorsement.

For many years the Board required licensed or certified professionals that were subject to its regulations to report incompetent or unlawful conduct by any other practitioner within the same profession and regulated by the same board. Several years ago, the Board changed this rule so that individuals licensed by the Board were required to report unprofessional or unlawful conduct for any mental health provider licensed by any health regulatory board. On advice of Board counsel, this provision was emended in 2007 to instead require these licensees to inform their patients of the patients' right to report misconduct.

The Board now proposes to amend these regulations by reinserting old language that requires licensees to report incompetent or unlawful conduct by other practitioners within the same profession. This proposed change will make reporting requirements for the three professions covered by these regulations consistent with those of other Board regulants. DHP reports that licensees covered by these regulations are likely not cognizant of the fact that that reporting requirements were inadvertently left out of these regulations when they were last amended. Accordingly, this proposed amendment may not have the affect of changing current licensee behavior. To the extent that some licensees may begin reporting misconduct that they formerly would not have, patients may be better protected from unprofessional or unlawful conduct on the part of their counselors/therapists. On the other hand, licensees will now be liable for reporting known or suspected misconduct and so may run afoul of the Board for not reporting bad conduct if the Board decides that conduct should have been reported.

Businesses and Entities Affected. These proposed regulations will affect all individuals licensed by the Board of Counseling. DHP reported in 2007 that the Board then licensed 2,884 licensed professional counselors, 838 marriage and family therapists and 177 licensed substance abuse practitioners.

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

Projected Impact on Employment. If this regulatory action leads to a smaller number of individuals being licensed by endorsement, there may end up being marginally fewer professionals in these fields practicing in the Commonwealth than there would be under current regulations.

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 Board of Counseling concurs with the analysis of the Department of

Planning and Budget on proposed amended regulations for 18VAC115-20, Regulations Governing the Practice of Professional Counselors, 18VAC115-50, Regulations Governing the Practice of Marriage and Family Therapy, 18VAC115-60, Regulations Governing the Practice of Licensed Substance Abuse Treatment Practitioners.

Summary:

The proposed amendments (i) specify that clinical practice experience required for licensure by endorsement must be post-licensure and (ii) requires licensees to report known or suspected violations of another licensee.

18VAC115-20-45. Prerequisites for licensure by endorsement.

A. Every applicant for licensure by endorsement shall submit in one package the following:

1. A completed application;

2. The application processing fee;

3. Verification of all professional licenses or certificates ever held in any other jurisdiction. In order to qualify for endorsement the applicant shall have no unresolved action against a license or certificate. The board will consider history of disciplinary action on a case-by-case basis;

4. Documentation of having completed education and experience requirements as specified in subsection B of this section;

5. Verification of a passing score on a licensure examination in the jurisdiction in which licensure was obtained; and

6. An affidavit of having read and understood the regulations and laws governing the practice of professional counseling in Virginia.

B. Every applicant for licensure by endorsement shall meet one of the following:

1. Educational requirements consistent with those specified in 18VAC115-20-49 and 18VAC115-20-51 and experience requirements consistent with those specified in 18VAC115-20-52; or

2. If an applicant does not have educational and experience credentials consistent with those required by this chapter, he shall provide:

a. Documentation of education and supervised experience that met the requirements of the jurisdiction in which he was initially licensed as verified by an official transcript and a certified copy of the original application materials; and

b. Evidence of post-licensure clinical practice for five of the last six years immediately preceding his licensure application in Virginia.

3. In lieu of transcripts verifying education and documentation verifying supervised experience, the board may accept verification from the credentials registry of the American Association of State Counseling Boards or any other board-recognized entity.

Part V
Standards of Practice; Unprofessional Conduct; Disciplinary Actions; Reinstatement

18VAC115-20-130. Standards of practice.

A. The protection of the public health, safety, and welfare and the best interest of the public shall be the primary guide in determining the appropriate professional conduct of all persons whose activities are regulated by the board. Regardless of the delivery method, whether in person, by phone or electronically, these standards shall apply to the practice of counseling.

B. Persons licensed by the board shall:

1. Practice in a manner that is in the best interest of the public and does not endanger the public health, safety, or welfare;

2. Practice only within the boundaries of their competence, based on their education, training, supervised experience and appropriate professional experience and represent their education, training, and experience accurately to clients;

3. Stay abreast of new counseling information, concepts, applications and practices that are necessary to providing appropriate, effective professional services;

4. Be able to justify all services rendered to clients as necessary and appropriate for diagnostic or therapeutic purposes;

5. Document the need for and steps taken to terminate a counseling relationship when it becomes clear that the client is not benefiting from the relationship. Document the assistance provided in making appropriate arrangements for the continuation of treatment for clients, when necessary, following termination of a counseling relationship;

6. Make appropriate arrangements for continuation of services, when necessary, during interruptions such as vacations, unavailability, relocation, illness, and disability;

7. Disclose to clients all experimental methods of treatment and inform clients of the risks and benefits of any such treatment. Ensure that the welfare of the clients is in no way compromised in any experimentation or research involving those clients;

8. Neither accept nor give commissions, rebates, or other forms of remuneration for referral of clients for professional services;

9. Inform clients of the purposes, goals, techniques, procedures, limitations, potential risks, and benefits of services to be performed; the limitations of confidentiality; and other pertinent information when counseling is initiated and throughout the counseling process as necessary. Provide clients with accurate information regarding the implications of diagnosis, the intended use of tests and reports, fees, and billing arrangements;

10. Select tests for use with clients that are valid, reliable and appropriate and carefully interpret the performance of individuals not represented in standardized norms;

11. Determine whether a client is receiving services from another mental health service provider, and if so, refrain from providing services to the client without having an informed consent discussion with the client and having been granted communication privileges with the other professional;

12. Use only in connection with one's practice as a mental health professional those educational and professional degrees or titles that have been earned at a college or university accredited by an accrediting agency recognized by the United States Department of Education, or credentials granted by a national certifying agency, and that are counseling in nature; and

13. Advertise professional services fairly and accurately in a manner that is not false, misleading or deceptive.

C. In regard to patient records, persons licensed by the board shall:

1. Maintain written or electronic clinical records for each client to include treatment dates and identifying information to substantiate diagnosis and treatment plan, client progress, and termination;

2. Maintain client records securely, inform all employees of the requirements of confidentiality and provide for the destruction of records that are no longer useful in a manner that ensures client confidentiality;

3. Disclose or release records to others only with clients' expressed written consent or that of their legally authorized representative in accordance with § 32.1-127.1:03 of the Code of Virginia;

4. Ensure confidentiality in the usage of client records and clinical materials by obtaining informed consent from clients or their legally authorized representative before (i) videotaping, (ii) audio recording, (iii) permitting third party observation, or (iv) using identifiable client records and clinical materials in teaching, writing or public presentations; and

5. Maintain client records for a minimum of five years or as otherwise required by law from the date of termination of the counseling relationship with the following exceptions:

a. At minimum, records of a minor child shall be maintained for five years after attaining the age of majority (18) or 10 years following termination, whichever comes later;

b. Records that are required by contractual obligation or federal law to be maintained for a longer period of time; or

c. Records that have transferred to another mental health service provider or given to the client or his legally authorized representative.

D. In regard to dual relationships, persons licensed by the board shall:

1. Avoid dual relationships with clients that could impair professional judgment or increase the risk of harm to clients. Examples of such relationships include, but are not limited to, familial, social, financial, business, bartering, or close personal relationships with clients. Counselors shall take appropriate professional precautions when a dual relationship cannot be avoided, such as informed consent, consultation, supervision, and documentation to ensure that judgment is not impaired and no exploitation occurs;

2. Not engage in any type of sexual intimacies with clients or those included in a collateral relationship with the client and not counsel persons with whom they have had a sexual relationship. Counselors shall not engage in sexual intimacies with former clients within a minimum of five years after terminating the counseling relationship. Counselors who engage in such relationship after five years following termination shall have the responsibility to examine and document thoroughly that such relations do not have an exploitive nature, based on factors such as duration of counseling, amount of time since counseling, termination circumstances, client's personal history and mental status, or adverse impact on the client. A client's consent to, initiation of or participation in sexual behavior or involvement with a counselor does not change the nature of the conduct nor lift the regulatory prohibition;

3. Not engage in any sexual relationship or establish a counseling or psychotherapeutic relationship with a supervisee. Counselors shall avoid any nonsexual dual relationship with a supervisee in which there is a risk of exploitation or potential harm to the supervisee or the potential for interference with the supervisor's professional judgment; and

4. Recognize conflicts of interest and inform all parties of the nature and directions of loyalties and responsibilities involved.

E. Persons licensed by this board shall report to the board known or suspected violations of the laws and regulations governing the practice of professional counseling.

F. Persons licensed by the board shall advise their clients of their right to report to the Department of Health Professions any information of which the licensee may become aware in his professional capacity indicating that there is a reasonable probability that a person licensed or certified as a mental health service provider, as defined in § 54.1-2400.1 of the Code of Virginia, may have engaged in unethical, fraudulent or unprofessional conduct as defined by the pertinent licensing statutes and regulations.

NOTICE: The forms used in administering the above regulation are not being published; however, the name of each form is listed below. The forms are available for public inspection by contacting the agency contact for this regulation, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS (18VAC115-20)

Registration of Supervision, LPC Form 1– Post Graduate Degree Supervised Experience, (rev. 8/08).

Quarterly Evaluation, LPC Form 1-QE (rev. 8/08).

Licensure Verification of Out-of-State Supervisor, LPC Form 1-LV (rev. 8/08).

Licensure Application, LPC Form 2 (rev. 8/08).

Verification of Supervision – Post-Graduate Degree Supervised Experience, Form LPC 2-VS (rev. 8/08).

Coursework Outline Form, Form LPC 2-CO (rev. 8/08).

Verification of Internship Hours Towards the Residency, Form LPC 2-IR (rev. 8/08).

Verification of Internship, Form LPC 2-VI (rev. 8/08).

Verification of Licensure, Form LPC 2-VL (rev. 8/08).

Supervision Outline Form – Examination Applicants Only, Form LPC 2-SO (rev. 8/08).

Verification of Post-Licensure Clinical Practice, Endorsement Applicants Only, Form LPC-ECP (rev. ~~8/08)~~ 8/09).

Continuing Education Summary Form (LPC) (rev. 8/07).

Application for Reinstatement of a Lapsed License (rev. 8/07).

18VAC115-50-40. Application for licensure by endorsement.

A. Every applicant for licensure by endorsement shall submit in one package:

1. A completed application;

2. The application processing and initial licensure fee prescribed in 18VAC115-50-20; and

3. Documentation of licensure as follows:

a. Verification of all professional licenses or certificates ever held in any other jurisdiction. In order to qualify for endorsement the applicant shall have no unresolved action against a license or certificate. The board will consider history of disciplinary action on a case-by-case basis;

b. Documentation of a marriage and family therapy license obtained by standards specified in subsection B of this section; or

c. If currently holding an unrestricted license as a professional counselor in Virginia, documentation of successful completion of the requirements set forth in 18VAC115-50-50, 18VAC115-50-55 and 18VAC115-50-60.

B. Every applicant for licensure by endorsement shall meet one of the following:

1. Educational requirements consistent with those specified in 18VAC115-50-50 and 18VAC115-50-55 and experience requirements consistent with those specified in 18VAC115-50-60; or

2. If an applicant does not have educational and experience credentials consistent with those required by this chapter, he shall provide:

a. Documentation of education and supervised experience that met the requirements of the jurisdiction in which he was initially licensed as verified by an official transcript and a certified copy of the original application materials; and

b. Evidence of post-licensure clinical practice for five of the last six years immediately preceding his licensure application in Virginia.

3. In lieu of transcripts verifying education and documentation verifying supervised experience, the board may accept verification from the credentials registry of the American Association of State Counseling Boards or any other board-recognized entity.

18VAC115-50-110. Standards of practice.

A. The protection of the public's health, safety and welfare and the best interest of the public shall be the primary guide in determining the appropriate professional conduct of all persons whose activities are regulated by the board. Regardless of the delivery method, whether in person, by phone or electronically, these standards shall apply to the practice of marriage and family therapy.

B. Persons licensed by the board shall:

1. Practice in a manner that is in the best interest of the public and does not endanger the public health, safety, or welfare;

2. Practice only within the boundaries of their competence, based on their education, training, supervised experience and appropriate professional experience and represent their education, training, and experience accurately to clients;

3. Stay abreast of new marriage and family therapy information, concepts, applications and practices that are necessary to providing appropriate, effective professional services;

4. Be able to justify all services rendered to clients as necessary and appropriate for diagnostic or therapeutic purposes;

5. Document the need for and steps taken to terminate a counseling relationship when it becomes clear that the client is not benefiting from the relationship. Document the assistance provided in making appropriate arrangements for the continuation of treatment for clients, when necessary, following termination of a counseling relationship;

6. Make appropriate arrangements for continuation of services, when necessary, during interruptions such as vacations, unavailability, relocation, illness, and disability;

7. Disclose to clients all experimental methods of treatment and inform client of the risks and benefits of any such treatment. Ensure that the welfare of the client is not compromised in any experimentation or research involving those clients;

8. Neither accept nor give commissions, rebates or other forms of remuneration for referral of clients for professional services;

9. Inform clients of the purposes, goals, techniques, procedures, limitations, potential risks, and benefits of services to be performed; the limitations of confidentiality; and other pertinent information when counseling is initiated and throughout the counseling process as necessary. Provide clients with accurate information regarding the implications of diagnosis, the intended use of tests and reports, fees, and billing arrangements;

10. Select tests for use with clients that are valid, reliable and appropriate and carefully interpret the performance of individuals not represented in standardized norms;

11. Determine whether a client is receiving services from another mental health service provider, and if so, refrain from providing services to the client without having an informed consent discussion with the client and having been granted communication privileges with the other professional;

12. Use only in connection with one's practice as a mental health professional those educational and professional degrees or titles that have been earned at a college or university accredited by an accrediting agency recognized by the United States Department of Education, or credentials granted by a national certifying agency, and that are counseling in nature; and

13. Advertise professional services fairly and accurately in a manner that is not false, misleading or deceptive.

C. In regard to patient records, persons licensed by the board shall:

1. Maintain written or electronic clinical records for each client to include treatment dates and identifying information to substantiate diagnosis and treatment plan, client progress, and termination;

2. Maintain client records securely, inform all employees of the requirements of confidentiality and provide for the destruction of records that are no longer useful in a manner that ensures client confidentiality;

3. Disclose or release client records to others only with clients' expressed written consent or that of their legally authorized representative in accordance with § 32.1-127.1:03 of the Code of Virginia;

4. Ensure confidentiality in the usage of client records and clinical materials by obtaining informed consent from clients or their legally authorized representative before (i) videotaping, (ii) audio recording, (iii) permitting third party observation, or (iv) using identifiable client records and clinical materials in teaching, writing, or public presentations; and

5. Maintain client records for a minimum of five years or as otherwise required by law from the date of termination of the counseling relationship with the following exceptions:

a. At minimum, records of a minor child shall be maintained for five years after attaining the age of majority (18) or 10 years following termination, whichever comes later;

b. Records that are required by contractual obligation or federal law to be maintained for a longer period of time; or

c. Records that have transferred to another mental health service provider or given to the client or his legally authorized representative.

D. In regard to dual relationships, persons licensed by the board shall:

1. Avoid dual relationships with clients that could impair professional judgment or increase the risk of harm to clients. Examples of such relationships include, but are not

limited to, familial, social, financial, business, bartering, or close personal relationships with clients. Counselors shall take appropriate professional precautions when a dual relationship cannot be avoided, such as informed consent, consultation, supervision, and documentation to ensure that judgment is not impaired and no exploitation occurs;

2. Not engage in any type of sexual intimacies with clients or those included in a collateral relationship with the client and not counsel persons with whom they have had a sexual relationship. Marriage and family therapists shall not engage in sexual intimacies with former clients within a minimum of five years after terminating the counseling relationship. Marriage and family therapists who engage in such relationship after five years following termination shall have the responsibility to examine and document thoroughly that such relations do not have an exploitive nature, based on factors such as duration of counseling, amount of time since counseling, termination circumstances, client's personal history and mental status, or adverse impact on the client. A client's consent to, initiation of or participation in sexual behavior or involvement with a marriage and family therapist does not change the nature of the conduct nor lift the regulatory prohibition;

3. Not engage in any sexual relationship or establish a counseling or psychotherapeutic relationship with a supervisee. Marriage and family therapists shall avoid any nonsexual dual relationship with a supervisee in which there is a risk of exploitation or potential harm to the supervisee or the potential for interference with the supervisor's professional judgment; and

4. Recognize conflicts of interest and inform all parties of the nature and directions of loyalties and responsibilities involved.

E. Persons licensed by this board shall report to the board known or suspected violations of the laws and regulations governing the practice of marriage and family therapy.

F. Persons licensed by the board shall advise their clients of their right to report to the Department of Health Professions any information of which the licensee may become aware in his professional capacity indicating that there is a reasonable probability that a person licensed or certified as a mental health service provider, as defined in § 54.1-2400.1 of the Code of Virginia, may have engaged in unethical, fraudulent or unprofessional conduct as defined by the pertinent licensing statutes and regulations.

NOTICE: The forms used in administering the above regulation are not being published; however, the name of each form is listed below. The forms are available for public inspection by contacting the agency contact for this regulation, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS (18VAC115-50)

Marriage and Family Therapist Licensure Application, MFT Form 2 (rev. 8/08).

Verification of Licensure, MFT Form 2-VL (rev. 8/08).

Verification of Supervision – Post-Graduate Degree Supervised Experience, MFT Form 2-VS (rev. 8/08).

Licensure Verification of Out-of-State Supervisor, MFT Form 1-LV (rev. 8/08).

Quarterly Evaluation, MFT Form 1-QE (rev. 8/08).

Coursework Outline Form for Marriage and Family Therapist Licensure, MFT Form 2-CO (rev. 8/08).

Verification of Internship, MFT Form 2-VI (rev. 8/08).

Verification of Internship Hours Towards the Residency, MFT Form 2-IR (rev. 8/08).

Supervision Outline Examination Applicants Only, MFT Form 2-SO (rev. 8/08).

Verification of Post-Licensure Clinical Practice, Endorsement Applicants Only, Form MFT-ECP (rev. ~~8/08)~~ 8/09).

Registration of Supervision - Marriage and Family Therapist Licensure, MFT Form 1 (rev. 8/08).

Application for Reinstatement of a Lapsed License (rev. 8/07).

Continuing Education Summary Form (LMFT) (rev. 8/07).

18VAC115-60-50. Prerequisites for licensure by endorsement.

A. Every applicant for licensure by endorsement shall submit in one package:

1. A completed application;

2. The application processing and initial licensure fee;

3. Verification of all professional licenses or certificates ever held in any other jurisdiction. In order to qualify for endorsement, the applicant shall have no unresolved disciplinary action against a license or certificate. The board will consider history of disciplinary action on a case-by-case basis;

4. Further documentation of one of the following:

a. A current substance abuse treatment license in good standing in another jurisdiction obtained by meeting requirements substantially equivalent to those set forth in this chapter; or

b. A mental health license in good standing in a category acceptable to the board which required completion of a master's degree in mental health to include 60 graduate semester hours in mental health; and

(1) Board-recognized national certification in substance abuse treatment;

(2) If the master's degree was in substance abuse treatment, two years of post-licensure experience in providing substance abuse treatment;

(3) If the master's degree was not in substance abuse treatment, five years of post-licensure experience in substance abuse treatment plus 12 credit hours of didactic training in the substance abuse treatment competencies set forth in 18VAC115-60-70 C; or

(4) Current substance abuse counselor certification in Virginia in good standing or a Virginia substance abuse treatment specialty licensure designation with two years of post-licensure or certification substance abuse treatment experience;

c. Documentation of education and supervised experience that met the requirements of the jurisdiction in which he was initially licensed as verified by an official transcript and a certified copy of the original application materials and evidence of post-licensure clinical practice for five of the last six years immediately preceding his licensure application in Virginia.

5. Verification of a passing score on a licensure examination as established by the jurisdiction in which licensure was obtained;

6. Official transcripts documenting the applicant's completion of the education requirements prescribed in 18VAC115-60-60 and 18VAC115-60-70; and

7. An affidavit of having read and understood the regulations and laws governing the practice of substance abuse treatment in Virginia.

B. In lieu of transcripts verifying education and documentation verifying supervised experience, the board may accept verification from the credentials registry of the American Association of State Counseling Boards or any other board-recognized entity.

Part V
Standards of Practice; Unprofessional Conduct; Disciplinary Actions; Reinstatement

18VAC115-60-130. Standards of practice.

A. The protection of the public health, safety, and welfare and the best interest of the public shall be the primary guide in determining the appropriate professional conduct of all persons whose activities are regulated by the board. Regardless of the delivery method, whether in person, by phone or electronically, these standards shall apply to the practice of substance abuse treatment.

B. Persons licensed by the board shall:

1. Practice in a manner that is in the best interest of the public and does not endanger the public health, safety, or welfare;

2. Practice only within the boundaries of their competence, based on their education, training, supervised experience and appropriate professional experience and represent their education, training and experience accurately to clients;

3. Stay abreast of new substance abuse treatment information, concepts, application and practices that are necessary to providing appropriate, effective professional services;

4. Be able to justify all services rendered to clients as necessary and appropriate for diagnostic or therapeutic purposes;

5. Document the need for and steps taken to terminate a counseling relationship when it becomes clear that the client is not benefiting from the relationship. Document the assistance provided in making appropriate arrangements for the continuation of treatment for clients, when necessary, following termination of a counseling relationship;

6. Make appropriate arrangements for continuation of services, when necessary, during interruptions such as vacations, unavailability, relocation, illness, and disability;

7. Disclose to clients all experimental methods of treatment and inform clients of the risks and benefits of any such treatment. Ensure that the welfare of the clients is in no way compromised in any experimentation or research involving those clients;

8. Neither accept nor give commissions, rebates, or other forms of remuneration for referral of clients for professional services;

9. Inform clients of the purposes, goals, techniques, procedures, limitations, potential risks, and benefits of services to be performed; the limitations of confidentiality; and other pertinent information when counseling is initiated and throughout the counseling process as necessary. Provide clients with accurate information regarding the implications of diagnosis, the intended use of tests and reports, fees, and billing arrangements;

10. Select tests for use with clients that are valid, reliable and appropriate and carefully interpret the performance of individuals not represented in standardized norms;

11. Determine whether a client is receiving services from another mental health service provider, and if so, refrain from providing services to the client without having an informed consent discussion with the client and having been granted communication privileges with the other professional;

12. Use only in connection with one's practice as a mental health professional those educational and professional degrees or titles that have been earned at a college or university accredited by an accrediting agency recognized by the United States Department of Education, or credentials granted by a national certifying agency, and that are counseling in nature; and

13. Advertise professional services fairly and accurately in a manner that is not false, misleading or deceptive.

C. In regard to patient records, persons licensed by the board shall:

1. Maintain written or electronic clinical records for each client to include treatment dates and identifying information to substantiate diagnosis and treatment plan, client progress, and termination;

2. Maintain client records securely, inform all employees of the requirements of confidentiality and provide for the destruction of records that are no longer useful in a manner that ensures client confidentiality;

3. Disclose or release records to others only with clients' expressed written consent or that of their legally authorized representative in accordance with § 32.1-127.1:03 of the Code of Virginia;

4. Maintain client records for a minimum of five years or as otherwise required by law from the date of termination of the substance abuse treatment relationship with the following exceptions:

a. At minimum, records of a minor child shall be maintained for five years after attaining the age of majority (18) or 10 years following termination, whichever comes later;

b. Records that are required by contractual obligation or federal law to be maintained for a longer period of time; or

c. Records that have transferred to another mental health service provider or given to the client; and

5. Ensure confidentiality in the usage of client records and clinical materials by obtaining informed consent from clients or their legally authorized representative before (i) videotaping, (ii) audio recording, (iii) permitting third party observation, or (iv) using identifiable client records and clinical materials in teaching, writing or public presentations.

D. In regard to dual relationships, persons licensed by the board shall:

1. Avoid dual relationships with clients that could impair professional judgment or increase the risk of harm to clients. Examples of such relationships include, but are not limited to, familial, social, financial, business, bartering, or close personal relationships with clients. Counselors shall take appropriate professional precautions when a dual relationship cannot be avoided, such as informed consent, consultation, supervision, and documentation to ensure that judgment is not impaired and no exploitation occurs;

2. Not engage in any type of sexual intimacies with clients or those included in a collateral relationship with the client and not counsel persons with whom they have had a sexual relationship. Licensed substance abuse treatment practitioners shall not engage in sexual intimacies with former clients within a minimum of five years after terminating the counseling relationship. Licensed substance abuse treatment practitioners who engage in such relationship after five years following termination shall have the responsibility to examine and document thoroughly that such relations do not have an exploitive nature, based on factors such as duration of counseling, amount of time since counseling, termination circumstances, client's personal history and mental status, or adverse impact on the client. A client's consent to, initiation of or participation in sexual behavior or involvement with a licensed substance abuse treatment practitioner does not change the nature of the conduct nor lift the regulatory prohibition;

3. Not engage in any sexual relationship or establish a counseling or psychotherapeutic relationship with a supervisee. Licensed substance abuse treatment practitioners shall avoid any nonsexual dual relationship with a supervisee in which there is a risk of exploitation or potential harm to the supervisee or the potential for interference with the supervisor's professional judgment; and

4. Recognize conflicts of interest and inform all parties of the nature and directions of loyalties and responsibilities involved.

E. Persons licensed by this board shall report to the board known or suspected violations of the laws and regulations governing the practice of substance abuse treatment.

F. Persons licensed by the board shall advise their clients of their right to report to the Department of Health Professions any information of which the licensee may become aware in his professional capacity indicating that there is a reasonable probability that a person licensed or certified as a mental health service provider, as defined in § 54.1-2400.1 of the Code of Virginia, may have engaged in unethical, fraudulent or unprofessional conduct as defined by the pertinent licensing statutes and regulations.

NOTICE: The forms used in administering the above regulation are not being published; however, the name of each form is listed below. The forms are available for public inspection by contacting the agency contact for this regulation, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS (18VAC115-60)

Licensed Substance Abuse Treatment Practitioner Licensure Application, LSATP Form 2 (rev. 8/08).

Verification of Licensure, Form LSATP 2-VL (rev. 8/08).

Verification of Supervision – Post Graduate Degree Supervised Experience, LSATP 2-VS (rev. 8/08).

Supervisor's Experience and Education, (rev. 8/08).

Licensure Verification of Out-of-State Supervisor, LSATP Form 1-LV (rev. 8/08).

Coursework Outline Form, Form LSATP 2-CO (rev. 8/08).

Verification of Internship, Form LSATP 2-VI (rev. 8/08).

Verification of Internship Hours Towards the Residency, Form LSATP 2-IR (rev. 8/08).

Registration of Supervision – Post Graduate Degree Supervised Experience, LSATP Form 1 (rev. 8/08).

Quarterly Evaluation Form, LSATP Form 1-QE (rev. 8/08).

Supervision Outline Form – Examination Applicants Only, Form LSATP 2-SO (rev. 8/08).

Verification of Post-Licensure Clinical Practice, Endorsement Applicants Only, Form LSATP-ECP (rev. ~~8/08)~~ 8/09).

Licensed Substance Abuse Treatment Practitioner Application for Reinstatement of a Lapsed Certificate (rev. 8/07).

Continuing Education Summary Form (LSATP) (rev. 8/07).

VA.R. Doc. No. R09-1724; Filed May 20, 2009, 11:18 a.m.

BOARD OF PSYCHOLOGY

Final Regulation

Title of Regulation: **18VAC125-30. Regulations Governing the Certification of Sex Offender Treatment Providers (amending 18VAC125-30-50, 18VAC125-30-80).**

Statutory Authority: §§ 54.1-2400 and 54.1-3605 of the Code of Virginia.

Effective Date: July 8, 2009.

Agency Contact: Evelyn B. Brown, Executive Director, Board of Psychology, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4697, FAX (804) 327-4435, or email evelyn.brown@dhp.virginia.gov.

Summary:

The amendments (i) allow credit for supervised hours for licensed persons who are able to document that those hours were working with the sex offender population within the past 10 years and (ii) require that certified sex offender treatment providers have at least six hours of continuing education focused on the treatment of that population for annual renewal.

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

18VAC125-30-50. Experience requirements; supervision.

A. An applicant for certification as a sex offender treatment provider shall provide documentation of having 2,000 hours of ~~post-degree~~ postdegree clinical experience in the delivery of clinical assessment/treatment services. At least 200 hours of this experience must be face-to-face treatment and assessment with sex offender clients.

1. The experience shall include a minimum of 100 hours of face-to-face supervision within the 2,000 hours experience with a minimum of six hours per month. A minimum of 50 hours shall be in individual face-to-face supervision. Face-to-face supervision obtained in a group setting shall include no more than six trainees in a group.

2. If the applicant has obtained the required postdegree clinical experience for a mental health license within the past 10 years, he can receive credit for those hours that were in the delivery of clinical assessment/treatment services with sex offender clients provided:

a. The applicant can document that the hours were in the treatment and assessment with sex offender clients; and

b. The supervisor for those hours can attest that he is licensed and qualified to render services to sex offender clients.

B. Supervised experience obtained in Virginia without prior written board approval shall not be accepted toward certification. Candidates shall not begin the experience until after completion of the required degree as set forth in 18VAC125-30-40. An individual who proposes to obtain supervised ~~post-degree~~ postdegree experience in Virginia shall, prior to the onset of such supervision, submit a supervisory contract along with the application package and pay the registration of supervision fee set forth in 18VAC125-30-20.

C. The supervisor.

1. The supervisor shall assume responsibility for the professional activities of the applicant.

2. The supervisor shall not provide supervision for activities for which the prospective applicant has not had appropriate education.

3. The supervisor shall provide supervision only for those sex offender treatment services which he is qualified to render.

4. At the time of formal application for certification, the board approved supervisor shall document for the board the applicant's total hours of supervision, length of work experience, competence in sex offender treatment and any needs for additional supervision or training.

D. Registration of supervision.

1. In order to register supervision with the board, individuals shall submit in one package:

a. A completed supervisory contract;

b. The registration fee prescribed in 18VAC125-30-20; and

c. Official graduate transcript.

2. The board may waive the registration requirement for individuals who have obtained at least five years documented work experience in sex offender treatment in another jurisdiction.

E. Supervised experience obtained prior to April 10, 2002, may be acceptable if they met the board's requirements that were in effect at the time the supervision was rendered.

Part III
Renewal and Reinstatement

18VAC125-30-80. Annual renewal of certificate.

A. Every certificate issued by the board shall expire on June 30 of each year.

B. Along with the renewal application, the certified sex offender treatment provider shall ~~submit~~:

1. Submit the renewal fee prescribed in 18VAC125-30-20; and

2. Attest to having obtained six hours of continuing education in topics related to the provision of sex offender treatment within the renewal period. Continuing education shall be offered by a sponsor or provider approved by the Virginia Board of Social Work, Psychology, Counseling, Nursing or Medicine or by the Association for the Treatment of Sexual Abusers. Hours of continuing education used to satisfy the renewal requirements for another license may be used to satisfy the six-hour requirement for sex offender treatment provider certification, provided it was related to the provision of sex offender treatment.

C. Certificate holders shall notify the board in writing of a change of address within 60 days. Failure to receive a renewal notice and application form(s) shall not excuse the certified sex offender treatment provider from the renewal requirement.

NOTICE: The forms used in administering the above regulation are not being published; however, the name of each form is listed below. The forms are available for public inspection by contacting the agency contact for this regulation, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS (18VAC125-30)

[General Information for Certification as a Sex Offender Treatment Provider (rev. ~~8/07)~~ 4/09).

Application for Certification as a Sex Offender Treatment Provider, Form 1 (rev. 8/07).

Licensure or Certification Verification of Applicant, SOTP Form 2 (rev. 8/07).

Sex Offender Treatment Provider, Verification of Supervision, SOTP Form 3 (rev. ~~8/07)~~ 4/09).

Licensure Verification of Out-of-State Supervisor, SOTP Form 4 (rev. 8/07).

Registration of Supervision Instructions (rev. ~~8/07)~~ 4/09).

Registration of Supervision, Post-Graduate Degree Supervised Experience, Form 5 (rev. 8/07).

Application for Reinstatement of Certification as a Sex Offender Treatment Provider (rev. 8/07).]

VA.R. Doc. No. R07-240; Filed May 20, 2009, 11:23 a.m.

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TITLE 20. PUBLIC UTILITIES AND TELECOMMUNICATIONS

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: **20VAC5-314. Regulations Governing Interconnection of Small Electrical Generators (adding 20VAC5-314-10 through 20VAC5-314-170).**

Statutory Authority: §§ 12.1-13 and 56-578 of the Code of Virginia.

Effective Date: May 21, 2009.

Agency Contact: Mike Martin, Senior Utilities Engineer, State Corporation Commission, P.O. Box 1197, Richmond,

VA 23218, telephone (804) 371-9336, FAX (804) 371-9350, or email mike.martin@scc.virginia.gov.

Summary:

Pursuant to § 56-578 A of the Virginia Electric Utility Restructuring Act, Chapter 23 (§ 56-576 et seq.) of Title 56 of the Code of Virginia (Restructuring Act), all electric energy distributors have the obligation to connect any retail customer, including those using distributed generation, located within its service territory to the distributor's facilities used for delivery of retail electric energy, subject to State Corporation Commission (commission) rules and regulations and approved tariff provisions relating to connection of service. In accordance with § 56-578 C of the Restructuring Act, the commission proposed interconnection standards, not inconsistent with nationally recognized standards, to ensure transmission and distribution safety and reliability. The interconnection regulations establish standardized interconnection and operating requirements for the safe operation of electric generating facilities with a rated capacity of 20 MW or less connected to the distribution systems of electric utilities under the jurisdiction of the Virginia State Corporation Commission. These requirements apply to retail electric customers, independently owned generators or any other parties operating or intending to operate a distributed generation facility. The regulations establish three interconnection review paths for interconnection of customer-sited generation in Virginia - Level 1, Level 2 and Level 3. Level 1 interconnections must include a request to interconnect a certified inverter-based generating facility no larger than 500 kW. To qualify for a Level 2 interconnection request, the generating facility can be no larger than 2 MW and the proposed generator must meet certain specified codes, standards, and certification requirements. Level 3 interconnection requests apply to generating facilities larger than 2 MW but no larger than 20 MW or a generating facility that does not pass the Level 1 or Level 2 Process.

The changes in the final regulation are in response to comments received from interested parties and are intended to address the recovery of costs by utilities from interconnection customers, insurance provisions, and interconnections to network circuits.

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

AT RICHMOND, MAY 8, 2009

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUE-2008-00004

Ex Parte: In the matter of establishing interconnection standards for distributed electric generation

ORDER ADOPTING REGULATIONS

On February 26, 2008, the State Corporation Commission ("Commission") issued an Order Establishing Proceeding in the above-captioned case to consider interconnection standards for distributed generation for the Commonwealth in accordance with § 56-578 A[1] of the Virginia Electric Utility Restructuring Act, Chapter 23 (§ 56-576 et seq.) of Title 56 of the Code of Virginia ("Code"). The Staff of the Commission developed proposed rules ("Staff's Proposed Rules") to meet the requirement of § 56-578 C[2] of the Restructuring Act, which proposed rules have been published in the Virginia Register on March 17, 2008, as Chapter 314 of the Virginia Administrative Code (20 VAC 5-314-10 et seq.), Regulations Governing Interconnection of Small Electrical Generators. The Commission directed that notice be given to the public and invited comments on Staff's Proposed Rules.

In response to the Commission's February 26, 2008 Order, the following filed on July 21 and 22, 2008, comments on Staff's Proposed Rules, all proposing certain revisions: Virginia Electric and Power Company ("Virginia Power"), Appalachian Power Company ("APCO"), the Potomac Edison Company ("Potomac Edison"), the Virginia Electric Cooperatives[3] ("Cooperatives"), and the Interstate Renewable Energy Council ("IREC"). Columbia Gas of Virginia ("Columbia") filed comments supporting Staff's Proposed Rules. These comments, as a group, are referred to as the "Initial Comments."

On August 28, 2008, the Commission granted Staff leave to file its response to the Initial Comments.[4] Accordingly, on October 27, 2008, Staff filed its report ("Staff Report") and attached Staff Revised Rules, which are reported by Staff to be responsive to the Initial Comments in providing improved readability and clarity, and include certain substantive revisions.[5]

The Commission issued an Order on November 26, 2008, which among other things, directed that notice be given to the public of Staff's Revised Rules, and invited comments thereon. Staff's Revised Rules were published on December 22, 2008, as Chapter 314. On January 15, 2009, the following filed comments addressing Staff's Revised Rules, all proposing certain revisions: Virginia Power, APCO, Potomac Edison, Cooperatives, and the IREC. Columbia filed comments supporting Staff's Revised Rules.

These comments as a group are referred to as "Further Comments."

NOW UPON CONSIDERATION of the Initial Comments, the Staff Report, and the Further Comments, we find that we should adopt Chapter 314, Regulations Governing Interconnection of Small Electrical Generators ("Interconnection Rules"), appended hereto as Attachment A, effective May 21, 2009.[6] We find that such rules are reasonable and are within the Commission's authority under § 56-578 of the Code.

The Commission is directed by § 56-578 C of the Code to "establish interconnection standards to ensure transmission and distribution safety and reliability, *which standards shall not be inconsistent with nationally recognized standards acceptable to the Commission*." (Emphasis added.) We previously noted, with regard to the existence of nationally recognized standards, that the Federal Energy Regulatory Commission ("FERC") has asserted jurisdiction over certain generator interconnections.[7] FERC's Order No. 2006, Standardization of Small Generator Interconnection Agreements and Procedures, and FERC's subsequent amendments thereto ("FERC Rules"),[8] address the interconnection of distributed generators. We find that for purposes of our rulemaking under § 56-578 C of the Code, that the FERC Rules constitute reasonable nationally recognized standards. The Staff reports that the FERC Rules provide the basis for Staff's Proposed Rules and Staff's Revised Rules.

The Interconnection Rules we adopt herein contain a number of modifications to Staff's Revised Rules. These modifications (shown in brackets) follow our consideration of changes suggested by the parties in their written comments and our analysis of the entire record in this proceeding. We will comment on certain of the modifications made in the Interconnection Rules.

First, some commenters urged that less restrictive deadlines be set in the Interconnection Rules.

Virginia Power comments that many deadlines set in the Interconnection Rules are overly aggressive. Virginia Power states that regardless of whether the interconnection customer is following a Level 1, 2, or 3 track toward interconnection,[9] the procedures applicable to the customer's small generating facility must accommodate the possibility that modifications to the utility system, as well as to the customer's small generating facility, will be required.[10]

The Cooperatives have stated that their limited staffs cannot abandon other responsibilities in order to quickly respond to the numerous technical questions that would arise from a proposed interconnection.[11] The Cooperatives continue to object to timelines set in the Interconnection Rules that they consider to be unnecessarily conforming to the FERC Rules without there being evidence that such restrictive timelines need to be imposed for Virginia interconnections. The Cooperatives represent that their distribution systems include essentially no FERC-jurisdictional transmission facilities and are otherwise exempt from FERC regulation because they are subject to regulation by the U.S. Department of Agriculture's Rural Utilities Service. The Cooperatives recommend that we lengthen certain deadlines from the FERC Rules in setting deadlines for the Interconnection Rules.

We note that the deadlines set in the Interconnection Rules are no more stringent than those imposed by the FERC Rules. If the deadlines present obstacles, we expect the parties to work together to resolve any timing issues. In addition, the Interconnection Rules, as the Cooperatives' Further Comments recognize, specifically address situations in which specified time frames cannot be met:

> The utility shall make reasonable efforts to meet all time frames provided in these regulations unless the utility and the IC [interconnection customer] agree to a different schedule. If the utility cannot meet a deadline provided herein, it shall notify the IC, explain the reason for the failure to meet the deadline, and provide an estimated time by which it will complete the applicable interconnection procedure in the process.

20 VAC 5-314-10.

Although the Cooperatives are concerned that negotiating timing extensions under this rule may become routine and will be disruptive of the interconnection process,[12] we find that expansion of the Interconnection Rules deadlines is unwarranted at this time.

Second, IREC and the Cooperatives propose further modification to the interconnection customer insurance requirements specified in 20 VAC 5-314-160.

IREC requests that any insurance requirements for a Level 1 small generating facility up to 500 kW be waived; and that the insurance requirements for larger systems be lowered to avoid what IREC considers to be an unreasonable barrier to new technology deployment. IREC suggests that Level 2 insurance requirements be set no higher than $1 million, and Level 3 insurance requirements be set no higher than $2 million, and in particular, that Level 3 insurance amounts not be determined "on a case-by-case" basis. IREC also requests that the requirement in 20 VAC 5-314-160 B stating that the utility be named as an additional insured be eliminated from the Interconnection Rules.

The Cooperatives comment that the insurance provisions of 20 VAC 5-314-160 are insufficient and recommend that any interconnection customer owning small generating facilities for interconnection be required to carry such insurance coverage as a utility would carry for comparable utility facilities that present the same kinds and levels of hazard risk. The Cooperatives suggest that such risk covered by a utility would be met by maintaining general liability insurance,

including premises liability coverage for operations, in an amount of $2 million per occurrence, with no upper limit on the aggregate, as well as an all-risk property policy and umbrella policies with even higher limits.

We note that the FERC Rules defer to the states in setting minimum limits for insurance coverage for interconnections falling under the Small Generator 10 kW processes.[13] With regard to all other interconnections, the FERC Rules at Article 8.1 of the Small Generator Interconnection Agreement require that insurance coverage shall be sufficient to insure against all reasonably foreseeable direct liabilities, given the size and nature of the generating equipment being interconnected, the interconnection itself, and the characteristics of the system to which the interconnection is made.[14]

We find reasonable insurance limits should be set, as proposed by Staff, for smaller systems at $100,000 for those with a rated capacity not exceeding 10 kW, and $300,000 for those with a rated capacity exceeding 10 kW but not exceeding 500 kW; and for larger systems at $2 million for those with a rated capacity exceeding 500 kW but not exceeding 2 MW, and determined on a case-by-case basis for those with a rated capacity exceeding 2 MW. These limits are reflected in 20 VAC 5-314-160 A of the Interconnection Rules. We have eliminated the requirement in 20 VAC 5-314-160 B of the Staff's Revised Rules that the utility be named as an additional insured.

Third, the Staff's Revised Rules for the Level 2 interconnection process, 20 VAC 5-314-60, did not require that a Level 2 small generating facility be connected under the Small Generator Interconnection Agreement ("SGIA"). Virginia Power cites the FERC Rules[15] requiring all generators of 20 MW or less to enter into an SGIA. We agree with Virginia Power that an SGIA should be required for small generating facilities having capacity exceeding 500 kW that make application under the Level 2 process.

Fourth, IREC comments that a utility-accessible, external disconnect switch ("UEDS") does not provide a sufficient additional safety benefit to justify its cost to the interconnection customer and should not be required under a utility's tariff, pursuant to 20 VAC 5-314-40 B 2 and 3. IREC argues that concern for a utility line worker's safety as reflected in the requirement for a UEDS fails to recognize that all modern inverters stop power flow to the grid from the interconnected distributed generator automatically. IREC proposes that 20 VAC 5-315 B 2 and 3 be modified to either prohibit the installation of a UEDS, or allow a utility to elect to install a UEDS at its own expense, for inverter-based systems sized less than or equal to 10 kW.

We recognize that there are reasonable arguments to support the utility's requirement for a UEDS. For instance, the Commission has recognized the need for this safety device and requires a UEDS as a safety measure in the Net Metering Rules set out in 20 VAC 5-315-40 A 2. Consistent with our requirement in the Net Metering Rules, we decline to modify 20 VAC 5-314-40 B 2 and 3 as requested by IREC.

Fifth, the Cooperatives seek release from any obligations to purchase reactive power from an interconnection customer that may arise under Article 1.8 of the SGIA (Schedule 6 of 20 VAC 5-314-170). The Cooperatives rely upon their wholesale power suppliers for all their power requirements and object to Article 1.8 requiring a utility to compensate the interconnection customer to the extent an electric cooperative calls upon the interconnection customer to provide reactive power. The Cooperatives maintain that any obligation arising under Article 1.8 must be taken up with the Cooperatives' wholesale power suppliers.

As Article 1.8 does not impose any obligation to purchase reactive power, we find that the Cooperative's requested exception is unnecessary.

Sixth, Virginia Power and the Cooperatives request that 20 VAC 5-314-110 be revised to state that, prior to the Commission releasing and making public confidential information that the Commission has received from either party, the parties shall have an opportunity to respond. Such a provision had appeared in the Staff's Proposed Rules, and we find that it should be restored, with minor editing, to 20 VAC 5-314-110 C.

Seventh, Virginia Power comments that the Interconnection Rules at 20 VAC 5-314-60 C 8 should be clarified to require that a Small Generating Facility ("SGF") cannot be interconnected to a network distribution system before all required modifications to the SGF are made. To that end, Virginia Power requests that the words, "except minor modification" be eliminated from 20 VAC 5-314-60 C 8. We agree.

Eighth, Virginia Power seeks recovery of overhead costs from the interconnection customer when performing interconnection studies, pursuant to 20 VAC 5-314-70 C 4 a, D 3 a, and E 3 a. The Commission finds that recovery of such overhead costs should not be permitted by the Interconnection Rules at this time. Rather, we find that it is reasonable for utilities to recover only their incremental costs in this regard, as is currently reflected in the Revised Rules. The recovery of overhead costs by the utility could significantly increase the cost of interconnection for the interconnection customer, which may unreasonably impede the development of distributed generation in the Commonwealth.

Accordingly, IT IS ORDERED THAT:

(1) We hereby adopt Chapter 314, Regulations Governing Interconnection of Small Electrical Generators (20 VAC 5-314-10, et seq.) of the Virginia Administrative Code, all as set forth in Attachment A appended hereto, to be effective May 21, 2009. The provisions of Chapter 314 shall become effective as of July 1, 2009, for eligible farms as defined in

H.B. 2171, enacted by the 2009 Session of the Virginia General Assembly.

(2) A copy of this Order and the rules adopted herein shall be forwarded promptly for publication in the Virginia Register of Regulations.

(3) This case is dismissed and the papers herein shall be placed in the files for ended causes.

Commissioner Dimitri did not participate in this matter.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: T. Borden Ellis, Senior Attorney, Legal, NiSource Corporate Services Company, 1809 Coyote Drive, Chester, Virginia 23836; Noelle J. Coates, Esquire, Hunton & Williams LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219-4074; Horace P. Payne, Jr., Esquire, Dominion Resources Services, Inc., 120 Tredegar Street, RS-2, Richmond, Virginia 23219; John A. Pirko, Esquire, LeClairRyan, P.C., 4201 Dominion Boulevard, Suite 200, Glen Allen, Virginia 23060; Charles E. Bayless, Esquire, Appalachian Power Company, P.O. Box 1986, Charleston, West Virginia 25327; Kevin Fox, Esquire, Keyes & Fox LLP, 5727 Keith Avenue, Oakland, California 94618; C. Meade Browder, Jr., Senior Assistant Attorney General, Division of Consumer Counsel, Office of Attorney General, 900 East Main Street, 2nd Floor, Richmond, Virginia 23219; and the Commission's Office of General Counsel and Divisions of Energy Regulation and Economics and Finance.

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[1]Section 56-578 A of the Code states:

A. All distributors shall have the obligation to connect any retail customer, including those using distributed generation, located within its service territory to those facilities of the distributor that are used for delivery of retail electric energy, subject to Commission rules and regulations and approved tariff provisions relating to connection of service.

[2]Section 56-578 C of the Code, states:

C. The Commission shall establish interconnection standards to ensure transmission and distribution safety and reliability, which standards shall not be inconsistent with nationally recognized standards acceptable to the Commission. In adopting standards pursuant to this subsection, the Commission shall seek to prevent barriers to new technology and shall not make compliance unduly burdensome and expensive. The Commission shall determine questions about the ability of specific equipment to meet interconnection standards.

[3]The Virginia Electric Cooperatives consist of A&N Electric Cooperative, BARC Electric Cooperative, Central Virginia Electric Cooperative, Community Electric Cooperative, Craig-Botetourt Electric Cooperative, Mecklenburg Electric Cooperative, Northern Neck Electric Cooperative, Northern Virginia Electric Cooperative, Prince George Electric Cooperative, Rappahannock Electric Cooperative, Shenandoah Valley Electric Cooperative, Southside Electric Cooperative, and the Virginia, Maryland & Delaware Association of Electric Cooperatives.

[4]The Staff was granted a filing extension to October 24, 2008, by Order Granting Extension to Staff issued September 24, 2008, and a further extension by Order issued November 26, 2008, which also granted leave to interested persons to file comments on Staff's Revised Rules on or before January 15, 2009.

[5]Staff Report, pp. 3-26.

[6]The provisions of the Interconnection Rules will become effective as of July 1, 2009, for "eligible farms," as defined in HB 2171, enacted by the 2009 Session of the Virginia General Assembly. (2009 Va. Acts Ch. 746)

[7]*Order Establishing Proceeding,* Case No. PUE-2008-00004, February 26, 2008, p. 2, n.2.

[8]Standardization of Small Generator Interconnection Agreements and Procedures, Order No. 2006, FERC Stats. & Regs. ¶ 31,180 (2005), order on reh'g, Order No. 2006-A, FERC Stats. & Regs. ¶ 31,196 (2005), order granting clarification, Order No. 2006-B, FERC Stats. & Regs. ¶ 31,221 (2006), appeal pending sub nom., Consolidated Edison Co. of New York, Inc. v FERC, Nos. 06-1018, 06-1036 (D.C. Cir.).

[9]20 VAC 5-314-10.

[10]Virginia Power Comments filed January 15, 2009, p. 15.

[11]Cooperatives Comments filed January 15, 2009, p. 9.

[12]Cooperatives' comments filed January 15, 2009, p. 11.

[13]*See* FERC Rules, Appendix E (Small Generator Interconnection Procedures), Attachment 5 (10 kW Inverter Process), Terms and Conditions for Interconnecting an Inverter-Based Small Generator Facility no larger than 10 kW, Section 7.0.

[14]*See* Appendix F (Small Generator Interconnection Agreement), Article 8., Insurance, Paragraph 8.1.

[15]*See* Order No. 2006-B, Sections 2.4.1 and 3.5.7.

CHAPTER 314
REGULATIONS GOVERNING INTERCONNECTION OF SMALL ELECTRICAL GENERATORS

20VAC5-314-10. Applicability and scope [; waiver].

[A.] These regulations are promulgated pursuant to § 56-578 of the Virginia Electric Utility Restructuring Act (§ 56-576 et seq. of the Code of Virginia). They establish standardized interconnection and operating requirements for the safe operation of electric generating facilities with a rated capacity of 20 megawatts (MW) or less connected to ~~distribution companies'~~ electric utility distribution (and in certain cases transmission) systems in Virginia. These ~~requirements~~ regulations apply [to utilities providing interconnections] to retail electric customers, independently owned generators ~~or~~ and any other parties operating, or intending to operate, a distributed generation facility in parallel with [~~a utility's system and to the~~] utility [systems]. ~~Interconnections~~ These regulations do not apply to customer generators operating pursuant to the [~~commission's~~ Virginia State Corporation Commission's] Regulations Governing Net Energy Metering (20VAC5-315) or those that fall under the jurisdiction of the Federal Energy Regulatory Commission [(FERC)] ~~are not subject to these regulations~~.

If the utility has turned over control of its transmission system to a Regional Transmission Entity (RTE), and if the small generator interconnection process identifies upgrades to the transmission system as necessary to interconnect the small generating facility, then the utility will coordinate with the RTE, and the procedures herein will be adjusted as necessary to satisfy the RTE's requirements with respect to such upgrades.

There are three ~~interconnection~~ review paths for the interconnection of ~~customer-sited~~ generation in Virginia having an output of not more than 20 MW:

Level 1 - A request to interconnect a ~~certified inverter-based~~ small generating facility (SGF) no larger than 500 kilowatts (kW) shall be evaluated under the Level 1 process.

Level 2 - A request to interconnect a certified ~~small generating facility~~ SGF no larger than ~~500 kW but no larger than~~ 2 MW and not qualifying for the Level 1 process shall be evaluated under the Level 2 process.

Level 3 - A request to interconnect ~~a small generating facility larger than 2 MW but~~ an SGF no larger than 20 MW ~~or a small generating facility that does not pass~~ and not qualifying for the Level 1 process or Level 2 process, shall be evaluated under the Level 3 process.

[~~An SGF proposed to be interconnected to a distribution feeder may be limited~~ The utility may limit the interconnection of an SGF to a distribution feeder] to a capacity substantially less than 20 MW, depending upon the characteristics of that feeder and the potential for upgrading it, as well as the nature of the loads and other generation on the feeder relative to the proposed point of interconnection. [If the SGF cannot be safely and reliably interconnected to the utility's distribution feeder, the utility shall work with the IC to interconnect the SGF to the utility's transmission system. In such cases, the interconnection of the SGF may be governed by the regulations promulgated by FERC rather than the regulation of the State Corporation Commission.]

The utility shall designate an employee or office from which the interconnection customer [~~("IC")~~ (IC)] may informally request information ~~on~~ concerning the application process ~~can be obtained through informal requests from the interconnection customer presenting a proposed project for a specific site~~. The name, telephone number, and email address of such contact employee or office shall be made available on the utility's Internet [~~web site~~ website]. Electric system information ~~for specific locations, feeders, or small areas~~ relevant to the location of the proposed SGF shall be provided to the ~~interconnection customer~~ IC upon request and may include ~~relevant system studies,~~ interconnection studies~~,~~ and any other relevant materials ~~useful to an understanding of an interconnection at a particular point on the utility's system~~, to the extent such provision does not violate confidentiality provisions of prior agreements or release critical infrastructure ~~requirements~~ information. The utility shall comply with reasonable requests for such information unless the information is proprietary or confidential and cannot be provided pursuant to a confidentiality agreement.

The utility shall make reasonable efforts to meet all time frames provided in these ~~procedures~~ regulations unless the utility and the ~~interconnection customer~~ IC agree to a different schedule. If the utility cannot meet a deadline provided herein, it shall notify the ~~interconnection customer~~ IC, explain the reason for the failure to meet the deadline, and provide an estimated time by which it will complete the applicable interconnection procedure in the process.

[Each utility shall have on file with the commission terms and conditions applicable to the interconnection of SGFs. Such terms and conditions shall, at a minimum, incorporate this chapter by reference, shall set forth terms and conditions applicable to SGFs for which no Small Generator Interconnection Agreement (SGIA) is executed, and shall not conflict with the provisions of this chapter. The terms and conditions applicable to SGFs for which no SGIA is executed shall be reasonably consistent with the terms and conditions of the SGIA.

B. The commission may waive any or all parts of the provisions of this chapter for good cause shown.]

20VAC5-314-20. Definitions.

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

"Affected system" means an electric utility system other than that of the ~~utility's distribution system~~ utility that may be affected by the proposed interconnection.

"Affected system operator" means an entity that operates an affected system or, if the affected system is under the operational control of an independent system operator or a regional transmission entity, such independent entity.

"Applicable laws and regulations" means all duly promulgated applicable federal, state and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders, permits and other duly authorized actions of any government authority.

"Attachment facilities" means the facilities and equipment owned, operated, and maintained by the utility that are built new in order to physically connect the customer's interconnection facilities to the utility system. Attachment facilities shall not include distribution upgrades or previously existing distribution and transmission facilities.

"Business day" means Monday through Friday, excluding federal holidays.

"Certified" has the meaning ascribed to it in Schedule 2 of this chapter.

["Commission" means the Virginia State Corporation Commission.

"Competitive service provider" means any entity, other than the utility, supplying electric energy service to the interconnection customer.]

"Customer's interconnection facilities" means all of the facilities and equipment owned, operated and maintained by the interconnection customer, between the small generating facility and the point of interconnection necessary to physically and electrically interconnect the small generating facility to the utility system.

[~~"Commission" means the Virginia State Corporation Commission.~~]

~~"Distribution company" means the utility that owns and/or operates the distribution system located in Virginia to which the small generation facility proposes to interconnect its small generating facility.~~

"Default" means the failure of a breaching party to cure its breach under the small generator interconnection agreement.

"Distribution system" means ~~a~~ the utility's facilities and equipment generally delivering electricity to ultimate customers from substations supplied by higher voltages (usually at transmission level). For purposes of these ~~interconnection rules~~ regulations, all portions of the ~~distribution company's~~ utility's transmission system regulated by the commission for which interconnections are not within Federal Energy Regulatory Commission (FERC) jurisdiction are considered also to be ~~part of~~ subject to these interconnection ~~rules~~ regulations.

"Distribution upgrades" means the additions, modifications, and upgrades to the utility's distribution system at or beyond the point of interconnection ~~to facilitate~~ necessary to abate problems on the utility's distribution system caused by the interconnection of the small generating facility ~~and to render the service necessary to effect the interconnection customer's operation of on-site generation~~. Distribution upgrades do not include customer's interconnection facilities or attachment facilities.

[~~"Energy service provider" means any entity supplying electric energy service to the~~] ~~producer, either as tariffed, competitive, or default service pursuant to § 56-585 of the Code of Virginia~~ [~~interconnection customer.~~]

"Facilities study" has the meaning ascribed to it in 20VAC5-314-70 E.

"Feasibility study" has the meaning ascribed to it in 20VAC5-314-70 C.

"FERC" means the Federal Energy Regulatory Commission.

"Good Utility Practice" means any of the practices, methods and acts engaged in or approved by a significant portion of the electric industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.

"Governmental authority" means any federal, state, local or other governmental regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority having jurisdiction over the parties, their respective facilities, or the respective services they provide, and exercising or entitled to exercise any administrative, executive, police, or taxing authority or power; provided that such term does not include the interconnection customer, the utility or a utility affiliate.

"Interconnection customer" or "IC" means any entity~~, including the utility, any affiliates or subsidiaries of either,~~ proposing to interconnect a new small generating facility with the ~~utility's~~ utility system ~~under this chapter~~.

~~"Interconnection facilities" means the utility's interconnection facilities and the interconnection customer's interconnection facilities. Collectively, interconnection facilities include all facilities and equipment between the small generating facility and the point of interconnection, including any modification, additions or upgrades that are necessary to physically and electrically interconnect the small generating facility to the utility's distribution system. Interconnection facilities are sole use facilities and shall not include distribution upgrades.~~

"Interconnection request" means the ~~interconnection customer's~~ IC's request, in accordance with [~~the tariff~~ this chapter], to interconnect a new small generating facility, or to increase the capacity of, or make a material modification to the operating characteristics of, an existing small generating facility that is interconnected with the ~~utility's~~ utility system.

"Interconnection ~~study~~ studies" means the ~~study that is undertaken~~ studies conducted by the ~~company~~ utility, or a ~~mutually agreed upon~~ third party agreed to by the ~~company~~ utility and the ~~producer~~ interconnection customer, in order to determine the interaction of the small generating facility ~~and~~ with the ~~distribution~~ utility system~~,~~ and the affected systems in order to specify any ~~modification~~ modifications to the small generating facility or the ~~distribution system needed~~ electric systems studied to ensure safe and reliable operation of the small generating facility in parallel with the ~~distribution~~ utility system.

"Material modification" means a modification that has a material impact on the cost or timing of any interconnection request with a later queue priority date.

"Operating requirements" means any operating and technical requirements that may be applicable due to regional transmission entity, independent system operator, control

area, or the utility's requirements, including those set forth in the Small Generator Interconnection Agreement.

"Party" or "parties" means the utility, interconnection customer, or ~~any combination thereof~~ both.

"Point of interconnection" means the point where the customer's interconnection facilities connect ~~with~~ to the ~~utility's~~ utility system.

~~"Producer" means a person operating a small generating facility interconnected to the distribution system of a utility for the purpose of parallel operation.~~

"Regional Transmission Entity" or "RTE" means an entity having the management and control of a utility's transmission system as further set forth in § 56-579 of the Code of Virginia.

"Small generating facility" or "generator" or "SGF" means the interconnection customer's ~~device~~ equipment for the production of electricity identified in the interconnection request~~, but shall not include the interconnection facilities not owned by the interconnection customer~~.

~~"Study process" means the procedure for evaluating an interconnection request that includes the Level 3 scoping meeting, feasibility study, system impact study, and facilities study.~~

"Small Generator Interconnection Agreement" or "SGIA" means the agreement between the utility and the interconnection customer as set forth in Schedule 6 of 20VAC5-314-170.

"Supplemental review" has the meaning ascribed to it in 20VAC5-314-60 [~~G~~ I].

"System" or "utility system" means the distribution and transmission facilities owned, controlled, or operated by the utility that are used to ~~provide electric service under the tariff~~ deliver electricity.

"System impact study" has the meaning ascribed to in 20VAC5-314-70 [~~E~~ D].

"Tariff" means the rates, terms and conditions filed by the utility with the commission for the purpose of providing commission-regulated electric service to retail customers.

"Transmission system" means the utility's facilities and equipment delivering electric energy to the distribution system, such facilities being operated at voltages above the utility's typical distribution system voltages.

"Utility" means the public utility company subject to regulation by the commission pursuant to Chapter 10 (§ 56-232 et seq.) of Title 56 of the Code of Virginia with regard to rates and/or service quality to which the interconnection customer proposes to interconnect a small generating facility.

20VAC5-314-30. Siting of distributed generation facilities.

Prior to installing a small generating facility, the ~~IC~~ interconnection customer must ensure compliance with local, state and federal laws and regulations, including ~~siting. If the producer has satisfied the requirements of this chapter and has submitted a copy of his interconnection notification form to the commission's Division of Energy Regulation, the statutory requirements of § 56-580 D~~ all applicable easements and permits, and §§ 56-265.2 and 56-580 of the Code of Virginia ~~shall be deemed to have been met~~, as applicable.

20VAC5-314-40. Level 1 interconnection process.

A. The Level 1 interconnection ~~path~~ process is available to any ~~IC~~ interconnection customer proposing to interconnect a small generating facility with the ~~utility's distribution~~ utility system if the ~~small generating facility~~ SGF is no larger than 500 kW. ~~In order to interconnect under this path, the small generating facility shall complete the streamlined Interconnection Request Form contained in 20VAC5-314-170 as Schedule 1. The utility shall follow the same time line established by the commission in 20VAC5-315-30 of the Net Metering Regulations.~~

[~~B. An IC may begin operation of a small generating facility when:~~

~~1. The IC has completed the Level 1 Interconnection Request Form (Schedule 1 in 20VAC5-314-170) and submitted it to the utility with the required $100 processing fee attached. The utility shall submit a copy of the Interconnection Notification Form to the commission's Division of Energy Regulation. The utility may supply a commission-approved Interconnection Request Form similar to Schedule 1;~~

B. The IC shall submit a complete Level 1 Interconnection Request Form (Schedule 1 in 20VAC5-314-170) to the utility with the required $100 processing fee attached. Alternatively, the utility may require use of a commission-approved Interconnection Request Form similar to Schedule 1, which shall be made available to customers on the utility's Internet website. The Interconnection Request Form shall be date- and time-stamped upon receipt by the utility. The date- and time-stamp shall be used as the qualifying date- and time-stamp for the purpose of any timetable in these procedures.

The IC shall be notified of receipt by the utility within three business days of receiving the interconnection request, which notification may be by United States mail, email address or fax number provided by the IC. As soon as practicable after receipt, but not later than 10 business days after the date of receipt, the utility shall notify the IC if there are any deficiencies in the IC's submittal. If there are deficiencies, such notice shall include a written list detailing all information that must be provided to complete the interconnection request.

The IC shall have 10 business days after receipt of the notice of incomplete information to submit the listed information or to request an extension of time to provide such information. If the IC does not provide the listed information or a request for an extension of time within the deadline, the Interconnection Request Form will be deemed withdrawn.

The utility shall provide a copy of the final completed date- and time-stamped Interconnection Request Form to the Commission's Division of Energy Regulation.

C. Within 15 business days after the date the IC submits a complete Interconnection Request Form and requisite fee, the utility shall evaluate the request and inform the IC what utility modifications are required to interconnect the SGF.

1. If the interconnection can be accomplished with minor modifications to the utility system, the IC and the utility may informally agree upon a plan to effectuate the required installations and modifications. The utility shall perform all installations and modifications of the utility system and the IC shall reimburse the utility for the cost of such installations and modifications. The IC shall perform all required modifications to its SGF.

2. Absent an agreement between the parties regarding modifications to the utility system, the interconnection request will be transferred to the Level 2 process or handled according to 20VAC5-314-100 (Disputes) at the IC's option.

D. An IC may begin operation of an SGF when any required modifications or additions as provided for in subsection C of this section are complete and when the following additional requirements are satisfied:]

[~~2.~~ 1.] If required by the utility's tariff, the IC has installed a lockable, utility-accessible, load breaking manual disconnect switch;

[~~3.~~ 2.] A licensed electrician has certified, by signing the Interconnection Request Form, that any required manual disconnect switch has been installed properly and that the small generating facility has been installed in accordance with the manufacturer's specifications as well as all applicable provisions of the National Electrical Code;

[~~4.~~ 3.] The vendor of the SGF has certified on the Interconnection Request Form that the SGF equipment is in compliance with the requirements established by Underwriters Laboratories or other national testing laboratories in accordance with IEEE Standard 1547, Standard for Interconnecting Distributed Resources with Electric Power Systems;

[~~5.~~ 4.] In the case of a static inverter-connected SGF with an alternating current capacity in excess of 10 kilowatts, the IC has had the inverter settings inspected by the utility. The utility may not impose a charge for the inspection;

[~~6.~~ 5.] In the case of a nonstatic inverter-connected SGF, the IC has interconnected according to the utility's interconnection guidelines, and the utility has inspected all protective equipment settings. The utility may not impose a charge for such inspection.

[6. The IC has paid, or has made arrangements satisfactory to the utility to pay the cost of the SGF metering pursuant to 20VAC5-314-80.]

7. [~~In the case of an~~ An] SGF having an alternating current capacity greater than 25 kilowatts [~~,~~ shall meet] the following [additional] requirements [~~shall be met~~] before interconnection may occur:

a. Distribution facilities and customer impact limitations. An SGF shall not be permitted to interconnect to distribution facilities if the interconnection would reasonably lead to damage to any of the utility's facilities or would reasonably lead to voltage regulation or power quality problems at other customer revenue meters due to the incremental effect of the SGF on the performance of the system, unless the IC reimburses the utility for its cost to modify any facilities needed to accommodate the interconnection [and such modifications are completed].

b. Secondary, service, and service entrance limitations. The capacity of the SGF shall be less than the capacity of the utility-owned secondary, service, and service entrance cable connected to the point of interconnection, unless the IC reimburses the utility for its cost to modify any facilities needed to accommodate the interconnection [and such modifications are completed].

c. Transformer loading limitations. The SGF shall not have the ability to overload the utility's distribution transformer, or any distribution transformer winding, beyond manufacturer or nameplate ratings, unless the IC reimburses the utility for its cost to modify any facilities needed to accommodate the interconnection [and such modifications are completed].

d. Integration with utility's grounding. The grounding scheme of the SGF shall comply with the IEEE 1547, Standard for Interconnecting Distributed Resources with Electric Power Systems, and shall be consistent with the grounding scheme used by the utility. If requested by an IC, the utility shall assist the IC in selecting a grounding scheme that coordinates with its distribution system.

e. [Voltage] Balance limitation. The SGF shall not create a voltage imbalance of more than 3.0% at any other customer's revenue meter if the utility distribution transformer, with the secondary connected to the point of interconnection, is a three-phase transformer, unless the IC reimburses the utility for its cost to modify any facilities needed to accommodate the interconnection [and such modifications are completed].

[E. Site control documentation must be submitted with the Interconnection Request Form. Any information appearing in public records may not be labeled Confidential. (Confidential information is discussed in 20VAC5-314-110.) Site control may be demonstrated through:

1. Ownership of, a leasehold interest in, or a right to develop a site for the purpose of constructing the SGF;

2. An option to purchase or acquire a leasehold site for such purpose;

3. An exclusive or other business relationship between the IC and the entity having the right to sell, lease, or grant the IC the right to possess or occupy a site for such purpose; or

4. An existing permanent service metered account with the utility at the site and in the name of the IC.]

[~~C. Neither~~ F. Except as otherwise provided herein, neither] the utility nor the [~~energy~~ competitive] service provider shall impose any charges upon an IC for any interconnection requirements specified by this chapter [~~, except as may be incurred in providing off-site metering~~].

[~~D.~~ G.] The IC shall immediately notify the utility of any changes in the ownership of, operational responsibility for, or contact information for the SGF.

[~~E.~~ H.] The utility shall not be required to maintain an interconnection with an SGF if the SGF or associated equipment is found to be out of compliance with the codes, standards [,] and certifications applicable to the SGF.

[I. Any IC that is not able to interconnect under the Level 1 interconnection process may apply for interconnection under the Level 2 process or Level 3 process.]

20VAC5-314-50. Levels ~~1~~ 2 and ~~2~~ 3 interconnection request general requirements.

A. The interconnection customer shall submit ~~it's~~ a completed Levels 2 and 3 Interconnection Request Form ~~contained in~~ (Schedule 4 of 20VAC5-314-170 ~~(Schedule 4)~~ to the utility, with the processing fee or deposit specified in the Interconnection Request Form. ~~The utility shall provide a copy of the Interconnection Request Form to the commission's Division of Energy Regulation.~~ The Interconnection Request Form shall be date- and time-stamped upon receipt by the utility~~, which~~. The date- and time-stamp of a completed Interconnection Request Form shall be used as the qualifying date- and time-stamp for the purposes of any timetable in these procedures. The interconnection customer shall be notified of receipt by the utility within three business days of receiving the interconnection request, which notification may be ~~to an~~ by US mail, email address [,] or fax number provided by the IC.

The utility shall notify the interconnection customer within 10 business days of the receipt of the Interconnection Request Form as to whether the Interconnection Request Form is complete or incomplete. If the Interconnection Request Form is incomplete, the utility shall ~~provide, along with the notice that the Interconnection Request Form is incomplete,~~ so notify the IC, including a written list detailing all information that must be provided to complete the Interconnection Request Form.

The interconnection customer ~~will~~ shall have 10 business days after receipt of the notice of incomplete information to submit the listed information or to request an extension of time to provide such information. If the ~~interconnection customer~~ IC does not provide the listed information or a request for an extension of time within the deadline, the Interconnection Request Form will be deemed withdrawn. ~~An Interconnection Request Form will be deemed complete upon submission of the listed information to the utility.~~

The utility shall provide a copy of the final completed date- and time-stamped Interconnection Request Form to the commission's Division of Energy Regulation.

B. Any material modification to machine data or equipment configuration or to the interconnection site of the small generating facility as specified in the Interconnection Request Form but not agreed to in writing by the utility and the ~~interconnection customer~~ IC may be deemed a withdrawal of the Interconnection Request Form and may require submission of a new Interconnection Request Form, unless proper notification of each party by the other and a reasonable time to cure the problems created by the changes are undertaken.

C. Site control documentation must be submitted with the ~~interconnection request~~ Interconnection Request Form. Any information appearing in public records may not be labeled Confidential. (Confidential information is discussed in 20VAC5-314-110.) Site control may be demonstrated through:

1. Ownership of, a leasehold interest in, or a right to develop a site for the purpose of constructing the small generating facility;

2. An option to purchase or acquire a leasehold site for such purpose;

3. An exclusivity or other business relationship between the interconnection customer and the entity having the right to sell, lease, or grant the ~~interconnection customer~~ IC the right to possess or occupy a site for such purpose.

[4. An existing permanent service metered account with the utility at the site and in the name of the IC.]

D. The utility shall place interconnection requests ~~in~~ into a [~~first-come, first-served~~ first-come, first-served] ~~order per~~ queue that is based on the interconnection's distribution feeder and ~~per~~ distribution substation. The queue position shall be based upon the date- and time-stamp of the completed Interconnection Request Form. The ~~order of each~~

~~Interconnection Request Form~~ queue position of an interconnection request will be used to determine the cost responsibility for the necessary upgrades ~~necessary to accommodate the interconnection~~. At the utility's option, interconnection requests may be studied serially or in clusters for the purpose of the system impact study.

E. The utility shall not be required to maintain an interconnection with an SGF if the SGF or associated equipment is found to be out of compliance with the codes, standards and certification applicable to the SGF.

20VAC5-314-60. Level 2 interconnection process.

A. The Level 2 interconnection process is available to an interconnection customer proposing to interconnect a small generating facility with the ~~utility's distribution~~ utility system if the ~~small generating facility~~ SGF is no larger than 2 MW and ~~if the interconnection customer's proposed small generating facility~~ does not qualify for the Level 1 process, and meets the codes, standards, and certification requirements of Schedules 2 and 3 in 20VAC5-314-170.

B. Within 15 business days after the utility notifies the ~~interconnection customer~~ IC it has received a complete ~~interconnection request~~ Interconnection Request Form, the utility shall perform an initial review using the screens set forth below [(20VAC5-314-60 C or 20VAC5-314-60 D, as applicable)] and shall notify the ~~interconnection customer~~ IC of the results [,] including copies of the analysis and data underlying the utility's determinations under the screens.

~~1. The proposed small generating facility's point of interconnection must be on a portion of the utility's distribution system that is subject to the tariff.~~

C. [~~Interconnection~~ Screens for interconnections] to radial circuits.

~~2.~~ 1. For interconnection of a ~~proposed~~ small generating facility to a radial distribution circuit, the aggregated generation, including the proposed small generating facility, on the circuit shall not exceed 15% of the line section's annual peak load as most recently measured at the substation or calculated for the line ~~segment~~ section. A line section is that portion of a ~~utility's electric system~~ distribution circuit connected to a customer that is bounded by automatic sectionalizing devices or the end of the ~~distribution line~~ circuit.

~~3.~~ 2. The ~~proposed small generating facility~~ SGF, in aggregation with other generation on the distribution circuit, shall not contribute more than 10% to the ~~distribution~~ circuit's maximum fault current at the point on the distribution ~~feeder~~ feeder's (primary) voltage ~~(primary)~~ level that is nearest the ~~proposed~~ point of ~~change of ownership~~ interconnection.

~~4.~~ 3. The ~~proposed small generating facility~~ SGF, in aggregate with other generation on the distribution circuit, shall not cause any distribution protective devices and equipment (including, but not limited to, substation breakers, ~~fuse~~ fused cutouts, and line reclosers), or interconnection customer equipment on the system to exceed 87.5% of the short circuit interrupting capability; nor shall the interconnection be ~~proposed for~~ permitted on a circuit ~~that already exceeds~~ where 87.5% of the short circuit interrupting capability is already exceeded.

~~5. Using~~ 4. For interconnections to the distribution primary voltage, use the table below, to determine the acceptable type of interconnection to a primary distribution ~~line~~ circuit. This screen includes a review of the type of electrical service provided to the ~~interconnection customer~~ IC, including line configuration and the transformer connection, to limit the potential for creating over-voltages on the utility's ~~electric power~~ distribution system due to a loss of ground during the operating time of any anti-islanding function.

Primary Distribution Line Type	Type of Interconnection to Primary Distribution Line	Result/Criteria
Three-phase, three wire	Three-phase, or single phase, phase-to-phase	Pass screen
Three-phase, four wire	Effectively-grounded three phase, or single-phase, line-to-neutral	Pass screen

~~6.~~ 5. If the ~~proposed~~ small generating facility is to be interconnected ~~on~~ to a single-phase shared secondary, the aggregate generation capacity on the shared secondary, including the proposed ~~small generating facility~~ SGF, shall not exceed 20 kW.

~~7.~~ 6. If the ~~proposed small generating facility~~ SGF is single-phase and is to be interconnected on a center tap neutral of a 240 volt service, its addition shall not create an imbalance between the two sides of the 240 volt service of more than 20% of the nameplate rating of the service transformer.

~~8.~~ 7. The ~~small generating facility~~ SGF, in aggregate with ~~other~~ generation interconnected to the transmission side of ~~a~~ the substation transformer ~~feeding~~ that feeds the distribution circuit where the ~~small generating facility~~ SGF proposes to interconnect, shall not exceed 10 MW in an area where there are known, or posted, transient stability limitations to generating units located in the general electrical vicinity (e.g., [within] three or four transmission busses from the point of interconnection).

~~9.~~ 8. No construction of facilities by the utility on its own system shall be required to accommodate the ~~small generating facility~~ SGF [~~, except minor modifications~~].

~~C.~~ D. [~~Interconnections to~~] ~~distribution systems~~ [~~secondary voltage networks (120 volts to 480 volts)~~ Screens for interconnections involving networks].

1. For interconnection of a ~~proposed~~ small generating facility to the load side of spot network protectors serving more than a single customer, the ~~proposed small generating facility~~ SGF must utilize an inverter-based equipment package and, together with the aggregated other inverter-based generation, shall not exceed the smaller of 5.0% of a spot network's maximum load or 300 kW. For spot networks serving a single customer, the ~~small generating facility~~ SGF must use an inverter-based equipment package and either meet the requirements above, or ~~shall~~ use a protection scheme, or operate the generator so as not to exceed on-site load or otherwise prevent nuisance operation of the spot network protectors.

2. For interconnection of ~~a proposed small generating facility~~ an SGF to the load side of area network protectors, the ~~proposed small generating facility~~ SGF must utilize an inverter-based equipment package and, together with the aggregated other inverter-based generation, shall not exceed the smaller of 10% of an area network's minimum load, or 500 kW.

[3. If the SGF is single-phase, the IC's load net of generation on each phase shall not create an imbalance between the phases of a polyphase service, or if applicable, between each leg of single-phase service.

4. For interconnection of an SGF to a distribution circuit in an area where there are known or posted transient stability limitations to generating units located in the general electrical vicinity (e.g., within three or four transmission busses from the point of interconnection), the SGF, in aggregate with generation interconnected to the transmission side of the substation transformer that feeds the distribution circuit, shall not exceed the following limits:

a. For a distribution circuit that supplies only secondary voltage networks, 30% of the distribution circuit's load.

b. For a distribution circuit not exclusively supplying secondary networks, 10 MW.

5. For interconnection of an SGF to the line side of network protectors:

a. For a distribution circuit that supplies only secondary networks, the interconnection fails the screen.

b. For a distribution circuit not exclusively supplying secondary networks, the interconnections shall be evaluated in accordance with 20VAC5-314-60 C.

6. No construction of facilities by the utility on its own system shall be required to accommodate the SGF.]

[~~3.~~ 7.] ~~Notwithstanding subdivision 1 or 2 of this subsection, each utility may incorporate into its interconnection standards any change in interconnection guidelines related to networks pursuant to standards developed under IEEE 1547 for interconnections to networks.~~ To the extent ~~the~~ any new IEEE standards conflict with this chapter, in particular IEEE 1547, the new standards shall apply. In addition, ~~and with the consent of the~~ utility~~, a small generating facility may be interconnected~~ consent shall not be unreasonably withheld from an SGF interconnecting to a spot or area network provided the ~~facility~~ SGF utilizes a protection scheme that will prevent any power export from the ~~customer's~~ IC's site including inadvertent export under fault conditions ~~or~~, and otherwise prevent nuisance operation of the network protectors.

~~D.~~ E. If the ~~proposed~~ interconnection passes the screens, the interconnection request shall be approved and the utility will provide the interconnection customer an executable interconnection agreement within ~~10~~ five business days after the determination.

~~E.~~ F. If the ~~proposed~~ interconnection fails any screens, but the utility determines that the small generating facility may nevertheless be interconnected consistent with safety, reliability, and power quality standards, the utility shall provide the ~~interconnection customer~~ IC an executable interconnection agreement within five business days after the determination.

~~F.~~ G. If the ~~proposed~~ interconnection fails ~~the~~ any screens, but the utility does not or cannot determine from the initial review that the ~~small generating facility~~ SGF may nevertheless be interconnected consistent with safety, reliability, and power quality standards, unless the ~~interconnection customer~~ IC is willing to consider minor modifications or further study, the utility shall provide the ~~interconnection customer~~ IC with the opportunity to attend a customer options meeting.

~~G.~~ H. If the utility determines [that] the ~~Interconnection Request Form~~ interconnection cannot be approved without minor modifications at minimal cost; a supplemental [~~study~~ review] or other [~~additional~~] studies or actions; or [modifications or installations] at significant cost to address safety, reliability, or power quality problems, ~~within the five business day period after the determination,~~ the utility shall notify the ~~interconnection customer~~ IC and provide copies of the data and analyses underlying its conclusion within five business days after determination. Within 10 business days of the ~~utility's~~ determination, the utility shall offer to convene a customer options meeting ~~with the utility~~ to review possible ~~interconnection customer~~ IC facility modifications, or the screen analysis and related results, to determine what further

steps are needed to permit the ~~small generating facility~~ SGF to be connected safely and reliably. At the time of notification of the utility's determination, or at the customer options meeting, the utility shall:

1. Offer to perform facility modifications or minor modifications to the [~~utility's electric~~ utility] system (e.g., changing meters, fuses, [and] relay settings) and provide ~~a nonbinding good faith~~ an estimate of the ~~limited~~ cost to make such modifications to the [~~utility's electric~~ utility] system;

2. Offer to perform a supplemental review if the utility concludes that the supplemental review might determine that the ~~small generating facility~~ SGF could continue to qualify for interconnection pursuant to the ~~fast track~~ Level 2 process, and provide ~~a nonbinding good faith~~ an estimate of the costs and time of such review; or

3. ~~Obtain the interconnection customer's agreement~~ Offer to continue evaluating the interconnection request, but under the Level 3 ~~study~~ interconnection process.

~~H.~~ I. Supplemental review. If ~~the interconnection customer agrees to~~ a supplemental review~~,~~ is offered to the interconnection customer ~~shall agree in writing within 15 business days of the offer and submit a deposit for the estimated costs provided in subdivision G 2 of this section~~ and the IC agrees to the supplemental review, the utility shall, within 10 business days of the request, provide to the IC an appropriate supplemental review agreement. To maintain its position in the utility's interconnection queue, the IC must execute the supplemental review agreement and return it to the utility, along with a deposit for the estimated cost of the supplemental review, within 15 business days after receipt of the agreement. If the IC fails to return the executed supplemental review agreement along with the deposit within 15 business days after receipt, the interconnection request shall be deemed withdrawn and shall lose its place in the utility's interconnection queue.

The ~~interconnection customer~~ IC shall be responsible for the utility's actual costs ~~for~~ of conducting the supplemental review. The ~~interconnection customer~~ IC shall pay any review costs that exceed the deposit within ~~20~~ 30 business days of receipt of the invoice or resolution of any dispute. If the deposit exceeds the invoiced costs, the utility will return such excess within ~~20~~ 30 business days of the invoice without interest.

Within 10 business days following receipt of the supplemental review agreement and deposit ~~for a supplemental review~~, the utility will determine if the ~~small generating facility~~ SGF can be interconnected safely and reliably.

1. If so, and if the supplemental review reveals that no [~~modification~~ modifications] are required to the [~~customer's~~ IC's] interconnection facilities, or to the system, or to an affected system, the utility shall forward an executable [~~interconnection agreement~~ SGIA] to the interconnection customer within five business days after the determination.

2. If so, and ~~interconnection customer facility~~ [~~the customer's interconnection facilities~~] modifications are required to [the IC's interconnection facilities that] allow the ~~small generating facility~~ SGF to be interconnected consistent with safety, reliability, and power quality standards under these procedures, the utility shall forward an executable [~~interconnection agreement~~ SGIA] to the ~~interconnection customer~~ IC within five business days after confirmation that the ~~interconnection customer~~ IC has agreed to make the necessary changes at the ~~interconnection customer's~~ IC's cost.

3. If so, and minor modifications to the [~~utility's electric~~ utility] system are required to allow the ~~small generating facility~~ SGF to be interconnected consistent with safety, reliability, and power quality standards under [~~the Level 2 process~~ these procedures], the utility shall [, within 10 business days after the determination,] forward an executable [~~interconnection agreement~~ SGIA] to the ~~interconnection customer~~ IC [~~within 10 business days after the determination~~] that requires the ~~interconnection customer~~ IC to pay the costs of such system modifications prior to interconnection.

4. If not, the interconnection request will ~~continue to be evaluated under~~ elevated to the Level 3 ~~study~~ interconnection process.

[Interconnection may occur when, as may be required under the applicable subdivisions 1, 2, or 3 of this subsection, the SGIA is fully executed and returned to the utility, the IC has made required payments to the utility, and required modifications are complete. If subdivision I 4 of this section is applicable, interconnection shall occur in accordance with the Level 3 interconnection process.

J. Small generating facilities of 500 kW or less. For an SGF of 500 kW or less, the requirements in this section shall be deemed satisfied when: (i) an Interconnection Request Form as required under 20VAC5-314-40 B is properly completed and all of the certifications and acknowledgements required in Sections 5, 6, and 7 of the Interconnection Request Form are affixed and (ii) the IC and the utility have exchanged appropriate written commitments to effect the necessary installations and modifications to the SGF and the utility system. The timing of such commitments shall follow the timing prescribed in this section.]

20VAC5-314-70. Level 3 interconnection process.

A. The Level 3 interconnection process shall be used by an ~~IC~~ interconnection customer proposing to interconnect a small generating facility with the ~~utility's~~ ~~distribution~~ utility system if the ~~small generating facility~~ SGF is ~~(i) larger than 2~~

~~MW but~~ no larger than 20 MW~~, (ii) not certified, or (iii) certified but did~~ and does not pass or qualify for the Level 1 or Level 2 interconnection ~~process~~ processes. ~~A study process consisting of~~ As needed, a scoping meeting, feasibility study, system impact study, and facilities study shall precede the preparation of ~~an interconnection agreement~~ a Small Generator Interconnection Agreement (Schedule 6 of 20VAC5-314-170). ~~Feasibility studies, scoping studies, and facility~~ Any of the studies may be combined ~~for simpler projects~~ by mutual agreement of the ~~utility and the~~ parties.

B. Scoping ~~study~~ meeting.

1. A scoping meeting will be held within 10 business days after the ~~interconnection request~~ Interconnection Request Form is deemed complete, or as otherwise mutually agreed to by the parties. The utility and the ~~interconnection customer~~ IC shall bring to the meeting personnel, including system engineers and other resources as may be reasonably required to accomplish the purpose of the meeting.

2. The purpose of the scoping meeting is to discuss the interconnection request. The parties shall ~~further~~ discuss ~~whether the utility should perform a feasibility study or proceed directly to a system impact study, or a facilities study, or an interconnection agreement~~ the studies and the cost responsibilities for the studies. ~~If the parties agree that a feasibility study should be performed, the utility shall provide the interconnection customer, as soon as possible, but not later than five business days after the scoping meeting, a feasibility study agreement including an outline of the scope of the study and a nonbinding good faith estimate of the cost to perform the study.~~

3. The scoping meeting may be omitted by mutual agreement. ~~In order to remain in consideration for interconnection, an interconnection customer who has requested a feasibility study must return the executed feasibility study agreement within 15 business days. If the parties agree not to perform a feasibility study, the utility shall provide the interconnection customer, no later than five business days after the scoping meeting, a system impact study agreement including an outline of the scope of the study and a nonbinding good faith estimate of the cost to perform the study.~~

C. Feasibility study.

1. If the parties agree that a feasibility study should be performed, the utility shall provide the IC with a feasibility study agreement, including an outline of the scope of the feasibility study and an estimate of the cost to perform the study no later than five business days after the scoping meeting or five business days after the decision is made to not have a scoping meeting [and otherwise pursuant to subsection D of this section].

If the parties agree to not perform a feasibility study, the utility shall provide the IC a system impact study agreement including an outline of the scope of the study and an estimate of the cost to perform the study no later than five business days after the scoping meeting, or five business days after the decision is made to not have a scoping meeting.

2. To maintain its position in the utility's interconnection queue, the IC must execute the feasibility study agreement and return it to the utility along with the deposit for the feasibility study within 15 business days after receipt of the agreement. If the IC fails to return the executed feasibility study agreement along with the deposit within 15 business days after receipt of the agreement, the interconnection request shall be deemed withdrawn and the interconnection request shall lose its place in the utility's interconnection queue.

~~1.~~ 3. A feasibility study shall identify any potential adverse system impacts that would result from the interconnection of the ~~small generating facility~~ SGF.

~~2.~~ 4. A deposit of ~~the lesser of~~ no more than 50% of the ~~good faith~~ estimated feasibility study costs or earnest money of $1,000 may be required from the interconnection customer.

a. ~~Any study fees~~ Study costs shall be ~~based on~~ the ~~distribution company's~~ utility's actual incremental costs and will be invoiced to the ~~interconnection customer~~ IC after the study is completed and delivered and will include a summary of professional time.

b. The ~~interconnection customer must~~ IC shall pay any study costs that exceed the deposit without interest within 30 calendar days on receipt of the invoice or resolution of any dispute. If the deposit exceeds the invoiced fees, the ~~distribution company~~ utility shall refund such excess within 30 calendar days of the invoice without interest.

~~3.~~ 5. The feasibility study shall be based on the technical information provided by the ~~interconnection customer~~ IC in the ~~interconnection request~~ Interconnection Request Form, as may be modified as the result of the scoping meeting. The ~~distribution company~~ utility reserves the right to request additional technical information from the ~~interconnection customer~~ IC as may reasonably become necessary consistent with Good Utility Practice during the course of the feasibility study and as designated in accordance with the standard small generator interconnection procedures. All modification made to the interconnection request shall be made in writing to the utility. If the interconnection customer modifies its interconnection request, the time to complete the feasibility study may be extended by agreement of the parties.

~~4.~~ 6. In performing the feasibility study, the ~~distribution company~~ utility shall rely, to the extent reasonably practicable, on recent studies. The ~~interconnection customer~~ IC shall not be charged for such existing studies;

however, the ~~interconnection customer~~ IC shall be responsible for charges associated with any new study or modifications to existing studies that are reasonably necessary to perform the feasibility study.

~~5.~~ 7. The feasibility study report shall provide the following analyses for the purpose of identifying any potential adverse system impacts that would result from the interconnection of the ~~small generating facility as proposed~~ SGF:

a. Initial identification of any circuit breaker short circuit capability limits exceeded ~~as a result of the interconnection~~;

b. Initial identification of any thermal overload or voltage limit violations ~~resulting from the interconnection~~;

c. Initial review of grounding requirements and electric system protection; and

d. Description and ~~nonbonding~~ estimated cost of facilities and estimated construction time required to interconnect the ~~proposed small generating facility~~ SGF and to address the identified short circuit and power flow issues.

~~6.~~ 8. The feasibility study shall model the impact of the ~~small generating facility regardless of purpose~~ SGF for all purposes identified in the Interconnection Request Form in order to avoid the further expense and interruption of operation for reexamination of feasibility and impacts if the ~~interconnection customer~~ IC later changes the purpose for which the ~~small generating facility~~ SGF is being installed.

~~7.~~ 9. The feasibility study shall include the feasibility of ~~any interconnection at a proposed project site where there could be multiple~~ all potential points of interconnection, as requested by the ~~interconnection customer~~ IC and at the ~~interconnection customer's~~ IC's cost.

~~8. Once the feasibility study is completed, a~~ 10. A feasibility study report shall be prepared and transmitted to the ~~interconnection customer. Barring unusual circumstances, the feasibility study must be completed and the feasibility study report transmitted~~ IC within 30 business days of the ~~interconnection customer's agreement to conduct a feasibility study~~ utility's receipt of the complete executed feasibility study agreement and required deposit.

~~9.~~ 11. If the feasibility study shows no potential for adverse system impacts, then within five business days the utility shall send the ~~interconnection customer~~ IC either an executable Small Generator Interconnection Agreement (Schedule 5, 20VAC5-314-170) or a facilities study agreement, including an outline of the scope of the study and ~~a nonbinding good faith~~ an estimate of the cost to perform the study.

~~10.~~ 12. If the feasibility study shows ~~the~~ potential for adverse system impacts, the review process shall proceed to the ~~appropriate~~ system impact study ~~or studies~~.

D. System impact study.

1. No later than five business days after the parties agree that a system impact study should be performed, the utility shall provide the IC a system impact study agreement including an outline of the scope of the system impact study and an estimate of the cost to perform the study.

2. To maintain its position in the utility's interconnection queue, the IC must execute the system impact study agreement and return it to the utility along with the deposit for the system impact study within 15 business days after receipt of the agreement. If the IC fails to return the executed system impact study agreement along with the deposit within 15 business days after receipt of the agreement, the interconnection request shall be deemed withdrawn and the interconnection request shall lose its place in the utility's interconnection queue.

3. A deposit equal to the estimated cost of a system impact study may be required from the IC.

a. Study cost shall be the utility's actual incremental costs and will be invoiced to the IC after the study is completed and delivered and will include a summary of professional time.

b. The IC shall pay any study costs that exceed the deposit within 30 calendar days on receipt of the invoice or resolution of any dispute. If the deposit exceeds the invoiced fees, the utility shall refund the excess within 30 calendar days of the invoice without interest.

~~1.~~ 4. A system impact study shall identify and detail the electric system impacts that would result if the ~~proposed small generating facility~~ SGF were interconnected without project modifications or electric system modifications, focusing on the adverse electric system impacts identified in the feasibility study, or ~~to study potential impacts, including but not limited to those identified~~ in the scoping meeting. A system impact study shall evaluate the impact of the proposed interconnection on the reliability of the electric system.

~~2.~~ 5. A system impact study will be based upon the results of the feasibility study and the technical information provided by the interconnection customer in the interconnection request. The ~~distribution company~~ utility reserves the right to request additional technical information from the ~~interconnection customer~~ IC as may reasonably become necessary consistent with Good Utility Practice during the course of the system impact study. If the ~~interconnection customer~~ IC modifies its designated point of interconnection, or interconnection request, or the technical information provided therein ~~is modified~~, the

time to complete the system impact study may be extended.

~~3.~~ 6. A system impact study shall consist of a study of the potentially impacted transmission and distribution systems, a short circuit analysis, a stability analysis, a power flow analysis, voltage drop and flicker studies, ~~protection and set point coordination studies, and~~ grounding reviews, distribution load flow study, analysis of equipment interrupting ratings, protection coordination study, and impacts on electric system operation, as necessary. A system impact study shall state the assumptions upon which it is based, state the results of the analyses, and provide the requirement or potential impediments to providing the requested interconnection service, including a preliminary indication of the cost and length of time that would be necessary to correct any problems identified in those analyses and implement the interconnection. A system impact study shall provide a list of facilities and modifications that ~~are~~ would be required as a result of the interconnection ~~request and nonbinding good faith~~ along with estimates of cost responsibility and time to construct. If arranged with the utility prior to the utility preparing the system impact study agreement, the system impact study may, at the IC's cost, include one or more alternatives to the point of interconnection; however, such alternative points must be on the same distribution circuit as the point of interconnection the IC specified as the proposed point of interconnection.

~~4. A distribution system impact study shall incorporate a distribution load flow study, an analysis of equipment interrupting ratings, protection coordination study, voltage drop and flicker studies, protection and set point coordination studies, grounding reviews, and the impact on electric system operation, as necessary.~~

~~5.~~ 7. Affected systems may participate in the preparation of a system impact study, with a division of costs among such entities as they may agree. All affected systems shall be afforded an opportunity to review and comment upon a system impact study that covers potential adverse system impacts on their electric systems, and the ~~distribution company~~ utility has 20 additional business days to complete a system impact study requiring review by affected systems.

~~6.~~ 8. If the utility uses a queuing procedure for sorting or prioritizing projects and their associated cost responsibilities for any required network upgrades, the system impact study shall consider all generating facilities (and with respect to clause iii below, any identified upgrades associated with such higher queued interconnection) that, on the date the system impact study is commenced are: (i) directly interconnected with the ~~distribution company's electric~~ utility system; or (ii) interconnected with affected systems and may have an impact on the proposed interconnection; and (iii) have a pending higher queued interconnection request to interconnect with the ~~utility's electric~~ utility system.

~~7.~~ 9. A ~~distribution~~ system impact study, if required, shall be completed and the results transmitted to the ~~interconnection customer~~ IC within ~~30~~ 45 business days after an agreement is signed by the parties. ~~A transmission system impact study, if required, shall be completed and the results transmitted to the interconnection customer within 45 business days after an agreement is signed by the parties~~, or in accordance with the utility's queuing procedures.

~~8. A deposit of the equivalent of the good faith estimated cost of a distribution system impact study and one half of the good faith estimated cost of a transmission system impact study may be required from the interconnection customer.~~

~~9. Any study fees shall be based on the utility's actual costs and will be invoiced to the interconnection customer after the study is completed and delivered and will include a summary of professional time.~~

~~10. The interconnection customer shall pay any study costs that exceed the deposit within 30 calendar days on receipt of the invoice or resolution of any dispute. If the deposit exceeds the invoiced fees, the utility shall refund such excess within 30 calendar days of the invoice. Interest shall not apply.~~

~~11. If no transmission system impact study is required, adverse distribution system impacts are identified in the scoping meeting or shown in the feasibility study, a distribution system impact study shall be performed. The utility shall send the interconnection customer a distribution system impact study agreement within 15 business days of transmittal of the feasibility study report, including an outline of the scope of the study and a nonbinding good faith estimate of the cost to perform the study, or following the scoping meeting if no feasibility study is to be performed.~~

~~12. In instances where the feasibility study or the distribution system impact study shows potential for transmission system adverse system impacts, within five business days following transmittal of the feasibility study report, the utility shall send the interconnection customer a transmission system impact study agreement, including an outline of the scope of the study and a nonbinding good faith estimate of the cost to perform the study, if such a study is required.~~

~~13. If a transmission system impact study is not required, but adverse distribution system impacts are shown by the feasibility study to be possible and no distribution system impact study has been conducted, the utility shall send the~~

~~interconnection customer a distribution system impact study agreement.~~

~~14. If the feasibility study shows no potential for transmission system or distribution system adverse impacts, the utility shall send the interconnection customer either an executable Small Generator Interconnection Agreement (SGIA) included in this chapter as Schedule 5 in 20VAC5-314-170, or a facilities study agreement, including an outline of the scope of the study and a nonbinding good faith estimate of the cost to perform the study, as applicable.~~

~~15. In order to remain under consideration for interconnection, the interconnection customer shall return executed system impact study agreements, if applicable, within 30 business days.~~

10. If the system impact study shows that facility modifications are needed to accommodate the SGF, then within five business days following transmittal of the system impact study report, the utility shall send the IC a facilities study agreement, including an outline of the scope of the study and an estimate of the cost to perform the study.

E. Facilities study.

1. ~~Once the required system impact study (or studies) is completed, a system impact study report shall be prepared and transmitted to the interconnection customer along with a facilities study agreement within five business days, including an outline of the scope of the study and a nonbinding good faith estimate of the cost to perform the facilities study. In the case where one or both impact studies are determined to be unnecessary, a notice of the fact shall be transmitted to the interconnection customer within the same timeframe.~~ The facilities study shall specify and estimate the cost of the equipment, engineering, procurement, and construction work needed to implement the conclusion of the feasibility and/or system impact study and to allow SGF to be interconnected and operate safely and reliably.

~~2. In order to remain under consideration for interconnection, or, as appropriate, in the utility's interconnection queue, the interconnection customer shall provide the following information, or a request for an extension of time within 30 business days, and the facilities study shall be based on the responses of the IC to the following queries:~~

~~a. Provide a location plan and simplified one-line diagram of the plant and station facilities. For staged projects, please indicate future generation, transmission circuits, etc. On the one-line diagram, indicate the generation capacity attached at each metering location. (Maximum load on CT (current transformer)/PT (partial transformer) On the one-line diagram, indicate the location of auxiliary power. (Minimum load on CT/PT) Amps~~

~~b. One set of metering is required for each generation connection to the new ring bus or existing distribution company station.~~

~~Number of generation connections: _____~~

~~c. Will an alternate source of auxiliary power be available during CT/PT maintenance?~~

~~Yes _____ No _____~~

~~d. Will a transfer bus on the generation side of the metering require that each meter set be designed for the total plant generation?~~

~~Yes _____ No _____ (Please indicate on the one-line diagram).~~

~~e. What type of control system or Programmable Logic Controller (PLC) will be located at the small generating facility?~~

~~_____~~

~~f. What protocol does the control system or PLC use?~~

~~_____~~

~~g. Provide a 7.5-minute quadrangle map of the site. Indicate the plant, station, transmission line, and property lines.~~

~~h. Physical dimensions of the proposed interconnection station:~~

~~_____~~

~~i. Bus length from generation to interconnection station: _____~~

~~j. Line length from interconnection station to utility's transmission system. _____~~

~~k. Tower number observed in the field. (Painted on tower leg)*:~~

~~_____~~

~~l. Number of third party easements required for transmission lines*: _____~~

~~*To be completed in coordination with distribution company.~~

~~m. Is the small generating facility located in utility's service area? Yes _____ No _____;~~

~~If No, please provide name of local provider:~~

~~_____~~

~~n. Please provide the following proposed schedule dates:~~

~~Begin Construction Date:_____~~

~~Generator step-up transformers receive back feed power date:_____~~

~~Generation Testing Date:_____~~

~~Commercial Operation Date:_____~~

~~3. The facilities study shall specify and estimate the cost of the equipment, engineering, procurement, and construction work (including overheads) needed to implement the conclusions of the system impact study or studies.~~

~~4. A deposit of the good faith estimated facilities study costs may be required from the interconnection customer.~~

~~5. Any study fees shall be based on the distribution company's actual costs and will be invoiced to the interconnection customer after the study is completed and delivered and will include a summary of professional time.~~

~~6. The interconnection customer shall pay any study costs that exceed the deposit within 30 calendar days on receipt of the invoice or resolution of any dispute. If the deposit exceeds the invoiced fees, the distribution company shall refund such excess within 30 calendar days of the invoice. Interest shall not apply.~~

2. To maintain its position in the utility's interconnection queue, the IC must execute the facilities study agreement and return it to the utility along with a completed Facilities Study Information Form (Schedule 5, 20VAC5-314-170) and deposit for the facilities study within 30 business days after receipt of the agreement, unless an extension has been agreed to with the utility. Otherwise, the interconnection request shall be deemed withdrawn and the interconnection request shall lose its place in the utility's interconnection queue.

3. A deposit equal to the estimated cost of a facilities study may be required from the IC.

a. Study cost shall be the utility's actual incremental costs and will be invoiced to the IC after the study is completed and delivered and will include a summary of professional time.

b. The IC shall pay any study costs that exceed the deposit within 30 calendar days after receipt of the invoice or resolution of any dispute. If the deposit exceeds the invoiced fees, the utility shall refund the excess within 30 calendar days of the invoice without interest.

~~7.~~ 4. Design for any required customer's interconnection facilities, attachment facilities, and/or upgrades shall be performed under the facilities study ~~agreement~~. The utility may contract with consultants to perform activities required under the facilities study ~~agreement~~. The ~~interconnection customer~~ IC and the utility may agree to allow the ~~interconnection customer~~ IC to separately arrange for the design of some of the customer's interconnection facilities. In such cases, facilities design will be reviewed and/or modified prior to acceptance by the utility, under the provisions of the facilities study ~~agreement~~. If the parties agree to separately arrange for design and construction, and provided security and confidentiality requirements can be met, the utility shall make sufficient information available to the ~~interconnection customer~~ IC in accordance with confidentiality and critical infrastructure requirements, to permit the ~~interconnection customer~~ IC to obtain an independent design and cost estimate for any necessary facilities.

~~8.~~ 5. The facilities study shall ~~specify and estimate the cost of the equipment, engineering, procurement and construction work (including overheads) needed to implement the conclusions of the system impact study or studies. The facilities study shall also~~ identify (i) the electrical switching configuration of the equipment, including, without limitation, transformer, switchgear, meters, and other station equipment, (ii) the nature and estimated cost of the ~~utility's~~ ~~interconnection~~ attachment facilities and distribution upgrades necessary to accomplish the interconnection, and (iii) an estimate of the time required to complete the construction and installation of such facilities.

~~9.~~ 6. The utility may propose to group facilities required for more than one ~~interconnection customer~~ IC in order to minimize facilities costs through economies of scale, but any ~~interconnection customer~~ IC may require the installation of facilities required for its own small generating facility if it ~~is willing to pay~~ pays the costs of those facilities.

~~10. Once the facilities study is completed, a facilities study report shall be prepared and transmitted to the interconnection customer. Barring unusual circumstances, the facilities study must be completed and the facilities study report transmitted within 30 business days of the interconnection customer's agreement to conduct a facilities study 11. In cases where upgrades are required, the facilities study must be completed within 45 business days of the receipt of this facilities study agreement. In cases where no upgrades are necessary, and the required facilities are limited to interconnection facilities, the facilities study must be completed within 30 business days.~~

7. In cases where system upgrades are required, the utility shall transmit the facilities study report within 45 business days after receipt of the complete facilities study

agreement, Facilities Study Information Form, and the deposit. In cases where no system upgrades are necessary, and the required facilities are limited to customer's interconnection facilities and attachment facilities only, the utility shall transmit the facilities study report within 30 business days after receipt of the complete facilities study agreement, Facilities Study Information Form and the deposit.

F. ~~Interconnection agreement~~ Small Generator Interconnection Agreement.

1. ~~Upon completion of the facilities study, and with the agreement of the interconnection customer to pay for interconnection facilities and upgrades identified in the facilities study, the utility shall provide the interconnection customer an executable SGIA within five business days~~ Within five business days after transmittal of the final study (i.e. the facilities study, or if applicable, a combined study that satisfies all study requirements), the utility shall provide the interconnection customer an executable SGIA (Schedule 6, 20VAC5-314-170).

2. After receiving ~~an interconnection agreement~~ the SGIA from the utility, the ~~interconnection customer~~ IC shall have 30 business days or another mutually agreeable ~~time frame~~ deadline, to sign and return the ~~interconnection agreement, or request that the utility file an unexecuted interconnection agreement with the commission~~ SGIA. If the ~~interconnection customer~~ IC does not ~~sign~~ return the ~~interconnection agreement, or ask that it be filed unexecuted by the utility within 30 business days~~ SGIA within the deadline, the interconnection request shall be deemed withdrawn and the IC shall lose its place in the utility's queue. After the ~~interconnection agreement~~ SGIA is signed by the parties, the interconnection of the ~~small generating facility~~ SGF shall proceed under the provisions of the SGIA.

20VAC5-314-80. Interconnection metering.

Any metering [, including telemetering,] necessitated by the use of the small generating facility [and any additional utility metering requested by the interconnection customer and agreed to by the utility] shall be [~~installed~~ provided by the utility] at the [~~interconnection customer's~~ IC's] expense in accordance with commission requirements or the utility's specifications. [The IC shall be responsible for the utility's reasonable and necessary cost for the purchase, installation, operation, maintenance, testing, repair, and replacement of metering and telemetering equipment.]

20VAC5-314-90. Commissioning tests.

Commissioning tests of the interconnection customer's installed equipment shall be performed pursuant to applicable codes and standards, including IEEE 1547.1 2005 "IEEE Standard Conformance Test Procedures for Equipment Interconnecting Distributed Resources with Electric Power Systems." The utility shall be given at least five business days written notice, or notice as otherwise mutually agreed to by the parties, of the tests and ~~may~~ the utility shall be allowed to be present to witness the commissioning tests. The utility shall not be compensated by the ~~interconnection customer~~ IC for ~~its expense in~~ witnessing ~~Level 2 and Level 3~~ commissioning tests.

20VAC5-314-100. Disputes.

A. The parties agree to attempt to resolve all disputes arising out of the interconnection process according to the provisions of this section.

B. In the event of a dispute, either party shall provide the other party with a written notice of dispute. The notice shall describe in detail the nature of the dispute. ~~If the dispute has not been resolved within five business days after receipt of the notice, either party may contact a mutually agreed upon third party dispute resolution service for assistance in resolving the dispute~~ The parties shall make a good faith effort to resolve the dispute informally within 10 business days.

C. If the dispute has not been resolved within 10 business days after receipt of the notice, either party may seek resolution assistance from the commission's Division of Energy Regulation where the matter will be handled as an informal complaint. [~~If that process is unsatisfactory, either party may petition the commission to handle the dispute as a formal complaint.~~]

Alternatively, the parties may [, upon mutual agreement,] seek resolution through the assistance of a dispute resolution service. The dispute resolution service will assist the parties in either resolving the dispute or in selecting an appropriate dispute resolution venue (e.g., mediation, settlement judge, early neutral evaluation, or technical expert) to assist the parties in resolving their dispute. Each party [~~agrees to~~ shall] conduct all negotiations in good faith and [~~will~~ shall] be responsible for [~~one-half~~ one-half] of any costs paid to neutral third parties.

~~D. Each party agrees to conduct all negotiations in good faith and will be responsible for 1/2 of any costs paid to neutral third parties.~~

~~E.~~ D. If ~~neither party elects to seek assistance from the dispute resolution service, or if the~~ [~~attempted dispute resolution fails to satisfy one or both of the parties, then~~ the dispute remains unresolved] either party may [petition the commission to handle the dispute as a formal complaint or may] exercise whatever rights and remedies it may have in equity or law [~~consistent with the terms of the~~] ~~agreements between the parties or it may seek resolution at the commission~~ [~~agreement~~].

20VAC5-314-110. Confidential information.

A. Confidential information shall mean any confidential and/or proprietary information provided by one party to the other party that is clearly marked or otherwise designated "Confidential." All design, operating specifications, and metering data provided by the ~~interconnection customer~~ IC shall be deemed confidential information regardless of whether it is clearly marked or otherwise designated as such.

B. Confidential information does not include information previously in the public domain, required to be publicly submitted or divulged by governmental authorities (after notice to the other party and after exhausting any opportunity to oppose such publication or release), or necessary to be divulged in an action to enforce an agreement between the parties. Each party receiving confidential information shall hold such information in confidence and shall not disclose it to any third party nor to the public without the prior written authorization from the party providing that information, except to fulfill obligations under agreements between the parties, or to fulfill legal or regulatory requirements.

1. Each party shall employ at least the same standard of care to protect confidential information obtained from the other party as it employs to protect its own confidential information.

2. Each party is entitled to equitable relief, by injunction or otherwise, to enforce its rights under this section to prevent the release of confidential information without bond or proof of damages, and may seek other remedies available at law or in equity for breach of this provision.

C. Notwithstanding anything in this chapter to the contrary, if the commission, during the course of an investigation or otherwise, requests information from one of the parties that is otherwise required to be maintained in confidence, the party shall provide the requested information to the commission, within the time provided for in the request for information. In providing the information to the commission, the party may request that the information be treated as confidential and nonpublic by the commission and that the information be withheld from public disclosure. Parties are prohibited from notifying the other party prior to the release of the confidential information to the commission. ~~The party shall notify the other party when it is notified by the commission that a request to release confidential information has been received by the commission, at which time either of the parties may respond before such information would be made public.~~ [A party shall notify the other party when it is notified by the commission that a request to release confidential information has been received by the commission, at which time either party may respond to the commission before such information would be made public.]

20VAC5-314-120. ~~Comparability~~ Equal treatment.

The utility shall receive, process, and analyze all interconnection requests in a timely manner as set forth in this chapter. The utility shall use the same reasonable efforts in processing and analyzing interconnection requests from all Interconnection customers, whether the ~~small generating facility~~ SGF is owned or operated by the utility, its subsidiaries or affiliates, or others.

20VAC5-314-130. Record retention.

The utility shall maintain, subject to audit, records for three years of (i) all interconnection requests received pursuant to this chapter, (ii) the times required to complete interconnection request approvals and disapprovals, and (iii) justification for the actions taken on the interconnection requests.

20VAC5-314-140. Coordination with affected systems.

The utility shall coordinate the conduct of any studies required to determine the impact of the ~~interconnection request~~ small generating facility on affected systems with affected system operators and, if possible, include those results (if available) in its applicable interconnection ~~study~~ studies within the time frame specified in this chapter. The utility will include such affected system operators in all meetings held with the ~~interconnection customer~~ IC as required by this chapter. The ~~interconnection customer~~ IC shall cooperate with the utility in all matters related to the conduct of studies and the determination of modifications to affected systems. A utility ~~which~~ that may be an affected system shall cooperate with the utility with ~~whom~~ which interconnection has been requested in all matters related to the conduct of studies and the determination of modifications to affected systems. The utility owning or operating the system to which the IC desires to interconnect shall not be held responsible or liable for any delays in the interconnection process attributable to the lack of information or cooperation from the owners or operators of affected systems.

20VAC5-314-150. Capacity of the small generating facility.

A. If the interconnection request is for an increase in capacity for an existing small generating facility, the interconnection request shall be evaluated on the basis of the new total capacity of the ~~small generating facility~~ SGF.

B. If the interconnection request is for a ~~small generating facility~~ SGF that includes multiple energy production devices at a site for which the interconnection customer seeks a single point of interconnection, the interconnection request shall be evaluated on the basis of the aggregate capacity of the multiple devices.

C. The interconnection request shall be evaluated using the maximum rated capacity of the ~~small generating facility~~ SGF.

20VAC5-314-160. Insurance.

A. For ~~systems of 500 kW or less~~ a small generating facility with a rated capacity not exceeding 10 kW, the IC, at its own expense, shall secure and maintain in effect during the term of the agreement liability insurance with a combined single limit for bodily injury and property damage of not less than ~~$300,000~~ $100,000 for each occurrence.

For an SGF with a rated capacity exceeding 10 kW but not exceeding 500 kW, the IC, at its own expense, shall secure and maintain in effect during the term of the agreement liability insurance with a combined single limit for bodily injury and property damage of not less than $300,000 for each occurrence.

For ~~systems greater than~~ an SGF with a rated capacity exceeding 500 kW but ~~smaller than~~ not exceeding 2 MW, the IC, at its own expense, shall secure and maintain in effect during the term of the agreement liability insurance with a combined single limit for bodily injury and property damage of not less than $2 million for each occurrence. Insurance coverage for ~~systems greater than~~ an SGF with a rated capacity exceeding 2 MW shall be determined on a case-by-case basis ~~by the utility~~ and shall reflect the size of the installation and the potential for system damage.

[~~B. Except for those photovoltaic inverter based systems installed on a residential premise that have a design rated capacity of 500 kW or less, the utility shall be named as an additional insured by endorsement to the insurance policy and the policy shall provide that written notice be given to the utility at least 30 days prior to any cancellation or reduction of any coverage. Such liability insurance shall provide, by endorsement to the policy, that the utility shall not by reason of its inclusion as an additional insured incur liability to the insurance carrier for the payment of premium of such insurance. For all photovoltaic inverter based systems, the liability insurance shall not exclude coverage for any incident related to the subject generator or its operation.~~

~~C.~~ B.] Certificates of insurance evidencing the requisite coverage and provision shall be furnished to ~~a~~ the utility prior to the date of interconnection of the ~~small generating facility~~ SGF. ~~Utilities~~ The utility shall be permitted to periodically obtain proof of current insurance coverage [~~form~~ from] the ~~producer~~ IC in order to verify continuing proper liability insurance coverage. The IC will not be allowed to commence or continue interconnected operations unless evidence is provided that ~~satisfactory~~ required insurance coverage is in effect at all times.

20VAC5-314-170. Schedules for Chapter 314.

The following schedules shall be used in the administration of this chapter.

Schedule 1

LEVEL 1 INTERCONNECTION REQUEST FORM FOR SMALL GENERATING FACILITY ~~LESS THAN~~ NOT EXCEEDING 500 kW

PURSUANT TO 20VAC5-314-40 OF THE COMMISSION'S REGULATIONS GOVERNING INTERCONNECTION OF SMALL [~~ELECTRIC~~ ELECTRICAL] GENERATORS, APPLICANT HEREBY GIVES NOTICE OF INTENT TO OPERATE A GENERATING FACILITY.

Section 1. ~~Applicant~~ Interconnection Customer Information

Name:_____

Mailing Address:_____

~~City:_____ State:_____ Zip Code:_____~~

City, State, Zip:_____

Street Address:_____

~~City:_____ State:_____ Zip Code:_____~~

City, State, Zip:_____

Phone Number(s):_____

Fax Number:_____ Email ~~Address~~:_____

~~Facility location (if different from above):~~ _____

~~Distribution Company~~ Utility: _____

~~Distribution Company~~ Utility Account Number:_____

[~~Energy~~ Competitive] Service Provider ~~(ESP) (if different than electric distribution company)~~:_____

~~ESP~~ [CSP] Account Number ~~(if applicable)~~:_____

Proposed Interconnection Date:_____

Section 2. Processing Fee [~~or Deposit~~]

The nonrefundable processing fee payable to the utility is $100.

Section ~~2.~~ 3. Small Generating Facility Information

~~Facility owner and/or Operator name (if different from Applicant):_____~~

SGF owner:_____

SGF operator:_____

Business relationship to applicant:_____

Mailing address:_____

~~City:_____State:_____Zip Code:____~~

City, State, Zip:_____

~~Street~~ SGF Address:_____

~~City:_____State:_____Zip Code:____~~

City, State, Zip:_____

Phone Number(s):_____

Fax Number:_____ Email ~~Address~~:_____

Fuel Type:_____

Generator Manufacturer and Model:_____

Rated Capacity in kilowatts: AC:_____ DC:_____

Inverter Manufacturer and Model:_____

Battery Backup ~~(circle one)~~: Yes_____No_____

[Facility schematic and equipment layout must be attached to this form.]

Section ~~3~~ 4. Information for Generators with an AC capacity in excess of 25 ~~kilowatts~~ kW

Is the proposed generator inverter based? Yes_____No____

Generator Type ~~(circle one)~~: Inverter Induction Synchronous

Frequency:_____Hz; Number of phases ~~(circle one)~~: One___ Three___

Rated Capacity: DC_____ [~~W~~ kW]; AC apparent_____ [~~KVA~~ kVA]; AC real_____ [~~W~~ kW];

Power factor_____%; AC voltage_____; AC amperage_____

Facility schematic and equipment layout must be attached to this form.

Section ~~4.~~ 5. Vendor Certification

The ~~system hardware~~ SGF equipment is listed by Underwriters Laboratories to be in compliance with UL-1741.

Signed (Vendor):_____Date:_____

Name (printed):_____

Company:_____

Phone Number:_____

Mailing Address:_____

~~City:_____ State:_____ Zip Code:_____~~

City, State, Zip:_____

Section ~~5~~ 6. Electrician Certification

The ~~system~~ generator equipment has been installed in accordance with the manufacturer's specifications as well as all applicable provisions of the National Electrical Code.

Signed (Licensed Electrician):_____ Date:_____

Name (printed):_____

License Number:_____ Phone Number:_____

Mailing Address:_____

~~City:_____ State:_____ Zip Code:_____~~

City, State, Zip:_____

~~Utility signature signifies only receipt of this form, in compliance with the State Corporation Commission's net energy metering regulations, 20 VAC 5-315-30.~~

~~Signed (Utility Representative):_____ Date:_____~~

Section 7. Applicant Signature

I hereby certify that, to the best of my knowledge, all of the information provided in this Request Form is true and correct.

Signature of Applicant:_____

Date:_____

Section 8. Utility Acknowledgement of Receipt

Signed:_____

Title:_____

Utility:_____

Date:_____

Utility signature signifies only receipt of this form, in compliance with 20VAC5-314-40, the State Corporation Commission's Regulations Governing Interconnection of Small Electrical Generators.

Schedule 2

Certification of Small Generator Equipment Packages

Small generating facility equipment proposed for use separately or packaged with other equipment in an interconnection system shall be considered certified for interconnected operation if (i) it has been tested in accordance with industry standards for continuous utility interactive operation in compliance with the appropriate codes and standards referenced below by any Nationally Recognized Testing Laboratory (NRTL) recognized by the United States Occupational Safety and Health Administration to test and certify interconnection equipment pursuant to the relevant codes and standards listed in SGIP Schedule 3, (ii) it has been labeled and is publicly listed by such NRTL at the time of the interconnection application, and (iii) such NRTL makes readily available for verification all test standards and procedures it utilized in performing such equipment certification, and, with consumer approval, the test data itself. The NRTL may make such information available on its website and by encouraging such information to be included in the manufacturer's literature accompanying the equipment.

The interconnection customer must verify that the intended use of the equipment falls within the use or uses for which the equipment was tested, labeled, and listed by the NRTL.

Certified equipment shall not require further type-test review, testing, or additional equipment to meet the requirements of this interconnection procedure; however, nothing herein shall preclude the need for an on-site commissioning test by the parties to the interconnection nor follow up production testing by the NRTL.

If the certified equipment package includes only interface components (switchgear, inverters, or other interface devices), then an ~~interconnection customer~~ IC must show that the generator or other electric source being utilized with the equipment package is compatible with the equipment package and is consistent with the testing and listing specified for this type of interconnection equipment.

Provided the generator or electric source, when combined with the equipment package, is within the range of capabilities for which it was tested by the NRTL, and does not violate the interface components' labeling and listing performed by the NRTL, no further design review, testing or additional equipment on the customer side of the point of ~~common coupling~~ interconnection shall be required to meet the requirements of this interconnection procedure.

An equipment package does not include equipment provided by the utility.

Schedule 3

Certification Codes and Standards

IEEE [Std] 1547 Standard for Interconnecting Distributed Resources with Electric Power Systems (including use of IEEE [Std] 1547.1 testing protocols to establish conformity)

UL 1741 Inverters, Converters, and Controllers for Use in Independent Power Systems

IEEE Std 929-2000 IEEE Recommended Practice for Utility Interface of Photovoltaic (PV) Systems

NFPA 70 (2005), National Electrical Code

IEEE Std C37.90.1-1989 (R1994), IEEE Standard Surge Withstand Capability (SWC) Tests for Protective Relays and Relay Systems

IEEE Std C37.90.2 (1995), IEEE Standard Withstand Capability of Relay Systems to Radiated Electromagnetic Interference from Transceivers

IEEE Std C37.108-1989 (R2002), IEEE Guide for the Protection of Network Transformers

IEEE Std C57.12.44-2000, IEEE Standard Requirements for Secondary Network Protectors

IEEE Std C62.41.2-2002, IEEE Recommended Practice on Characterization of Surges in Low Voltage (1000V and Less) AC Power Circuits

IEEE Std C62.45-1992 (R2002), IEEE Recommended Practice on Surge Testing for Equipment Connected to Low-Voltage (1000V and Less) AC Power Circuits

ANSI C84.1-1995 Electric Power Systems and Equipment – Voltage Ratings (60 Hertz)

IEEE Std 100-2000, IEEE Standard Dictionary of Electrical and Electronic Terms

NEMA MG 1-1998, Motors and Small Resources, Revision 3

IEEE Std 519-1992, IEEE Recommended Practices and Requirements for Harmonic Control in Electrical Power Systems

NEMA MG 1-2003 (Rev 2004), Motors and Generators, Revision 1

Schedule 4

~~LEVEL~~ LEVELS 2 AND 3 INTERCONNECTION REQUEST FORM ~~FOR~~ SMALL GENERATING ~~FACILITIES~~ FACILITY LESS THAN 20 MW

~~Distribution Company:~~ _____

~~Designated Contact Person:~~ _____

~~Address:~~ _____

~~Telephone Number: _____~~

~~Fax: _____~~

~~E-Mail Address: _____~~

~~An Interconnection Request is considered complete when it provides all applicable and correct information required below.~~

~~Processing Fee or Deposit~~

~~If the Interconnection Request is submitted as Level 2, the nonrefundable processing fee payable to the distribution company is $500.~~

~~If the interconnection request is submitted as Level 3, the interconnection customer shall submit to the distribution company a deposit not to exceed $1,000 towards the cost of the feasibility study.~~

~~Interconnection Customer Information~~

~~Legal Name of the Interconnection Customer (or, if an individual, individual's name)~~

~~Name: _____~~

~~Account Number: _____~~

~~Contact person: _____~~

~~Mailing Address: _____~~

~~City: State: Zip: _____~~

~~Facility location (if different from above): _____~~

~~Telephone (Day): _____ Telephone (Evening): _____~~

~~Fax: _____ E-Mail Address: _____~~

~~Alternative contact information (if different from the interconnection customer)~~

~~Contact Name: _____~~

~~Title: _____~~

~~Address: _____~~

~~_____~~

~~Telephone (Day): _____ Telephone (Evening): _____~~

~~Fax: _____ E-Mail Address: _____~~

~~Application is for: New Small Generating Facility~~

~~Capacity addition to Existing Small Generating Facility~~

~~If capacity addition to existing facility, please describe:~~

~~_____~~

~~Will the Small Generating Facility be used for any of the following?~~

~~To supply power to the interconnection customer? Yes ___ No ___~~

~~To supply power to others? Yes ___ No ___~~

~~Contact Name: _____~~

~~Title: _____~~

~~Address: _____~~

~~Telephone (Day): _____ Telephone (Evening): _____~~

~~Fax: _____ E-Mail Address: _____~~

~~Requested point of interconnection: _____~~

~~Interconnection customer's requested in-service date: _____~~

Section 1. Interconnection Customer Information

Name:_____

Contact person:_____

Mailing address:_____

[~~City: State: Zip~~ City, State, Zip]:_____

Utility and account number:_____

Energy Service Provider and account number:_____

Facility address:_____

Telephone (Day):_____(Evening):_____

Fax:_____E-Mail:_____

Alternative contact information

Contact Name:_____

Title:_____

Mailing Address:_____

[~~City: State: Zip~~ City, State, Zip]:_____

Telephone (Day):_____(Evening):_____

Fax:_____E-Mail:_____

Application is for: New Small Generating Facility _____ Capacity addition ____

If capacity addition to existing facility, please describe:

_____

The Small Generating Facility will supply: Interconnection Customer __ others __

Point of Interconnection:_____

Interconnection Customer's requested in-service date:_____

Section 2. Processing Fee or Deposit

If the Interconnection Request is submitted as Level 2, the nonrefundable processing fee payable to the utility is $500.

If the Interconnection Request is submitted as Level 3, the Interconnection Customer shall submit to the Utility the deposit is $1,000, or 50% of the estimated cost of the Feasibility Study, whichever is less.

Section 3. Small Generating Facility Information

Data apply only to the small generating facility, not the interconnection facilities.

Energy Source: Solar ___ Wind ___ Hydro ___ Hydro Type ~~(e.g. Run-of-River)~~:_____

Diesel ___ Natural Gas ___ Fuel Oil ___ Other ~~(state type)~~ (describe)

_____

Prime Mover: Fuel Cell___ Recip Engine___ Gas Turb___ Steam Turb___ Microturbine___ PV___

Other (describe)_____

Type of Generator: ____ Synchronous_____Induction_____ Inverter_____

Generator Nameplate Rating: _____kW ~~(Typical)~~ [___] Generator Nameplate kVAR:_____

Interconnection customer or customer-site load: _____kW ~~(if none, so state)~~

Typical reactive load ~~(if known)~~:_____

Maximum physical export capability requested: _____ kW

List components of the small generating facility equipment package that are currently certified:

Equipment ~~Type~~	Certifying Entity
1._____	1._____
2._____	2._____
3._____	3._____
4._____	4._____
5._____	5._____

Is the prime mover compatible with the certified protective relay package?
____Yes____No____

Generator (or solar collector)

Manufacturer, model name & number:_____

Version Number:_____

Nameplate Output Power Rating in kW: (Summer)_____ (Winter)_____

Nameplate Output Power Rating in kVA: (Summer)_____ (Winter)_____

Individual Generator Power Factor

Rated Power Factor: Leading:_____ Lagging:_____

Total number of generators in wind farm to be interconnected pursuant to this Interconnection Request:
_____ Elevation: Single phase___ Three phase_____

Inverter manufacturer, model name & number ~~(if used)~~:_____

List of adjustable set points for the protective equipment or software:_____

Note: A completed power systems load flow data sheet must be supplied with the Interconnection Request.

Small Generating Facility Characteristic Data (for inverter-based machines)

Max design fault contribution current:_____ Instantaneous___ or RMS~~?~~ _____

Harmonics characteristics:_____

Start-up requirements:_____

Small Generating Facility Characteristic Data (for rotating machines)

RPM Frequency:_____

~~(*)~~ Neutral Grounding Resistor (If Applicable):_____

Synchronous Generators:

Direct Axis Synchronous Reactance, [~~Xd~~ X_d]:_____P.U.

Direct Axis Transient Reactance, X'_d:_____P.U.

Direct Axis Subtransient Reactance, X''_d:_____P.U.

Negative Sequence Reactance, X_2:_____P.U.

Zero Sequence Reactance, X_0:_____P.U.

KVA Base:_____

Field Volts:_____

Field Amperes:_____

Induction Generators:

Motoring Power (kW):_____

~~I2 2t~~ I^2t or K (Heating Time Constant):_____

Rotor Resistance, [~~Rr~~ R_r]:_____

Stator Resistance, [~~Rs~~ R_s]:_____

Stator Reactance, [~~Xs~~ X_s]:_____

Rotor Reactance, [~~Xr~~ X_r]:_____

Magnetizing Reactance, [~~Xm~~ X_m]:_____

Short Circuit Reactance, [~~Xd"~~ X_d'']':_____

Exciting Current:_____

Temperature Rise:_____

Frame Size:_____

Design Letter:_____

Reactive Power Required In Vars (No Load):_____

Reactive Power Required In Vars (Full Load):_____

Total Rotating Inertia, H: _____ Per Unit on kVA ~~Base~~ base

Excitation and Governor System Data for Synchronous Generators Only [:]

Provide appropriate IEEE model block diagram of excitation system, governor system and power system stabilizer (PSS) in accordance with the regional reliability council criteria. A PSS may be determined to be required by applicable studies. A copy of the manufacturer's block diagram may not be substituted.

Section 4. Customer's Interconnection Facilities Information

Will a transformer be used between the generator and the point of ~~common coupling~~ interconnection ? ___
Yes____ No____

Will the transformer be provided by the interconnection customer? ____ Yes____ No____

Transformer Data (If applicable, for interconnection customer-owned transformer):

Is the transformer: ____ single phase_____ three phase~~?~~___ Size:_____ kVA_____

Transformer Impedance:_____% on _____kVA ~~Base~~ base

If Three Phase:

Transformer Primary: _____Volts _____Delta _____Wye _____Wye Grounded

Transformer Secondary: __Volts _____Delta _____Wye _____Wye Grounded

Transformer Tertiary: _____Volts _____Delta _____Wye _____Wye Grounded

Transformer Fuse Data (If applicable, for interconnection customer-owned fuse):

(Attach copy of fuse manufacturer's minimum melt and total clearing time-current curves)

Manufacturer:_____ Type:_____ Size:_____ Speed:_____

Interconnecting Circuit Breaker (if applicable):

Manufacturer:_____ Type:_____

Load Rating (Amps):___ Interrupting Rating (Amps):___ Trip Speed (Cycles):___

Interconnection Protective Relays (If Applicable):

If microprocessor-controlled:

Manufacturer:_____ Type:_____ Model No. _____
Firmware ID:_____ Instruction Book No. _____

List of functions and adjustable setpoints for the protective equipment or software:

Setpoint Function	Minimum	Maximum
1._____	_____	_____
2._____	_____	_____
3._____	_____	_____

4._____ _____ _____

5._____ _____ _____

6._____ _____ _____

If Discrete Components:

(Enclose copy of any proposed time-overcurrent coordination curves)

Manufacturer:_____ Type:_____ Style/Catalog No.:_____ Proposed Setting:_____

Manufacturer:_____ Type:_____ Style/Catalog No.:_____ Proposed Setting:_____

Manufacturer:_____ Type:_____ Style/Catalog No.:_____ Proposed Setting:_____

Manufacturer:_____ Type:_____ Style/Catalog No.:_____ Proposed Setting:_____

Manufacturer:_____ Type:_____ Style/Catalog No.:_____ Proposed Setting:_____

Current Transformer Data (If applicable):

(Enclose copy of manufacturer's excitation and ratio correction curves)

Manufacturer:_____

Type:_____ Accuracy Class:_____ Proposed Ratio Connection:____

Manufacturer:_____

Type:_____ Accuracy Class:_____ Proposed Ratio Connection:____

Potential Transformer Data (If applicable):

Manufacturer:_____

Type:_____ Accuracy Class:_____ Proposed Ratio Connection:____

Manufacturer:_____

Type:_____ Accuracy Class:_____ Proposed Ratio Connection:____

Section 5. General Information

Enclose a copy of the site electrical one-line diagram showing the configuration of ~~all~~ the small generating facility equipment, current and potential circuits, and protection and control schemes.

Enclose a copy of any site documentation that indicates the precise physical location of the proposed ~~small generating facility~~ SGF (e.g., United States Geological Survey (~~USGS~~) topographic map or other diagram or documentation).

~~Proposed~~ Describe the proposed location of the protective interface equipment on the property ~~(include address if different from the interconnection customer's address)~~ [:] _____

Enclose a copy of any site documentation that describes and details the operation of the protection and control schemes. Is available documentation enclosed? Yes____ No____

Enclose copies of schematic drawings for all protection and control circuits, relay current circuits, relay potential circuits, and alarm/monitoring circuits (if applicable).

Are schematic drawings enclosed?___ Yes____ No____

~~Applicant~~ Section 6. Interconnection Customer Signature

I hereby certify that, to the best of my knowledge, all the information provided in this Interconnection Request is true and correct.

~~For Interconnection Customer~~ Signature:_____ Date:_____

Section 7. Utility Acknowledgement of Receipt

Signed:_____

Title:_____

Utility:_____

Date:_____

Utility signature signifies only receipt of this form, in compliance with 20VAC5-314-50 of the State Corporation Commission's Regulations Governing Interconnection of Small Electrical Generators.

Schedule 5

LEVELS 2 AND 3 FACILITIES STUDY INFORMATION FORM FOR SMALL GENERATING FACILITIES LESS THAN 20 MW

1. Provide a location plan and simplified one-line diagram of the plant and station facilities. For staged projects, indicate future generation, future transmission circuits, and other major future facilities. On the one-line diagram, show (i) each generator, its electric connection configuration, and its generation capacity, (ii) the location and capacity of auxiliary power, and (iii) minimum load on CT/PT.

2. One set of metering is required for each generation connection to the new ring bus or existing utility station. Indicate the number of generation connections requiring a metering set:_____

3. Indicate whether an alternate source of auxiliary power will be available during CT/PT maintenance. Yes____ No____

4. Indicate whether a transfer bus on the generation side of the metering will require that each meter set be designed for the total plant generation. Indicate such on the one-line diagram. [~~Yes_____ No_____~~]

5. State the type of control system or Programmable Logic Controller (PLC) that will be located at the small generating facility.

_____

6. State the protocol used by the control system or PLC.

_____

7. [Describe the operation sequence and timing of the protection scheme during disconnection and reconnection to the utility by the SGF.

8.] Provide a 7.5-minute quadrangle map of the site. Indicate the plant, station, transmission line, and property lines.

[~~8.~~ 9.] State the physical dimensions of the proposed interconnection station.

_____

[~~9.~~ 10.] State the bus length from generation to interconnection station.

_____

[~~10.~~ 11.] Provide a diagram or description of the point of interconnection desired by the IC that is to be the point of interconnection in the system impact study report.

[~~11.~~ 12.] State the line length from interconnection station to utility system.

_____

[~~12.~~ 13.] State the pole or tower number observed in the field affixed to the pole or tower leg.

_____

[~~13.~~ 14.] State the number of third party easements required for distribution or transmission lines.

[~~14.~~ 15.] Provide the following proposed schedule dates:

a. Date IC to begin construction:_____

b. Date generator step-up transformers to receive back feed power:_____

c. Date IC will test SGF:_____

d. Date IC will place SGF into commercial operation:_____

Schedule ~~5~~ 6

[~~LEVEL 3~~] SMALL GENERATOR INTERCONNECTION AGREEMENT (SGIA)
~~(For Small Generating Facilities Subject to the Level 3 Process)~~

This Small Generator Interconnection Agreement ("Agreement") is made and entered into this _____ day of _____, 20__, by _____ ("~~Distribution Company~~ Utility"), and _____ ("Interconnection Customer") each hereinafter sometimes referred to individually as "Party" or both referred to collectively as the "Parties."

~~Distribution Company~~ Utility Information

~~Distribution Company~~ Utility:_____

Attention:_____

Address:_____

~~City:_____ State:_____ Zip:_____~~

City, State, Zip:_____

Phone:_____ Fax:_____

Interconnection Customer Information

Interconnection Customer:_____

Attention:_____

Address:_____

~~City:_____ State:_____ Zip:_____~~

City, State, Zip:_____

Phone:_____ Fax:_____

Interconnection Customer Application No:_____

In consideration of the mutual covenants set forth herein, the Parties agree as follows:

Article 1. Scope and Limitations of Agreement

1.1 This Agreement shall be used for all Interconnection Requests [for generators in excess of 500 kW] submitted [~~under the~~] ~~Small Generator Interconnection Procedures (SGIP)~~ [~~Level 3 interconnections~~] pursuant to the Commission's Regulations Governing Interconnection of Small Electrical Generators, Chapter 314 of the Virginia Administrative Code.

1.2 This Agreement governs the terms and conditions under which the Interconnection Customer's ("IC") Small Generating Facility ("SGF") will interconnect with, and operate in parallel with, the ~~utility's distribution~~ utility system.

1.3 This Agreement does not constitute an agreement to purchase or deliver the Interconnection Customer's power. The purchase or delivery of power and other services, including station service or backup power, that the ~~Interconnection Customer~~ IC may require will be covered

under separate agreements, possibly with other parties. The ~~Interconnection Customer~~ IC will be responsible for separately making all necessary arrangements (including scheduling) for delivery of electricity with the applicable ~~Distribution Company~~ utility and provider of transmission service.

1.4 Nothing in this Agreement is intended to affect any other agreement between the ~~Distribution Company~~ utility and the ~~Interconnection Customer~~ IC.

1.5 Responsibilities of the Parties

1.5.1 The Parties shall perform all obligations of this Agreement in accordance with all applicable laws and regulations, operating requirements, and Good ~~Distribution Company~~ Utility Practice.

1.5.2 The ~~Interconnection Customer~~ IC shall construct, interconnect, operate and maintain its ~~Small Generating Facility~~ SGF and construct, operate, and maintain its Customer's Interconnection Facilities in accordance with the applicable manufacturer's recommended maintenance schedule, in accordance with this Agreement, and with Good ~~Distribution Company~~ Utility Practice.

1.5.3 The ~~Distribution Company~~ utility shall construct, operate, and maintain its distribution and transmission system and ~~interconnection~~ attachment facilities in accordance with this Agreement, and with Good ~~Distribution Company~~ Utility Practice.

1.5.4 The ~~Interconnection Customer~~ IC agrees to construct its facilities ~~or systems~~ in accordance with applicable specifications that meet or exceed those provided by the National Electrical Safety Code, the American National Standards Institute, IEEE, Underwriter's Laboratory, and operating requirements in effect at the time of construction and other applicable national and state codes and standards. The ~~Interconnection Customer~~ IC agrees to design, install, maintain, and operate its ~~small generating facility~~ SGF so as to reasonably minimize the likelihood of a disturbance adversely affecting or impairing the system or equipment of the ~~Distribution Company~~ utility or affected systems and to otherwise maintain and operate its SGF in accordance with the specifications and certifications under which the SGF was initially installed and interconnected.

1.5.5 Each Party shall operate, maintain, repair, and inspect, and shall be fully responsible for the facilities that it now or subsequently may own unless otherwise specified in the Attachments to this Agreement. Each Party shall be responsible for the safe installation, maintenance, repair and condition of their respective lines and appurtenances on their respective sides of the point of change of ownership. The ~~Distribution Company~~ utility and the ~~Interconnection Customer~~ IC, as appropriate, shall provide ~~Interconnection~~ Attachment Facilities and Customer's Interconnection Facilities that adequately protect the ~~Distribution Company's Transmission System,~~ utility's personnel, and other persons from damage and injury. The allocation of responsibility for the design, installation, operation, maintenance and ownership of ~~Interconnection~~ Attachment Facilities and Customer's Interconnection Facilities shall be delineated in the Attachments to this Agreement. The design, installation, operation, and maintenance of such facilities shall be the responsibility of the owner except as otherwise provided for in this Agreement.

1.5.6 The ~~Distribution Company~~ utility shall coordinate with all affected systems to support the interconnection.

1.6 Parallel operation obligations

Once the ~~small generating facility~~ SGF has been authorized to commence parallel operation, the ~~Interconnection Customer~~ IC shall abide by all rules and procedures pertaining to the parallel operation of the ~~small generating facility~~ SGF including, but not limited to the rules and procedures concerning the operation of generation set forth in the tariff.

1.7 Metering

The ~~Interconnection Customer~~ IC shall be responsible for the ~~Distribution Company's~~ utility's reasonable and necessary cost for the purchase, installation, operation, maintenance, testing, repair, and replacement of metering and data acquisition equipment specified in Attachments 2 and 3 of this Agreement. The ~~Interconnection Customer's~~ IC's metering (and data acquisition, as required) equipment shall conform to applicable industry rules and operating requirements.

1.8 Reactive power

1.8.1 The ~~Interconnection Customer~~ IC shall design its ~~small generating facility~~ SGF to maintain a composite power delivery at continuous rated power output at the point of interconnection at a power factor within the range of 0.95 leading to 0.95 lagging, unless the ~~Distribution Company~~ utility has established different requirements that apply to all similarly situated generators in the control area on a comparable basis. The requirements of this paragraph shall not apply to wind generators.

1.8.2 The ~~Distribution Company~~ utility is required to pay the Interconnection Customer for reactive power that the ~~Interconnection Customer~~ IC provides or absorbs from the ~~small generating facility~~ SGF when the ~~Distribution Company~~ utility requests the ~~Interconnection Customer~~ IC to operate its ~~small generating facility~~ SGF outside the range specified in article 1.8.1. In addition, if the ~~Distribution Company~~ utility pays its own or affiliated generators for reactive power service within the specified

range, it must ~~also~~ similarly pay the ~~Interconnection Customer~~ IC.

1.8.3 Payments shall be in accordance with the ~~Interconnection Customer's~~ IC's applicable rate schedule ~~then~~ as may be in effect and accepted by the appropriate government authority. To the extent that no rate schedule is in effect at the time the Interconnection Customer is required to provide or absorb reactive power under this Agreement, the ~~Parties agree to~~ IC may expeditiously file such rate schedule ~~and agree~~ with the appropriate government authority, and the utility agrees to support any request for waiver of ~~the State Corporation Commission's~~ any prior notice requirement of such authority in order to ~~compensate~~ permit compensation to the ~~Interconnection Customer~~ IC from the time service commenced.

1.9 Capitalized terms used herein shall have the meanings specified in the ~~Glossary of Terms~~ definitions in Attachment 1 to Schedule ~~5~~ 6 or in the body of this Agreement.

Article 2. Inspection, Testing, Authorization, and Right of Access

2.1 Equipment testing and inspection

2.1.1 The Interconnection Customer shall test and inspect its small generating facility and interconnection facilities prior to interconnection. The ~~Interconnection Customer~~ IC shall notify the ~~Distribution Company~~ utility of such activities no fewer than five business days (or as may be agreed to by the Parties) prior to such testing and inspection. Testing and inspection shall occur on a business day. The ~~Distribution Company~~ utility may, at its own expense, send qualified personnel to the ~~small generating facility~~ SGF site to inspect the interconnection and observe the testing. The ~~Interconnection Customer~~ IC shall provide the ~~Distribution Company~~ utility a written test report when such testing and inspection is completed.

2.1.2 The ~~Distribution Company~~ utility shall provide the ~~Interconnection Customer~~ IC written acknowledgment that it has received the ~~Interconnection Customer's~~ IC's written test report. Such written acknowledgment shall not be deemed to be or construed as any representation, assurance, guarantee, or warranty by the ~~Distribution Company~~ utility of the safety, durability, suitability, or reliability of the ~~small generating facility~~ SGF or any associated control, protective, and safety devices owned or controlled by the ~~Interconnection Customer~~ IC or the quality of power produced by the ~~small generating facility~~ SGF.

2.2 Authorization required prior to parallel operation

2.2.1 The ~~Distribution Company~~ utility shall use reasonable efforts to list applicable parallel operation requirements in Attachment 5 of this Agreement. Additionally, the ~~Distribution Company~~ utility shall notify the Interconnection Customer of any changes to these requirements as soon as they are known. The ~~Distribution Company~~ utility shall make reasonable efforts to cooperate with the ~~Interconnection Customer~~ IC in meeting requirements necessary for the ~~Interconnection Customer~~ IC to commence parallel operations by the in-service date.

2.2.2 The ~~Interconnection Customer~~ IC shall not operate its ~~small generating facility~~ SGF in parallel with the ~~Distribution Company's~~ utility's system without prior written authorization of the ~~Distribution Company~~ utility. The ~~Distribution Company~~ utility will provide such authorization once the ~~Distribution Company~~ utility receives notification that the ~~Interconnection Customer~~ IC has complied with all applicable parallel operation requirements. Such authorization shall not be unreasonably withheld, conditioned, or delayed.

2.3 Right of access

2.3.1 Upon reasonable notice, the ~~Distribution Company~~ utility may send a qualified person to the premises of the Interconnection Customer at or immediately before the time the ~~small generating facility~~ SGF first produces energy to inspect the interconnection, and observe the commissioning of the ~~small generating facility~~ SGF (including any required testing), startup, and operation for a period of up to three business days after initial start-up of the unit. In addition, the ~~Interconnection Customer~~ IC shall notify the ~~Distribution Company~~ utility at least five business days prior to conducting any on-site verification testing of the ~~small generating facility~~ SGF.

2.3.2 Following the initial inspection process described above, at reasonable hours, and upon reasonable notice, or at any time without notice in the event of an emergency or hazardous condition, the ~~Distribution Company~~ utility shall have access to the Interconnection Customer's premises for any reasonable purpose in connection with the performance of the obligations imposed on it by this Agreement or if necessary to meet its legal obligation to provide service to its customers.

2.3.3 Each Party shall be responsible for its own costs associated with ~~following~~ this article.

Article 3. Effective Date, Term, Termination, and Disconnection

3.1 Effective date

This Agreement shall become effective upon execution by the Parties ~~subject to acceptance by the State Corporation Commission's Division of Energy Regulation (if applicable), or if filed unexecuted, upon the date specified by the State Corporation Commission's Division of Energy Regulation~~. The ~~Distribution Company~~ utility shall promptly file this Agreement with the ~~State Corporation~~ Commission's Division of Energy Regulation upon execution~~, if required~~.

3.2 Term of Agreement

This Agreement ~~shall become effective on the effective date and~~ shall remain in effect for a period of 10 years from the effective date or such other longer period as the Interconnection Customer may request and shall be automatically renewed for each successive one-year period thereafter, unless terminated earlier in accordance with article 3.3 of this Agreement.

3.3 Termination

No termination shall become effective until the Parties have complied with all applicable laws and regulations applicable to such termination, including the filing with the ~~State Corporation~~ Commission's Division of Energy Regulation of a notice of termination of this Agreement ~~(if required), which notice has been accepted for filing by commission's Division of Energy Regulation~~.

3.3.1 The Interconnection Customer may terminate this Agreement at any time by giving the ~~Distribution Company~~ utility 20 business days written notice.

3.3.2 Either Party may terminate this Agreement after default pursuant to article 7.6.

3.3.3 Upon termination of this Agreement, the ~~small generating facility~~ Small Generating Facility will be disconnected from the ~~Distribution Company's~~ utility system. The termination of this Agreement shall not relieve either Party of its liabilities and obligations, owed or continuing at the time of the termination.

~~3.3.4 This provisions of this article shall survive termination or expiration of this Agreement.~~

3.4 Temporary disconnection

Temporary disconnection shall continue only for so long as reasonably necessary under Good ~~Distribution Company~~ Utility Practice.

3.4.1 Emergency Conditions -- "Emergency Condition" shall mean a condition or situation: (i) that in the judgment of the Party making the claim is imminently likely to endanger life or property; or (ii) that, in the case of the ~~Distribution Company~~ utility, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to the ~~distribution~~ utility system, the ~~Distribution Company's Interconnection~~ Attachment Facilities or the electrical facilities of others to which the ~~Distribution Company's distribution~~ utility system is directly connected; or (iii) that, in the case of the Interconnection Customer, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to, the ~~small generating facility~~ Small Generating Facility or the ~~Interconnection~~ Customer's ~~interconnection facilities~~ Interconnection Facilities. Under emergency conditions, the ~~Distribution Company~~ utility may immediately suspend interconnection service and temporarily disconnect the ~~small generating facility~~ SGF. The ~~Distribution Company~~ utility shall notify the ~~Interconnection Customer~~ IC promptly when it becomes aware of an emergency condition that may reasonably be expected to affect the ~~Interconnection Customer's~~ IC's operation of the ~~small generating facility~~ SGF. The ~~Interconnection Customer~~ IC shall notify the ~~Distribution Company~~ utility promptly when it becomes aware of an emergency condition that may reasonably be expected to affect the ~~Distribution Company's~~ utility system or other affected systems. To the extent information is known, the notification shall describe the emergency condition, the extent of the damage or deficiency, the expected effect on the operation of both Parties' facilities and operations, its anticipated duration, and the necessary corrective action.

3.4.2 Routine maintenance, construction, and repair

The ~~Distribution Company~~ utility may interrupt interconnection service or curtail the output of the ~~small generating facility~~ SGF and temporarily disconnect the ~~small generating facility~~ SGF from the ~~Distribution Company's distribution~~ utility's system when necessary for routine maintenance, construction, and repairs on the ~~Distribution Company's distribution~~ utility system. The ~~Distribution Company~~ utility shall provide the ~~Interconnection Customer~~ IC with at least five business days notice prior to such interruption unless circumstances require shorter notice. The ~~Distribution Company~~ utility shall use reasonable efforts to coordinate such reduction or temporary disconnection with the ~~Interconnection Customer~~ IC.

3.4.3 Forced outages

During any forced outage, the ~~Distribution Company~~ utility may suspend interconnection service to effect immediate repairs on the ~~Distribution Company's distribution~~ utility system. The ~~Distribution Company~~ utility shall use reasonable efforts to provide the ~~Interconnection Customer~~ IC with prior notice. If prior notice is not given, the ~~Distribution Company~~ utility shall, upon request, provide the ~~Interconnection Customer~~ IC written documentation after the fact explaining the circumstances of the disconnection.

3.4.4 Adverse operating effects

The ~~Distribution Company~~ utility shall notify the ~~Interconnection Customer~~ IC as soon as practicable if, based on Good ~~Distribution Company~~ Utility Practice, operation of the ~~small generating facility~~ SGF may cause disruption or deterioration of service to other customers served from the ~~same electric~~ utility system or affected systems, or if operating the ~~small generating facility~~ SGF could cause damage to the ~~Distribution Company's~~

distribution utility system or affected systems. Supporting documentation used to reach the decision to disconnect shall be provided to the Interconnection Customer IC upon request. If, after notice, the Interconnection Customer IC fails to remedy the adverse operating effect within a reasonable time, the Distribution Company utility may disconnect the small generating facility SGF. The Distribution Company utility shall provide the Interconnection Customer IC with a five business day notice of such disconnection, unless the provisions of article 3.4.1 apply.

3.4.5 Modification of the small generating facility Small Generating Facility

The Interconnection Customer must receive written authorization from the Distribution Company utility before making any change changes to the small generating facility SGF or mode of operations that may have a material impact on the safety or reliability of the Distribution Company's utility system or affected system. Such authorization shall not be unreasonably withheld. Modifications shall be done in accordance with Good Distribution Company Utility Practice. If the Interconnection Customer IC makes such modification modifications without the Distribution Company's utility's prior written authorization, the latter shall have the right to temporarily disconnect the small generating facility SGF.

3.4.6 Reconnection

The Parties shall cooperate with each other to restore the small generating facility SGF, interconnection facilities, and the Distribution Company's distribution utility system to their normal operating state as soon as reasonably practicable following a temporary disconnection.

Article 4. Cost Responsibility for Customer's Interconnection Facilities, Attachment Facilities, and Distribution Upgrades

4.1 Customer's Interconnection facilities Facilities

The IC shall be responsible for the costs associated with owning, operating, maintaining, repairing, and replacing the Customer's Interconnection Facilities.

4.1.1 4.2 Attachment Facilities

The Interconnection Customer IC shall pay for the cost of one-time and ongoing costs of installing, owning, operating, maintaining and replacing the interconnection attachment facilities itemized in Attachment 2 of this Agreement. The Distribution Company utility shall provide a best estimate an estimated cost, including overheads, for the purchase and construction of its interconnection the attachment facilities and provide a detailed itemization of such costs. Costs associated with interconnection attachment facilities may be shared with other entities that may benefit from such facilities by agreement of the Interconnection Customer IC, such other entities, and the Distribution Company utility.

4.1.2 The Interconnection Customer shall be responsible for its share of all reasonable expenses, including overheads, associated with (i) owning, operating, maintaining, repairing, and replacing its own interconnection facilities, and (ii) operating, maintaining, repairing, and replacing the Distribution Company's interconnection facilities.

4.2 4.3 Distribution upgrades

The Distribution Company utility shall design, procure, construct, install, and own the distribution upgrades described in Attachment 6 of this Agreement. The actual cost of the distribution upgrades shall be directly assigned to the IC. If the Distribution Company utility and the Interconnection Customer IC agree, the Interconnection Customer IC may construct distribution upgrades that are located on land owned by the Interconnection Customer IC. The actual cost of the distribution upgrades, including overheads, shall be directly assigned to the Interconnection Customer.

Article 5. Cost Responsibility for System Upgrades

5.1 Applicability

No portion of this article 5 shall apply unless the interconnection of the small generating facility requires system upgrades.

5.2 System upgrades

The Distribution Company shall design, procure, construct, install, and own the system upgrades described in Attachment 3 of this Agreement. If the Distribution Company and the Interconnection Customer agree, the Interconnection Customer may construct system upgrades that are located on land owned by the Interconnection Customer. Unless the Distribution Company elects to pay for system upgrades, the actual cost of the system upgrades, including overheads, shall be borne initially by the Interconnection Customer.

5.2.1 Repayment of amounts advanced for system upgrades

The Interconnection Customer shall be entitled to a cash repayment, equal to the total amount paid to the Distribution Company and affected system operator, if any, for system upgrades, including any tax gross-up or other tax-related payments associated with the system upgrades, and not otherwise refunded to the Interconnection Customer, to be paid to the Interconnection Customer on a dollar-for-dollar basis for the nonusage sensitive portion of transmission charges, as payments are made under the Distribution Company's tariff and affected system's tariff for distribution services with respect to the small generating facility. Upgrades through the date on which the

~~Interconnection Customer receives a repayment of such payment pursuant to this subparagraph. The Interconnection Customer may assign such repayment rights to any person.~~

~~5.2.1.1 Notwithstanding the foregoing, the Interconnection Customer, the Distribution Company, and affected system operator may adopt any alternative payment schedule that is mutually agreeable so long as the Distribution Company and affected system operator take one of the following actions no later than five years from the commercial operation date: (i) return to the Interconnection Customer any amounts advanced for system upgrades not previously repaid, or (ii) declare in writing that the Distribution Company or affected system operator will continue to provide payments to the Interconnection Customer on a dollar for dollar basis for the nonusage sensitive portion of transmission charges, or develop an alternative schedule that is mutually agreeable and provides for the return of all amounts advanced for system upgrades not previously repaid; however, full reimbursement shall not extend beyond 20 years from the commercial operation date.~~

~~5.2.1.2 If the small generating facility fails to achieve commercial operation, but it or another generating facility is later constructed and requires use of the system upgrades, the Distribution Company and affected system operator shall at that time reimburse the Interconnection Customer for the amounts advanced for the system upgrades. Before any such reimbursement can occur, the Interconnection Customer, or the entity that ultimately constructs the generating facility, if different, is responsible for identifying the entity to which reimbursement must be made.~~

~~5.3 Special provisions for affected systems~~

~~Unless the Distribution Company provides, under this Agreement, for the repayment of amounts advanced to affected system operator for system upgrades, the Interconnection Customer and affected system operator shall enter into an agreement that provides for such repayment. The agreement shall specify the terms governing payments to be made by the Interconnection Customer to affected system operator as well as the repayment by affected system operator.~~

Article 5. Transmission System

5.1 Transmission system upgrades

5.1.1 No portion of section 5.1 of this article 5 shall apply unless the interconnection of the Small Generating Facility requires transmission system upgrades.

5.1.2 The utility shall design, procure, construct, install, and own the transmission system upgrades described in Attachment 6 of this Agreement. If the utility and the Interconnection Customer agree, the IC may construct transmission system upgrades that are located on land owned by the IC. The costs of the transmission system upgrades shall be borne by the IC.

5.1.3 Notwithstanding any other provision of section 5.1 of article 5, in the event and to the extent an RTE has rules, tariffs, agreements, or procedures properly applying to transmission system upgrades, the provisions of section 5.2 of article 5 shall apply to such upgrades.

5.2 Regional Transmission Entities

Notwithstanding any other provision of this Agreement, if the utility's transmission system is under the control of an RTE and the RTE has rules, tariffs, agreements or procedures properly governing operation of the SGF, transmission of the output of the SGF, sale of the output of the SGF, system upgrades required for interconnection of the SGF, or other aspects of the interconnection and operation of the SGF, the IC and the utility shall comply with the applicable of such agreements, rules, tariffs, or procedures.

~~5.4~~ 5.3 Rights under other agreements

Notwithstanding any other provision of this Agreement, nothing herein shall be construed as relinquishing or foreclosing any rights, including but not limited to firm transmission rights, capacity rights, transmission congestion rights, or transmission credits, that the ~~Interconnection Customer~~ IC shall be entitled to, now or in the future, under any other agreement or tariff as a result of, or otherwise associated with system upgrades, including the right to obtain cash reimbursements or transmission credits for transmission service that is not associated with the ~~small generating facility~~ SGF.

Article 6. Billing, Payment, Milestones, and Financial Security

6.1 Billing and payment procedures and final accounting

6.1.1 The ~~Distribution Company~~ utility shall bill the ~~Interconnection Customer~~ IC for the design, engineering, construction, and procurement costs of ~~interconnection~~ attachment facilities and upgrades contemplated by this Agreement on a monthly basis, or as otherwise agreed by the Parties. The ~~Interconnection Customer~~ IC shall pay each bill within 30 calendar days of receipt, or as otherwise agreed to by the Parties.

6.1.2 Within ~~three months~~ 120 calendar days of completing the construction and installation of the ~~Distribution Company's interconnection~~ attachment facilities and/or distribution upgrades described in the Attachments to this Agreement, the ~~Distribution Company~~ utility shall provide the ~~Interconnection Customer~~ IC with a final accounting report of any difference between (i) the ~~Interconnection Customer's~~ IC's cost responsibility for the actual cost of such facilities or upgrades, and (ii) the ~~Interconnection Customer's~~ IC's previous aggregate payments to the

~~Distribution Company~~ utility for such facilities or upgrades. If the ~~Interconnection Customer's~~ IC's cost responsibility exceeds its previous aggregate payments, the ~~Distribution Company~~ utility shall invoice the ~~Interconnection Customer~~ IC for the amount due and the ~~Interconnection Customer~~ IC shall make payment to the ~~Distribution Company~~ utility within 30 calendar days. If the ~~Interconnection Customer's~~ IC's previous aggregate payments exceed its cost responsibility under this Agreement, the ~~Distribution Company~~ utility shall refund to the ~~Interconnection Customer~~ IC an amount equal to the difference within 30 calendar days of the final accounting report.

6.2 Milestones

The Parties shall agree on milestones for which each Party is responsible and ~~list them~~ such milestone shall be listed in Attachment 4 of this Agreement. A Party's milestones obligations under this provision may be ~~extended~~ modified by agreement. If a Party anticipates that it will be unable to meet a milestone for any reason other than a Force Majeure ~~Event~~ event, it shall immediately (i) notify the other Party of the reason(s) for not meeting the milestone, and ~~(i)~~ (ii) propose the earliest reasonable alternate date by which it can attain this and future milestones, and ~~(ii) requesting~~ (iii) request appropriate amendments to Attachment 4. The Party affected by the failure to meet a milestone shall not ~~unreasonably~~ withhold agreement to such an amendment unless it will suffer ~~significant~~ uncompensated economic or operational harm from the delay, attainment of the same milestone has previously been delayed, or it has reason to believe that the delay in meeting the milestone is intentional or unwarranted notwithstanding the circumstances explained by the Party proposing the amendment.

6.3 Financial security arrangements

At least 20 business days prior to the commencement of the design, procurement, installation, or construction of a discrete portion of the ~~Distribution Company's interconnection~~ attachment facilities and distribution upgrades, the Interconnection Customer shall provide the ~~Distribution Company~~ utility, at the ~~Interconnection Customer's~~ IC's option, a guarantee, a surety bond, letter of credit or other form of security that is reasonably acceptable to the ~~Distribution Company~~ utility and is consistent with the Uniform Commercial Code of the jurisdiction where the point of interconnection is located. Such security for payment shall be in an amount sufficient to cover the costs for ~~constructing,~~ designing, procuring, ~~and~~ installing, and constructing the applicable portion of the ~~Distribution Company's interconnection~~ attachment facilities and distribution upgrades and shall be reduced on a dollar-for-dollar basis for payments made to the ~~Distribution Company~~ utility under this Agreement during its term. In addition:

6.3.1 The guarantee must be made by an entity that meets the creditworthiness requirements of the ~~Distribution Company~~ utility, and contain terms and conditions that guarantee payment of any amount that may be due from the ~~Interconnection Customer~~ IC, up to an agreed-to maximum amount.

6.3.2 The letter of credit or surety bond must be issued by a financial institution or insured reasonably acceptable to the ~~Distribution Company~~ utility and must specify a reasonable expiration date.

Article 7. Assignment, Liability, Indemnity, Force Majeure, Consequential Damages, and Default

7.1 Assignment

This Agreement may be assigned by either Party upon 15 business days prior written notice and opportunity to object by the other Party; provided that:

7.1.1 Either Party may assign this Agreement without the consent of the other Party to any affiliate of the assigning Party with an equal or greater credit rating and with the legal authority and operational ability to satisfy the obligations of the assigning Party under this Agreement;

7.1.2 The Interconnection Customer shall have the right to assign this Agreement, without the consent of the ~~Distribution Company~~ utility, for collateral security purposes to aid in providing financing for the ~~small generating facility~~ SGF, provided that the ~~Interconnection Customer~~ IC will promptly notify the ~~Distribution Company~~ utility of any such assignment.

7.1.3 Any attempted assignment that violates this article is void and ineffective.

Assignment shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reason thereof. An assignee is responsible for meeting the same financial, credit, and insurance obligations as the ~~Interconnection Customer~~ IC. Where required, consent to assignment will not be unreasonably withheld, conditioned or delayed.

7.2 Limitation of liability

Each Party's liability to the other Party for any loss, cost, claim, injury, liability, or expense, including reasonable attorney's fees, relating to or arising from any act or omission in its performance of this Agreement, shall be limited to the amount of direct damage actually incurred. In no event shall either Party be liable to the other Party for any indirect, special, consequential, or punitive damages, except as authorized by this Agreement.

7.3 Indemnity

7.3.1 This provision protects each Party from liability incurred to third parties as a result of carrying out the

provisions of this Agreement. Liability under this provision is exempt from the general limitations on liability found in article 7.2.

7.3.2 The Parties shall at all times indemnify, defend, and hold the other Party harmless from, any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the other Party's action or failure to meet its obligations under this Agreement on behalf of the indemnifying Party, except in cases of gross negligence or intentional wrongdoing by the indemnified Party.

7.3.3 If an indemnified ~~person~~ Party is entitled to indemnification under this article as a result of a claim by a third party, and the indemnifying Party fails, after notice and reasonable opportunity to proceed under this article, to assume the defense of such claim, such indemnified person may at the expense of the indemnifying Party contest, settle or consent to the entry of any judgment with respect to, or pay in full, such claim.

7.3.4 If an indemnifying ~~party~~ Party is obligated to indemnify and hold any indemnified person harmless under this article, the amount owing to the indemnified person shall be the amount of such indemnified person's actual loss, net of any insurance or other recovery.

7.3.5 Promptly after receipt by an indemnified person of any claim or notice of the commencement of any action or administrative or legal proceeding or small generator investigation as to which the indemnity provided for in this article may apply, the indemnified person shall notify the indemnifying ~~party~~ Party of such fact. Any failure of or delay in such notification shall not affect a Party's indemnification obligation unless such failure or delay is materially prejudicial to the indemnifying party.

7.4 Consequential damages

Other than as expressly provided for in this Agreement, neither Party shall be liable under any provision of this Agreement for any losses, damages, costs or expenses for any special, indirect, incidental, consequential, or punitive damages, including but not limited to loss of profit or revenue, loss of the use of equipment, cost of capital, cost of temporary equipment or services, whether based in whole or in part in contract, in tort, including negligence, strict liability, or any other theory of liability; provided that damages for which a Party may be liable to the other Party under another agreement will not be considered to be special, indirect, incidental, or consequential damages hereunder.

7.5 Force Majeure

7.5.1 As used in this article, a Force Majeure ~~Event~~ event means "any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, any order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, or any other cause beyond a Party's control. A Force Majeure ~~Event~~ event does not include an act of negligence or intentional wrongdoing."

7.5.2 If a Force Majeure ~~Event~~ event prevents a Party from fulfilling any obligations under this Agreement, the Party affected by the Force Majeure ~~Event~~ event ("Affected Party") shall promptly notify the other Party, either in writing or via the telephone, of the existence of the Force Majeure ~~Event~~ event. The notification must specify in reasonable detail the circumstances of the Force Majeure ~~Event~~ event, its expected duration, and the steps that the Affected Party is taking to mitigate the effects of the event on its performance. The Affected Party shall keep the other Party informed on a continuing basis of developments relating to the Force Majeure ~~Event~~ event until the event ends. The Affected Party will be entitled to suspend or modify its performance of obligations under this Agreement (other than the obligation to make payments) only to the extent that the effect of the Force Majeure ~~Event~~ event cannot be mitigated by the use of reasonable efforts. The Affected Party will use reasonable efforts to resume its performance as soon as possible.

7.6 Default

7.6.1 No default shall exist where such failure to discharge an obligation (other than the payment of money) is the result of a Force Majeure ~~Event~~ event as defined in this Small Generator Interconnection Agreement or the result of an act or omission of the other Party. Upon a default, the ~~nondefaulting~~ Nondefaulting Party shall give written notice of such default to the ~~defaulting~~ Defaulting Party. Except as provided in article 7.6.2, the ~~defaulting~~ Defaulting Party shall have 60 calendar days from receipt of the default notice within which to cure the default; however, if the default is not capable of cure within 60 calendar days, the ~~defaulting~~ Defaulting Party shall commence the cure within 20 calendar days after notice and continuously and diligently complete the cure within six months from receipt of the default notice; and, if cured within such time, the default specified in such notice shall cease to exist.

7.6.2 If a default is not cured as provided in this article, or if a default is not capable of being cured within the period provided for herein, the ~~nondefaulting~~ Nondefaulting Party shall have the right to terminate this Agreement by written notice at any time until cure occurs, and be relieved of any further obligation hereunder and, whether or not that Party terminates this Agreement, to recover from the ~~defaulting~~ Defaulting Party all amounts due hereunder, plus all other

damages and remedies to which it is entitled at law or in equity. The provisions of this article will survive termination of this Agreement.

Article 8. Insurance

8.1 The Interconnection Customer shall, at its own expense, maintain in force general liability insurance without any exclusion for liabilities related to the interconnection undertaken pursuant to this Agreement. The amount of such insurance shall be ~~sufficient to insure against all reasonably foreseeable direct liabilities given the size and nature of the generating equipment being interconnected, the interconnection itself, and the characteristics of the system to which the interconnection is made~~ in accordance with 20VAC5-314-160 of the Commission's Regulations Governing the Interconnection of Small Electrical Generators. The ~~Interconnection Customer~~ IC shall obtain additional insurance only if necessary as a function of owning and operating a generating facility. Insurance shall be obtained from an insurance provider authorized to do business in the State ~~where the interconnection is located~~ of Virginia. Certification that such insurance is in effect shall be provided upon request of the ~~Distribution Company~~ utility, except that the ~~Interconnection Customer~~ IC shall show proof of insurance to the ~~Distribution Company~~ utility no later than 10 business days prior to the anticipated commercial operation date of the SGF. An ~~Interconnection Customer~~ IC of sufficient creditworthiness may propose to self-insure for such liabilities, and such a proposal shall not be unreasonably rejected.

8.2 The ~~Distribution Company~~ utility agrees to maintain general liability insurance or self insurance consistent with the ~~Distribution Company's~~ utility's commercial practice. Such insurance or self-insurance shall not exclude coverage for the ~~Distribution Company's~~ utility's liabilities undertaken pursuant to this Agreement.

8.3 The Parties further agree to notify each other whenever an accident or incident occurs resulting in any injuries or damages that are included within the scope of coverage of such insurance, whether or not such coverage is sought.

Article 9. Confidentiality

9.1 Confidential information shall mean any confidential and/or proprietary information provided by one Party to the other Party that is clearly marked or otherwise designated "Confidential." For purposes of this Agreement all design, operating specifications, and metering data provided by the Interconnection Customer shall be deemed confidential information regardless of whether it is clearly marked or otherwise designated as such.

9.2 Confidential information does not include information previously in the public domain, required to be publicly submitted or divulged by governmental authorities (after notice to the other Party and after exhausting any opportunity to oppose such publication or release), or necessary to be divulged in an action to enforce this Agreement. Each Party receiving confidential information shall hold such information in confidence and shall not disclose it to any third party nor to the public without the prior written authorization from the Party providing that information, except to fulfill obligations under this Agreement, or to fulfill legal or regulatory requirements.

9.2.1 Each Party shall employ at least the same standard of care to protect confidential information obtained from the other Party as it employs to protect its own confidential information.

9.2.2 Each Party is entitled to equitable relief, by injunction or otherwise, to enforce its rights under this provision to prevent the release of confidential information without bond or proof of damages, and may seek other remedies available at law or in equity for breach of this provision.

9.3 Notwithstanding anything in this Agreement to the contrary, if the Virginia State Corporation Commission ("Commission"), during the course of an investigation or otherwise, requests information from one of the Parties that is otherwise required to be maintained in confidence, the Party shall provide the requested information to the Commission, within the time provided for in the request for information. In providing the information to the Commission, the Party may request that the information be treated as confidential and nonpublic by the Commission and that the information be withheld from public disclosure. Parties are prohibited from notifying the other Party prior to the release of the confidential information to the Commission. [A Party shall notify the other Party when it is notified by the Commission that a request to release confidential information has been received by the Commission, at which time either Party may respond to the Commission before such information would be made public.]

Article 10. Disputes

10.1 The Parties agree to attempt to resolve all disputes arising out of the interconnection process according to the provisions of this article.

10.2 In the event of a dispute, either Party shall provide the other Party with a written Notice of Dispute. Such Notice shall describe in detail the nature of the dispute. The Parties shall make a good faith effort to resolve the dispute informally within 10 business days.

10.3 If the dispute has not been resolved within ~~two~~ 10 business days after receipt of the Notice, either Party may ~~contact~~ seek resolution assistance from the Commission's Division of Energy Regulation ~~for assistance in resolving the dispute~~ where the matter will be handled as an informal complaint. [~~If that process is unsatisfactory, either Party may~~

~~petition the Commission to handle the dispute as a formal complaint.~~]

Alternatively, either Party may [, upon mutual agreement,] seek resolution through the assistance of a dispute resolution service. The dispute resolution service will assist the Parties in either resolving the dispute or in selecting an appropriate dispute resolution venue (e.g., mediation, settlement judge, early neutral evaluation, or technical expert) to assist the Parties in resolving their dispute. Each Party [~~agrees to~~ shall] conduct all negotiations in good faith and [~~will~~ shall] be responsible for [~~½~~ one-half] of any costs paid to neutral third parties.

10.4 ~~Each Party agrees to conduct all negotiations in good faith and will be responsible for one half of any costs paid to neutral third parties~~ If [~~attempted dispute resolutions fail to satisfy one or both of the Parties, then~~ the dispute remains unresolved] either Party may [petition the Commission to handle the dispute as a formal complaint or may] exercise whatever rights and remedies it may have in equity or law consistent with the terms of this Agreement.

~~10.5 If neither Party elects to seek assistance from the State Corporation Commission's Division of Energy Regulation, or if the attempted dispute resolution fails, then either Party may exercise whatever rights and remedies it may have in equity or law consistent with the terms of this Agreement.~~

Article 11. Taxes

11.1 The Parties agree to follow all applicable tax laws and regulations

11.2 Each Party shall cooperate with the other to maintain the other Party's tax status. Nothing in this Agreement is intended to adversely affect the ~~Distribution Company's~~ utility's tax exempt status with respect to the issuance of bonds including, but not limited to, local furnishing bonds.

Article 12. Miscellaneous

12.1 Governing ~~Law, Regulatory Authority, and Rules~~ law, regulatory authority, and rules

The validity, interpretation and enforcement of this Agreement and each of its provisions shall be governed by the laws of the ~~state~~ State of Virginia without regard to its conflicts of law principles. This Agreement is subject to all applicable laws and regulations. Each Party expressly reserves the right to seek changes in, appeal, or otherwise contest any laws, orders, or regulations of a governmental authority.

12.2 Amendment

The Parties may amend this Agreement by a written instrument duly executed by both Parties.

12.3 No ~~Third Party Beneficiaries~~ third-party beneficiaries

This Agreement is not intended to and does not create rights, remedies, or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, and the obligations herein assumed are solely for the use and benefit of the Parties, their successors in interest and where permitted, their assigns.

12.4 Waiver

12.4.1 The failure of a Party to this Agreement to insist, on any occasion, upon strict performance of any provision of this Agreement will not be considered a waiver of any obligation, right, or duty of, or imposed upon, such Party.

12.4.2 Any waiver at any time by either Party of its rights with respect to this Agreement shall not be deemed to be a continuing waiver or a waiver with respect to any other failure to comply with any other obligation, right, or duty of this Agreement. Termination or default of this Agreement for any reason by the Interconnection Customer shall not constitute a waiver of the ~~Interconnection Customer's~~ IC's legal rights to obtain an interconnection from the ~~Distribution Company~~ utility. Any waiver of this Agreement shall, if requested, be provided in writing.

12.5 Entire Agreement

This Agreement, including all Attachments, constitutes the entire agreement between the Parties with reference to the subject matter hereof, and supersedes all prior and contemporaneous understandings or agreements, oral or written, between the Parties with respect to the subject matter of this Agreement. There are no other agreements, representations, warranties, or covenants which constitute any part of the consideration for, or any condition to, either Party's compliance with its obligations under this Agreement.

12.6 Multiple ~~Counterparts~~ counterparts

This Agreement may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

12.7 No ~~Partnership~~ partnership

This Agreement shall not be interpreted or construed to create an association, joint venture, agency relationship, or partnership between the Parties or to impose any partnership obligation or partnership liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

12.8 Severability

If any provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction or other governmental authority, (i) such portion or provision shall be deemed separate and independent, (ii) the Parties shall

negotiate in good faith to restore insofar as practicable the benefits to each Party that were affected by such ruling, and (iii) the remainder of this Agreement shall remain in full force and effect.

12.9 Environmental ~~Releases~~ releases

Each Party shall notify the other Party, first orally and then in writing, of the release of any hazardous substances, any asbestos or lead abatement activities, or any type of remediation activities related to the ~~small generating facility or~~ Small Generating Facility, the customer's interconnection facilities, or attachment facilities, each of which may reasonably be expected to affect the other Party. The notifying Party shall (i) provide the notice as soon as practicable, provided such Party makes a good faith effort to provide the notice no later than 24 hours after such Party becomes aware of the occurrence, and (ii) promptly furnish to the other Party copies of any publicly available reports filed with any governmental authorities addressing such events.

12.10 Subcontractors

Nothing in this Agreement shall prevent a Party from utilizing the services of any subcontractor as it deems appropriate to perform its obligations under this Agreement; however, each Party shall require its subcontractors to comply with all applicable terms and conditions of this Agreement in providing such services and each Party shall remain primarily liable to the other Party for the performance of such subcontractor.

12.10.1 The creation of any subcontract relationship shall not relieve the hiring Party of any of its obligations under this Agreement. The hiring Party shall be fully responsible to the other Party for the acts or omissions of any subcontractor the hiring Party hires as if no subcontract had been made; however, in no event shall the ~~Distribution Company~~ utility be liable for the actions or inactions of the ~~Interconnection Customer~~ IC or its subcontractors with respect to obligations of the ~~Interconnection Customer~~ IC under this Agreement. Any applicable obligation imposed by this Agreement upon the hiring Party shall be equally binding upon, and shall be construed as having application to, any subcontractor of such Party.

12.10.2 The obligations under this article will not be limited in any way by any limitation of subcontractor's insurance.

12.11 Reservation of ~~Rights~~ rights

The ~~Distribution Company~~ utility shall have the right to make a unilateral filing with the Commission to modify this Agreement with respect to any rates, terms and conditions, charges, classifications of service, rule or regulation.

Article 13. Notices

13.1 General

Unless otherwise provided in this Agreement, any written notice, demand, or request required or authorized in connection with this Agreement ("Notice") shall be deemed properly given if delivered in person, delivered by recognized national ~~currier~~ courier service, or sent by first class mail, postage prepaid, to the person specified below:

If to the Interconnection Customer:

Interconnection Customer:_____

Attention:_____

Address:_____

~~City:_____ State:_____ Zip:_____~~

City, State, Zip:_____

Phone:_____ Fax:_____

If to the ~~Distribution Company~~ Utility:

~~Distribution Company~~ Utility:_____

Attention:_____

Address:_____

~~City:_____ State:_____ Zip:_____~~

City, State, Zip:_____

Phone:_____ Fax:_____

13.2 Billing and ~~Payment~~ payment

Billings and payments shall be sent to the addresses set out below:

If to the Interconnection Customer:

Interconnection Customer:_____

Attention:_____

Address:_____

~~City:~~_____ ~~State:~~_____ ~~Zip:~~_____

City, State, Zip:_____

If to the ~~Distribution Company~~ Utility:

~~Distribution Company~~ Utility:_____

Attention:_____

Address:_____

~~City:~~_____ ~~State:~~_____ ~~Zip:~~_____

City, State, Zip:_____

13.3 Alternative ~~Forms~~ forms of ~~Notice~~ notice

Any notice or request required or permitted to be given by either Party to the other and not required by this Agreement to be given in writing may be so given by telephone, facsimile or e-mail to the telephone numbers and email addresses set out below:

If to the Interconnection Customer:

Interconnection Customer:_____

Attention:_____

Address:_____

~~City:~~_____ ~~State:~~_____ ~~Zip:~~_____

City, State, Zip:_____

Phone:_____ Fax:_____

If to the ~~Distribution Company~~ Utility:

~~Distribution Company~~ Utility:_____

Attention:_____

Address:_____

~~City:~~_____ ~~State:~~_____ ~~Zip:~~_____

City, State, Zip:_____

Phone:_____ Fax:_____

13.4 Designated ~~Operating Representative~~ operating representative

The Parties may also designate operating representatives to conduct the communications which may be necessary or convenient for the administration of this Agreement. This person will also serve as the point of contact with respect to operations and maintenance of the Party's facilities.

Interconnection Customer's Operating Representative:

Interconnection Customer:_____

Attention:_____

Address:_____

~~City:~~ _____ ~~State:~~ _____ ~~Zip:~~ _____

City, State, Zip:_____

Phone:_____ Fax:_____

~~Distribution Company's~~ Utility's Operating Representative:

~~Distribution Company~~ Utility:_____

Attention:_____

Address:_____

~~City:~~ _____ ~~State:~~ _____ ~~Zip:~~ _____

City, State, Zip:_____

Phone:_____ Fax:_____

13.5 Changes to the ~~Notice Information~~ notice information

Either Party may change this information by giving five business days written notice prior to the effective date of the change.

Article 14. Signatures

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized representatives.

For the ~~Distribution Company~~ Utility

Name:_____

Title:_____

Date:_____

For the Interconnection Customer

Name:_____

Title:_____

Date:_____

Attachment 1 to

Schedule ~~5~~ 6

Glossary of Terms

"Affected system~~—An~~" means an electric utility system other than that of the ~~Distribution Company's transmission system~~ utility that may be affected by the proposed interconnection.

"Affected system operator" means an entity that operates an affected system or, if the affected system is under the operational control of an independent system operator or a Regional Transmission Entity, such independent entity.

"Applicable laws and regulations~~—All~~" means all duly promulgated applicable federal, state and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders, permits and other duly authorized actions of any governmental authority.

"Attachment facilities" means the facilities and equipment owned, operated, and maintained by the utility that are built new in order to physically connect the customer's interconnection facilities to the utility system. Attachment facilities shall not include distribution upgrades or previously existing distribution and transmission facilities.

"Business [~~Day"~~ day"] ~~–~~ means Monday through Friday, excluding federal holidays.

"Certified" has the meaning ascribed to it in Schedule 2 of Chapter 314 [~~(20VAC5-314-10 et seq.)~~ (20VAC5-314)] of the Virginia Administrative Code.

["Commission" means the Virginia State Corporation Commission.

"Competitive service provider" means any entity, other than the utility, supplying electric energy service to the Interconnection Customer.]

"Customer's interconnection facilities" means all the facilities and equipment owned, operated and maintained by the Interconnection Customer, between the Small Generating Facility and the point of interconnection necessary to physically and electrically interconnect the Small Generating Facility to the utility system.

[~~"Commission means the Virginia State Corporation Commission."~~]

"Default~~—The~~" means the failure of a breaching Party to cure its breach under the Small Generator Interconnection Agreement.

~~Distribution Company—The Utility that owns and/or operates the Distribution System located in Virginia to which the small generation facility proposes to interconnect its small generating facility.~~

"Distribution system~~—The Distribution Company's~~" means the utility's facilities and equipment ~~used to transmit~~ generally delivering electricity to ultimate ~~usage points such as homes and industries directly from nearby generators or from interchanges with higher voltage transmission systems which transport bulk power over longer distances. The voltage levels at which distribution systems operate differ among areas~~ customers from substations supplied by higher voltages (usually at transmission level). For purposes of this Agreement, all portions of the utility's transmission system regulated by the Commission for which interconnections are not within Federal Energy Regulatory Commission jurisdiction are considered also to be subject to Commission regulations.

"Distribution upgrades~~—The~~" means the additions, modifications, and upgrades to the ~~Distribution Company's~~ utility's distribution system at or beyond the point of interconnection necessary to ~~facilitate~~ abate problems on the utility's distribution system caused by the interconnection of the ~~small generating facility and render the transmission service necessary to effect the Interconnection Customer's wholesale sale of electricity in interstate commerce~~ Small Generating Facility. Distribution upgrades do not include customer's interconnection facilities or attachment facilities.

[~~"Energy service provider" means any entity supplying electric energy service to the Interconnection Customer.~~]

"Facilities study" has the meaning ascribed to it in the commission's regulations governing the interconnection of small generating facilities at 20VAC5-314-70 [~~F~~ E].

"Feasibility study" has the meaning ascribed to it in the commission's regulations governing the interconnection of small generating facilities at 20VAC5-314-70 [~~D~~ C].

"FERC" means the Federal Energy Regulatory Commission.

"Good ~~Distribution Company~~ Utility Practice~~—Any~~" means any of the practices, methods and acts engaged in or approved by a significant portion of the electric industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good ~~Distribution Company~~ Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.

"Governmental authority~~—Any~~" means any federal, state, local or other governmental regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority having jurisdiction over the Parties, their respective facilities, or the respective services they provide, and exercising or entitled to exercise any administrative, executive, police, or taxing authority or power; provided that such term does not include the Interconnection Customer, the ~~interconnection provider, or any Affiliate thereof~~ utility, or a utility affiliate.

"Interconnection Customer~~—Any~~" or "IC" means any entity~~, including the Distribution Company, the transmission owner or any of the affiliates or subsidiaries of either, that proposes to interconnect its small generating facility with the Distribution Company's transmission~~ proposing to interconnect a new Small Generating Facility with the utility system.

~~Interconnection facilities—The Distribution Company's interconnection facilities and the Interconnection Customer's interconnection facilities. Collectively, interconnection facilities include all facilities and equipment between the small generating facility and the point of interconnection, including any modification, additions or upgrades that are necessary to physically and electrically interconnect the small generating facility to the Distribution Company's transmission system. Interconnection facilities are sole use facilities and shall not include distribution upgrades or system upgrades.~~

"Interconnection request~~—The Interconnection Customer's~~" means the IC's request, in accordance with [~~the tariff~~ Chapter 314 (20VAC5-314) of the Virginia Administrative Code], to interconnect a new ~~small generating facility~~ Small [~~General~~ Generating] Facility, or to increase the capacity of, or make a material modification to the operating characteristics of, an existing ~~small generating facility~~ Small Generating Facility that is interconnected with the ~~Distribution Company's~~ utility system.

"Interconnection studies" means the studies conducted by the utility, or a third party agreed to by the utility and the Interconnection Customer, in order to determine the interaction of the Small Generating Facility with the utility system and the affected systems in order to specify any modifications to the Small Generating Facility or the electric

systems studied to ensure safe and reliable operation of the Small Generating Facility in parallel with the utility system.

"Material modification~~—A~~" means a modification that has a material impact on the cost or timing of any Interconnection Request with a later queue priority date.

~~System upgrades—Additions, modifications, and upgrades to the Distribution Company's distribution and transmission system required at or beyond the point at which the small generating facility interconnects with the system to accommodate the interconnection of the small generating facility with the Distribution Company's transmission system.~~

"Operating requirements~~—Any~~" means any operating and technical requirements that may be applicable due to ~~Regional Transmission Organization, Independent System Operator~~ regional transmission entity, independent system operator, control area, or the ~~Distribution Company's~~ utility's requirements, including those set forth in the Small Generator Interconnection Agreement.

"Party" or "Parties" ~~—The Distribution Company~~ means the utility, the Interconnection Customer or ~~any combination of the above~~ both.

"Point of interconnection~~—The~~" means the point where the customer's interconnection facilities connect ~~with~~ to the ~~Distribution Company's transmission~~ utility system.

~~Reasonable efforts—With respect to an action required to be attempted or taken by a Party under the Small Generator Interconnection Agreement, efforts that are timely and consistent with Good Distribution Company Practice and are otherwise substantially equivalent to those a Party would use to protect its own interests.~~

"Regional Transmission Entity" or "RTE" shall refer to an entity having the management and control of a utility's transmission system as further set forth in § 56-579 of the Code of Virginia.

"Small Generating Facility~~—The~~" or "generator" or "SGF" means the Interconnection Customer's ~~device~~ equipment for the production of electricity identified in the Interconnection Request~~, but shall not include the Interconnection Customer's interconnection facilities~~.

"Small Generator Interconnection Agreement" or "SGIA" means the agreement between the utility and the Interconnection Customer as set forth in Schedule 6 of [~~20VAC5-314-170 of the Commission's regulations governing interconnection of small electrical generators~~ Chapter 314 (20VAC5-314) of the Virginia Administrative Code].

"Supplemental review" has the meaning ascribed to it in the Commission's regulations governing the interconnection of small generating facilities at 20VAC5-314-70 [~~E~~ I].

"System" or "utility system" means the distribution and transmission facilities owned, controlled, or operated by the utility that are used to deliver electricity.

"System impact study" has the meaning ascribed to it in the Commission's regulations governing the interconnection of small generating facilities at 20VAC5-314-70 [~~E~~ D].

"Tariff~~—The~~" means the rates, terms and conditions filed by the utility with the ~~State Corporation~~ Commission for the purpose of providing ~~commission regulated~~ Commission-regulated electric service to retail customers.

~~Upgrades—The required additions and modifications to the Distribution Company's distribution or transmission system at or beyond the point of interconnection. Upgrades do not include interconnection facilities.~~

"Transmission system" means the utility's facilities and equipment delivering electric energy to the distribution system, such facilities usually being operated at voltages above the utility's typical distribution system voltages.

"Utility" means the public utility company subject to regulation by the Commission pursuant to Chapter 10 (§ 56-232 et seq.) of Title 56 of the Code of Virginia with regard to rates and/or service quality to which the Interconnection Customer proposes to interconnect a Small Generating Facility.

Attachment 2 to

Schedule ~~5~~ 6

Description and Costs of the Small Generating Facility, Customer's Interconnection Facilities, Attachment Facilities and Metering Equipment

~~Equipment, including the small generating facility, interconnection facilities, and metering equipment shall be itemized and identified as being~~ The following shall be provided in this exhibit:

1. An itemization of the major equipment components owned by the Interconnection Customer ~~or~~ and the ~~Distribution Company. The Distribution Company will provide a best estimate itemized cost, including overheads, of its interconnection facilities and metering equipment, and a best estimate itemized cost of the annual operation and maintenance expenses associated with its interconnection facilities and metering equipment~~ utility, including components of the Small Generating Facility, the customer's interconnection facilities, attachment facilities, and metering equipment. Such itemization shall identify the owner of each item listed.

2. The utility's estimated itemized cost of its attachment facilities and its metering equipment.

3. The utility's estimated cost of its annual operation and maintenance expenses associated with attachment

facilities and metering equipment to be charged to the Interconnection Customer.

Attachment 3 to

Schedule ~~5~~ 6

~~Diagram to be provided by applicant~~

One-line Diagram Depicting the Small Generating Facility, Customer's Interconnection Facilities, Attachment Facilities, Metering Equipment, and Distribution Upgrades

(Diagram and description to be provided by Interconnection Customer [unless the utility elects to prepare this schedule. If this schedule is prepared by the utility, the IC shall provide a one-line diagram of the SGF and IC's interconnection facilities for the utility to use as a data source for preparing this schedule.])

Attachment 4 to

Schedule ~~5~~ 6

Milestones

In-Service Date:_____

Critical milestones and responsibility as agreed to by the Parties:

Milestone/Date	**Responsible Party**
(1)_____	_____
(2)_____	_____
(3)_____	_____
(4)_____	_____
(5)_____	_____
(6)_____	_____
(7)_____	_____
(8)_____	_____
(9)_____	_____
(10)_____	_____

Agreed to by:

For the ~~Distribution Company~~ Utility

_____Date_____

For the Transmission Owner (If Applicable)_____

Date_____

For the Interconnection Customer_____

Date_____

Attachment 5 to

Schedule ~~5~~ 6

Additional Operating Requirements for the ~~Distribution Company's~~ Utility System and Affected Systems Needed to Support the Interconnection Customer's Needs

The ~~Distribution Company~~ utility shall ~~also~~ provide requirements that must be met by the Interconnection Customer prior to initiating parallel operation with the ~~Distribution Company's~~ utility system.

Attachment 6 to

Schedule ~~5~~ 6

~~Distribution Company's~~ Utility's Description of its Distribution and Transmission Upgrades ~~And Best~~ and Estimate of Upgrade Costs

The ~~Distribution Company shall describe upgrades and provide an itemized estimate of the cost, including overheads, of the upgrades and annual operation and maintenance expenses associated with such upgrades. The Distribution Company shall functionalize upgrade costs and annual expenses as either transmission or distribution related.~~ utility shall provide the following in this attachment:

1. An itemized list of the upgrades required to be constructed by the utility prior to interconnection of the Small Generating Facility, with transmission and distribution related upgrades shown separately.

2. An estimate of the cost of each item listed pursuant to item 1.

3. An estimate of annual operation and maintenance expenses associated with such upgrades that are to be charged to the Interconnection Customer, shown separately for transmission and distribution related items.

[~~Attestation~~]

VA.R. Doc. No. R08-1147; Filed May 8, 2009, 1:29 p.m.

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TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Proposed Regulation

Title of Regulation: **22VAC40-630. Disability Advocacy Project (repealing 22VAC40-630-10 through 22VAC40-630-50).**

Statutory Authority: §§ 63.2-217 and 63.2-802 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comments: Public comments may be submitted until 5 p.m. on August 7, 2009.

Agency Contact: Mark L. Golden, TANF Program Manager, Department of Social Services, Division of Benefit Programs, 7 North 8th Street, Richmond, VA 23219, telephone (804) 726-7385, FAX (804) 726-7356, or email mark.golden@dss.virginia.gov.

Basis: Pursuant to § 63.2-217 of the Code of Virginia, the State Board of Social Services has authority to promulgate rules and regulations necessary for the operation of all assistance programs. Section 63.2-803 of the Code of Virginia provides for the establishment of an advocacy project for recipients of General Relief.

Purpose: General Relief is a program that provides assistance to individuals that are not eligible for other forms of assistance. General Relief is an optional program at the local level. The regulation provides for procedures for referring recipients to legal representation during an appeal of a SSI disability determination process and providing information on how the appeal may affect their General Relief benefits. The agency will advise recipients that they have five days from the receipt of a letter from the Social Security agency to contact the social services agency requesting advocacy services. Since the provisions of this regulation will be contained in 22VAC40-411, General Relief Program, the welfare of citizens will not be impacted. This regulatory action promotes a more efficient administration of state and local government.

Substance: This regulation will be repealed. A new comprehensive General Relief regulation will be established. Any necessary language from this regulation will be included in the new comprehensive regulation.

Issues: The Disability Advocacy regulation will be an advantage to the vulnerable and disadvantaged population who cannot receive assistance in other programs. General Relief is often the only means to support those individuals. Legal representation will provide information and support to these individuals regarding the SSI appeal process and provide an explanation of how receiving SSI will affect their General Relief benefits. The regulatory action poses no disadvantages to the public or the Commonwealth. It promotes a more efficient state and local government.

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

Summary of the Proposed Amendments to Regulation. The State Board of Social Services (Board) proposes to repeal its regulations for the General Relief Disability Advocacy Project.

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

Estimated Economic Impact. Currently, the Board has several sets of regulations, including the General Relief Disability Advocacy Project, which allow localities the option of providing assistance to individuals who do not qualify for more regular types (food stamps, Temporary Assistance for Needy Families, Medicaid, etc) of Social Services aid. The Disability Advocacy Project, for instance, provides legal assistance referrals for individuals whose Social Security Income (SSI) disability claims have been denied and who are going through the appeals process.

The Board is in the process of promulgating one, comprehensive, set of regulations to cover the disparate aid programs, including the Disability Advocacy Project, which local Departments of Social Services can optionally implement. The repeal of all affected separate regulations except those for the General Relief Disability Advocacy Project was proposed as part of that regulatory package (22VAC40-411, stage # 4564). The Board now proposes to repeal the Disability Advocacy Project because these regulations will now be redundant and unnecessary. Because the rules for the Disability Advocacy Project will not be changed (they will just be moved to the comprehensive regulation), affected individuals are unlikely to incur any costs on account of this regulatory proposal. Local Departments of Social Services will likely find it beneficial to have all the rules for these smaller optional programs in one set of regulations.

Businesses and Entities Affected. This proposed regulatory action will affect all local Departments of Social Services (LDSS) that choose to implement this optional program. Currently, 83 LDSS provide Disability Advocacy Project assistance.

Localities Particularly Affected. This proposed regulatory action will particularly affect LDSS that choose to implement the Disability Advocacy Project.

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 Social Services concurs with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

General Relief is a program that provides assistance to individuals who are not eligible for other forms of assistance and is an optional program at the local level. The regulation provides procedures for referring recipients to legal representation during an appeal of a Supplemental Security Income (SSI) disability determination process and providing information on how the appeal may affect their General Relief benefits. This regulation is repealed and its provisions will be included in a new comprehensive General Relief Program regulation (22VAC40-411).

VA.R. Doc. No. R08-1278; Filed May 13, 2009, 4:03 p.m.

AIR POLLUTION CONTROL BOARD

State Implementation Plan Revision

Notice of action: The Department of Environmental Quality (DEQ) is announcing an opportunity for public comment on a proposed revision to the Commonwealth of Virginia State Implementation Plan (SIP). The SIP is a plan developed by the Commonwealth in order to fulfill its responsibilities under the federal Clean Air Act to attain and maintain the ambient air quality standards promulgated by the U.S. Environmental Protection Agency (EPA) under the Act. If adopted, the Commonwealth intends to submit the regulation or a portion thereof to the EPA as a revision to the SIP in accordance with the requirements of § 110(a) of the federal Clean Air Act.

Regulations affected: The regulation affected by this action is 9VAC5-10, General Definitions, Rev. H07.

Purpose of notice: DEQ is seeking comment on the issue of whether the regulation amendments should be submitted as a revision to the SIP.

Public comment period: May 18, 2009, to June 17, 2009.

Public hearing: A public hearing may be conducted if a request is made in writing to the contact listed below. In order to be considered, the request must include the full name, address, and telephone number of the person requesting the hearing and be received by DEQ by 5 p.m. on the last day of the comment period. Notice of the date, time, and location of any requested public hearing will be announced in a separate notice, and another 30-day comment period will be conducted.

Public comment stage: The regulation amendments are exempt from the state administrative procedures for adoption of regulations contained in Article 2 of the Administrative Process Act by the provisions of § 2.2-4006 A 4 c of the Administrative Process Act because they are necessary to meet the requirements of the federal Clean Air Act and do not differ materially from the pertinent EPA regulations. Since the amendments are exempt from administrative procedures for the adoption of regulations, DEQ is accepting comment only on the issue cited above under "purpose of notice" and not on the content of the regulation amendments.

Description of proposal: The proposed revision will consist of amendments to existing regulation provisions concerning the definition of volatile organic compound (VOC). On January 18, 2007 (72 FR 2193), EPA revised the definition of VOC in 40 CFR 51.100 to exclude a compound known as (1)1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane (HFE-7300). This exclusion is accomplished by adding the substance to a list of substances not considered to be a VOC. In order to maintain consistency with the federal requirements for reducing VOCs and therefore ozone, Virginia's definition of VOC must be consistent with EPA's definition.

Federal information: This notice is being given to satisfy the public participation requirements of federal regulations (40 CFR 51.102) and not any provision of state law. Except as noted below, the proposal will be submitted as a revision to the Commonwealth of Virginia SIP under § 110(a) of the federal Clean Air Act in accordance with 40 CFR 51.104. It is planned to submit all provisions of the proposal as a revision to the Commonwealth of Virginia SIP.

How to comment: DEQ accepts written comments by email, fax, and postal mail. In order to be considered, comments must include the full name, address, and telephone number of the person commenting and be received by DEQ by 5 p.m. on the last day of the comment period. Due to problems with the quality of faxes, commenters are encouraged to provide the signed original by postal mail within one week. All testimony, exhibits, and documents received are part of the public record.

To review regulation documents: The proposal and any supporting documents are available on the DEQ Air Public Notices for Plans website (http://www.deq.state.va.us/air/permitting/planotes.html). The documents may also be obtained by contacting the DEQ representative named below. The public may review the documents between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period at the following DEQ locations: (i) Main Street Office, 629 E Main St., 8th Floor, Richmond, VA, (804) 698-4070, (ii) Southwest Regional Office, 355 Deadmore St., Abingdon, VA, (540) 676-4800, (iii) Blue Ridge Regional Office, Roanoke Location, 3019 Peters Creek Rd., Roanoke, VA, (540) 562-6700, (iv) Blue Ridge Regional Office, Lynchburg Location, 7705 Timberlake Rd., Lynchburg, VA, (804) 582-5120, (v) Valley Regional Office, 4411 Early Rd., Harrisonburg, VA, (540) 574-7800, (vi) Piedmont Regional Office, 4949-A Cox Rd., Glen Allen, VA, (804) 527-5020, (vii) Northern Regional Office, 13901 Crown Court, Woodbridge, VA, (703) 583-3800, and (viii) Tidewater Regional Office, 5636 Southern Blvd, Virginia Beach, VA, (757) 518-2000.

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

DEPARTMENT OF ENVIRONMENTAL QUALITY

Notice of Opportunity to Serve on a Regulatory Advisory Panel Concerning Permit Regulations for Renewable-Energy Facilities

Purpose of notice: The Department of Environmental Quality is announcing the establishment of a Regulatory Advisory

Panel (panel) to assist the department in developing a regulation to implement Virginia Acts of Assembly Chapters 808 and 854 (2009 HB 2175/SB 1347). The department is seeking persons interested in serving on the panel.

Deadline for submittal of requests: June 29, 2009.

Background: During the 2009 legislative session, the Virginia General Assembly passed HB 2175/SB 1347 (Virginia Acts of Assembly Chapters 804 and 854), which require the department to develop regulations that establish one or more permits by rule necessary for the construction and operation of small renewable energy projects, including such conditions and standards necessary to protect the Commonwealth's natural resources. The permit by rule for wind energy shall be effective as soon as practicable, but not later than January 1, 2011.

Purpose of panel: The department is establishing this panel to review the subject legislation and make recommendations to the department on how to implement the law's provisions. It is anticipated that discussion topics will include how the department might address potential environmental impacts, mitigation plans, facility site planning, public participation, permit fees, interagency consultations, enforcement and compliance, and other topics that may be brought up during the public comment period. The department will publish a Notice of Intended Regulatory Action in the near future to begin the rulemaking process to implement this legislation. However, the panel established in response to this notice will be the panel used to assist the department in the development of one or more permits by rule regulations.

Contact for additional information or submittal of requests to serve on the committee: Carol C. Wampler, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, email carol.wampler@deq.virginia.gov, telephone (804) 698-4579.

Proposed Consent Order - Contractors Paving Company, Inc.

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: June 8, 2009, to July 8, 2009.

Consent order description: The State Water Control Board proposes to issue a consent order to Contractors Paving Company, Inc., to address alleged violations of Virginia State Water Control Law. The location where the alleged violations occurred is 3431 Trant Avenue, Norfolk. 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 paul.smith@deq.virginia.gov.

Proposed Consent Order - O'Malley's UAP & UC, Inc.

Purpose of notice: To seek public comment on a proposed consent order from the Department of Environmental Quality for a location in Suffolk, Virginia.

Public comment period: June 8, 2009, to July 8, 2009.

Consent order description: The State Water Control Board proposes to issue a consent order to O'Malley's UAP & UC, Inc., to address alleged violations of Virginia State Water Control Law. The location where the alleged violations occurred is O'Malley's Used Auto Parts, 1327 Portsmouth Boulevard, Suffolk. 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 paul.smith@deq.virginia.gov.

Study to Restore Water Quality - Cod, Presley, Hull, Rogers, Bridgeman, Cubitt, and Hack Creeks, and Fountain Cove

Public meeting: June 24, 2009, at the Northumberland Public Library, 7204 Northumberland Highway, Heathsville, VA 22473. An afternoon public meeting will be held from 2 p.m. to 4 p.m. and the evening public meeting from 6 p.m. to 8 p.m. The library asks that you please park at the side or in back of the building.

Purpose of notice: The Virginia Department of Environmental Quality and the Department of Conservation and Recreation

are announcing a study to restore water quality for a shellfish growing area, a public comment opportunity, and two public meetings.

Meeting description: First public meetings on a study to restore water quality for shellfish growing areas along Cod, Presley, Hull, Rogers, Bridgeman, Cubitt, and Hack Creeks, and Fountain Cove, which are impaired due to bacterial violations.

Description of study: Virginia agencies are working to identify sources of the bacterial contamination in the shellfish growing waters of these (tidal) creeks including their tributaries. These condemnations include a total area of approximately 1.18 square miles in Northumberland County. These streams are impaired for failure to meet the designated use of shellfish consumption because of bacterial water quality standard violations. Cubitt Creek also has a recreational impairment (swimming) of approximately 0.227 square miles. The recreational water quality standard is less stringent than that of the shellfish standard; therefore, it is expected that clean-up efforts aimed at restoring the shellfish use will also result in attainment of the recreational use.

Stream	County	Area (miles²)	Impairment
Cod Creek (left branch)	Northumberland	0.115	Shellfish Use (Fecal Coliform) bacteria
Cod Creek (right branch)		0.079	
Hull Creek (mainstem)		0.044	
Bridgeman Creek		0.045	
Rogers Creek		0.035	
Fountain Cove		0.087	
Hack Creek		0.215	
Cubitt Creek		0.227	Shellfish Use (Fecal Coliform) & Recreational Use (Enterococci)

The study reports the current status of the creeks via sampling performed by the Virginia Department of Health, Division of Shellfish Sanitation, shellfish area condemnations and the possible sources of bacterial contamination. The study recommends total maximum daily loads (TMDLs) for the impaired waters. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, bacterial levels have to be reduced to the TMDL amount.

How to comment: DEQ accepts written comments by email, fax, or postal mail. Written comments should include the name, address, and telephone number of the person commenting and be received by DEQ during the comment period, which will expire on July 23, 2009. DEQ also accepts written and oral comments at the public meeting announced in this notice.

Contact for additional information: Margaret Smigo, TMDL Coordinator, Department of Environmental Quality, Piedmont Regional Office, 4949A Cox Road, Glen Allen, VA 23060, telephone (804) 527-5124, FAX (804)-527-5106, or email mjsmigo@deq.virginia.gov.

Study to Restore Water Quality - 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 announce the second technical advisory committee (TAC) meeting for the Hunting Creek, Cameron Run, and Holmes Run bacteria TMDL studies.

Technical advisory committee meeting: Tuesday, June 30, 2009, 10 a.m. - Noon, City of Alexandria, Charles E. Beatley Central Library, Main Community Room, 5005 Duke Street, Alexandria, VA 22304-2903.

Meeting description: This is the second meeting of the TAC. The purpose of the TAC will be to provide technical input and insight for the project, and to assist with stakeholder and public participation.

Description of study: Portions of 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
Hunting Creek (Tidal)	Recreational use Impairment due to *E. coli* bacteria	0.53 square miles	Route 241 (Telegraph Road) Bridge Crossing
Cameron Run (Nontidal)	Recreational use Impairment due to *E. coli* bacteria	2.08 miles	Confluence with Backlick Run
Holmes Run (Nontidal)	Recreational use Impairment due to *E. coli* bacteria	3.58 miles	Mouth of Lake Barcroft

During this study, DEQ will develop a total maximum daily load (TMDL) for each of the impaired stream segments. A TMDL is the total amount of a pollutant a water body can receive and still meet water quality standards. To restore water quality, pollutant levels have to be reduced to the TMDL allocated amount.

How to comment: The public comment period on the materials presented at the TAC meeting will extend from June 30, 2009, to July 30, 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, Department of Environmental Quality, 13901 Crown Court, Woodbridge, VA 22193, telephone (703) 583-3804, email mkconaway@deq.virginia.gov.

Total Maximum Daily Loads - Mossy Creek, Long Glade Run and Naked Creek

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) implementation plan for Mossy Creek, Long Glade Run, and Naked Creek in Augusta and Rockingham counties. Mossy Creek and Long Glade Run were originally listed on the 1996 § 303(d) TMDL Priority List and Report as impaired, with Naked Creek joining them in 1998, due to violations of the state's water quality standard for bacteria. In 1998, Mossy Creek was also listed due to a benthic or aquatic life impairment. TMDLs for bacteria in all three creeks and one for sediment in Mossy Creek were developed to address the impairments in these streams. These TMDLs were approved by EPA on July 14, 2004, and May 21, 2002, respectively, and are available on DEQ's website at http://gisweb.deq.virginia.gov/tmdlapp/tmdl_report_search.cfm.

Section 62.1-44.19:7 C of the Code of Virginia requires the development of an implementation plan (IP) for approved TMDLs. The IP should provide measurable goals and the date of expected achievement of water quality objectives. The IP should also include the corrective actions needed and their associated costs, benefits, and environmental impacts.

DEQ and DCR will hold a final public meeting on Thursday, June 18, 2009, at 7 p.m. to inform the public of the IP development and to solicit comments on the draft document. The meeting will be held in the cafeteria of North River Elementary School in Mt. Solon.

The draft implementation plan will be available for review on the web no later than June 15, 2009, at http://www.deq.virginia.gov/tmdl/iprpts.html. The public comment period for this final public meeting will end on Wednesday, July 15, 2009. Questions or information requests should be addressed to Tara Sieber, DEQ, (540) 574-7870. Written comments should include the name, address, and telephone number of the person submitting the comments and should be sent to Tara Sieber, Department of Environmental Quality, P.O. Box 3000, Harrisonburg, VA 22801, telephone (540) 574-7870, FAX (540) 574-7878, or email tara.sieber@deq.virginia.gov.

Total Maximum Daily Loads - South River in Augusta and Rockingham Counties

The Department of Environmental Quality (DEQ) and the Department of Conservation and Recreation seek written and oral comments from interested persons on the development of total maximum daily loads (TMDLs) for the South River in Augusta and Rockingham counties. The South River was listed on the 1996 § 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 impairment extends for 5.44 miles from the Invista discharge downstream to Sawmill Run. The bacteria impairment extends for 24.71 miles from the Invista discharge to the confluence with the North River. In addition, the South River and South Fork Shenandoah River fail to support the fish consumption use due to mercury contamination.

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. DEQ has developed a bacteria TMDL to address the recreational use impairment, sediment and phosphorus TMDLs to address the aquatic life impairment, and a mercury TMDL to address the fish consumption impairment. Draft reports of these TMDLs will be available for review and download from the DEQ website at https://www.deq.virginia.gov/TMDLDataSearch/DraftReports.jspx beginning on or before June 11, 2009. DEQ is seeking comment on these draft reports.

The final public meeting on the development of these TMDLs will be held on Thursday, June 11, 2009, 7 p.m. at the Waynesboro City Council Chambers, Charles T. Yancey Municipal Building, 503 West Main Street, Room 104, Waynesboro, VA.

The public comment period for this meeting and the draft TMDL will end on July 13, 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.

BOARD OF LONG-TERM CARE ADMINISTRATORS

Notice of Periodic Review

Review Announcement: The Board of Long-Term Care Administrators within the Department of Health Professions is preparing to conduct a periodic review of its general regulations governing the practice of nursing home administrators:

18VAC95-20, Regulations Governing the Practice of Nursing Home Administrators

The board is receiving comment on whether there is a need for amendments for clarification or for consistency with changes in practice.

Comment Begins: May 25, 2009, and ends June 24, 2009.

If any member of the public would like to comment on these regulations, please send comments by the close of the comment period to: Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233.

Comments may also be emailed to elaine.yeatts@dhp.virginia.gov or FAX (804) 527-4434.

Regulations for the practice of nursing home administrators may be viewed online at www.townhall.virginia.gov or www.dhp.virginia.gov or copies will be sent upon request.

STATE WATER CONTROL BOARD

Approval of Water Quality Management Planning Actions

Notice of action: The State Water Control Board (board) is considering the approval of six total maximum daily load (TMDL) reports and four TMDL modifications, and granting authorization to include the TMDL reports and modifications in the appropriate Water Quality Management Plans (WQMPs).

Purpose of notice: The board is seeking comment on the proposed approvals and authorizations. The purpose of these actions is to approve six TMDL reports and four TMDL modifications as Virginia's plans for the pollutant reductions necessary for attainment of water quality goals in several impaired waterbodies. These actions are taken in accordance with the Public Participation Procedures for Water Quality Management Planning.

Public comment period: June 8, 2009, to July 7, 2009.

Description of proposed action: DEQ staff intends to recommend (i) that the DEQ director approve the TMDL reports and TMDL modifications listed below as Virginia's plans for the pollutant reductions necessary for attainment of water quality goals in the impaired segments, and (ii) that the DEQ director authorize inclusion of the TMDL reports and TMDL modifications in the appropriate WQMPs. No regulatory amendments are required for these TMDLs and their associated waste load allocations.

At previous meetings, the board voted unanimously to delegate to the DEQ director the authority to approve TMDLs that do not include waste load allocations requiring regulatory adoption by the board, provided that a summary report of the action the director plans to take is presented to the board prior to the director approving the TMDL reports. The TMDLs included in this public notice will be approved using this delegation of authority.

The TMDLs listed below were developed in accordance with federal regulations (40 CFR 130.7) and are exempt from the provisions of Article II (§ 2.2-4006 et seq. of the Code of Virginia) of the Virginia Administrative Process Act. The TMDLs have been through the TMDL public participation process contained in DEQ's Public Participation Procedures for Water Quality Management Planning. The public comment process provides the affected stakeholders an opportunity for public appeal of the TMDLs. EPA approved all TMDL reports presented under this public notice. The approved reports can be found at https://www.deq.virginia.gov/TMDLDataSearch/ReportSearch.jspx.

Affected Waterbodies and Localities:

Potomac River & Shenandoah River Basins:

1. "Monroe Bay, Monroe Creek Total Maximum Daily Load (TMDL) Report for Shellfish Condemnation Areas Listed Due to Bacteria Contamination"

- One bacteria TMDL, located in Westmoreland County, proposes bacteria reductions for portions of the watershed to address VDH Shellfish Area Condemnations

2. "Total Maximum Daily Load Report for Shellfish Areas Listed Due to Bacteria Contamination in Upper Machodoc Creek"

- Three bacteria TMDL, located in King George County, propose bacteria reductions for portions of the watershed to address VDH Shellfish Area Condemnations

In the James River Basin:

3. "Bacteria Total Maximum Daily Load Development for Mill Creek and Powhatan Creek"

- Three bacteria TMDLs, located in James City County, propose bacteria reductions for portions of the watersheds to address a primary contact (swimming use) impairment

In the Roanoke River Basin:

4 & 5. "Bacteria TMDLs for the Dan River Water Shed" modifications (2)

• 15 bacteria TMDLs, located in Pittsylvania, Henry, Halifax and Mecklenburg, Franklin, Floyd, Carroll, and Patrick counties, propose bacteria reductions for portions of the watersheds to address primary contact (swimming use) impairments

In the Chesapeake Bay-Small Coastal-Eastern Shore Basin:

6. "Total Maximum Daily Load Report for Shellfish Areas Listed Due to Bacteria Contamination – Barlow and Jacobus Creeks"

• Three bacteria TMDLs, located in Northampton County, propose bacteria reductions for portions of the watersheds to address VDH Shellfish Area Condemnations

7. "Total Maximum Daily Load Report for Shellfish Areas Listed Due to Bacteria Contamination – Indian, Tabbs, Dymer, and Antipoison Creeks"

• Six bacteria TMDLs, located in Northumberland and Lancaster counties, propose bacteria reductions for portions of the watersheds to address VDH Shellfish Area Condemnations

In the Rappahannock River Basin:

8. "Total Maximum Daily Load Report for Shellfish Areas Listed Due to Bacteria Contamination – Oyster Creek and Mosquito Creek"

• Two bacteria TMDLs, located in Lancaster County, propose bacteria reductions for portions of the watersheds to address VDH Shellfish Area Condemnations

9. "Bacteria TMDL for Robinson River and Dark Run" modification

• One bacteria TMDLs, located in Madison County, proposes bacteria reductions for portions of the watersheds to address primary contact (swimming use) impairments

10. "Bacteria TMDLs for Mountain Run and Mine Run, Orange County, Virginia" modification

• One bacteria TMDLs, located in Madison County, proposes bacteria reductions for portions of the watershed to address primary contact (swimming use) impairments

How to comment: The DEQ accepts written comments by email, fax and postal mail. All written comments must include the full name, address and telephone number of the person commenting and be received by DEQ by 5 p.m. on the last day of the comment period.

How a decision is made: After comments have been considered, the board will make the final decision.

To review documents: The TMDL reports and TMDL implementation plans are available on the DEQ website at https://www.deq.virginia.gov/TMDLDataSearch/ReportSearch.jspx and by contacting the DEQ representative named below. The electronic copies are in PDF format and may be read online or downloaded.

Contact for public comments, document requests and additional information: David S. Lazarus, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4299, FAX (804) 698-4116, or email david.lazarus@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

BOARD OF AGRICULTURE AND CONSUMER SERVICES

Title of Regulation: **2VAC5-585. Retail Food Establishment Regulations.**

Publication: 25:18 VA.R. 3108-3148 May 11, 2009.

Correction to Proposed Regulation:

Page 3123, 2VAC5-585-80 D 2, line 3, change to "subdivisions 4 through 9"

Page 3124, 2VAC5-585-80 F 2, lines 3 and 4, change to "subdivisions 4 through 9"

Page, 3132, 2VAC5-585-570 D, line 1, change to: "D. ~~Wet~~ Dry wiping cloths ..."

Page 3140, 2VAC5-585-870, after subdivision D 2 e (4), insert:

f. Held in a refrigeration unit that is equipped with an electronic system that continuously monitors time and temperature and is visually examined for proper operation twice daily;

VA.R. Doc. No. R09-1653; Filed May 19, 2009; 16:46 p.m.